



Appeal Decision

Site visit made on 24 July 2019

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 23 September 2019

Appeal Ref: APP/P1560/W/19/3228344

Land East of Pork Lane, Great Holland CO13 0JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Candler against the decision of Tendring District Council.
 - The application Ref 18/1571/OUT, dated 19 September 2018, was refused by notice dated 15 November 2018.
 - The development proposed is residential development of 0.4 hectares of land to create up to five detached bungalows.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Candler against Tendring District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application is for outline permission with all matters being reserved for future consideration. I have dealt with the appeal on that basis.
4. The appellant submitted a completed Unilateral Undertaking (UU) dated 19th July 2019 in relation to contributions towards recreational disturbance, avoidance and mitigation accompanied by a plan showing the sites red line boundary. The Council has had the opportunity to comment. I have taken account of the UU in my decision.
5. The Tendring District Local Plan 2013-2033 and Beyond (the Emerging Local Plan) has been published but has yet to be examined and found sound. Therefore, it attracts limited weight as a material consideration.
6. The Council has confirmed that, having received an Ecological Impact Assessment (EIA) provided by the appellant, they no longer wish to defend the third reason for refusal which relates to the impact of the development on biodiversity of the site. There is no need, therefore, for me to consider this further.

Main Issues

7. The site lies within the zone of influence of European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Although not forming part of the Council's

reasons for refusal, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the protected site. It is necessary to consider this matter as a main issue.

8. In light of this and the Council's decision not to defend the appeal in regard to impact of the development on biodiversity of the site, the main issues are: -
 - Whether the site is a suitable location for up to five new dwellings having regard to local planning policy and the character and appearance of the surrounding area; and: -
 - The effect of the proposal on European Designated Sites.

Reasons

Suitability of the site for housing

9. The appeal site is an enclosed parcel of informal woodland containing a number of mature and semi-mature trees, and scrub growth. To the south, east and west lie houses whilst to the north lies an open field. Beyond that lies open countryside. The field to the north has an extant permission for residential development, permitted following Appeal Ref APP/P1560/W/18/3202946 (3202946). The main body of the site is enclosed by a belt of mature trees that will be retained.
10. The site connects to Pork Lane, a single carriageway road without footway provision or street lighting. Where the site adjoins Pork Lane the road is subject to a 60 MPH speed limit. However, a 30 MPH mandatory speed limit commences a short distance to the south and at this point street lighting is provided. In the immediate vicinity of the point where the site joins Pork Lane the road is fronted by residential development; that to the north is of recent construction.
11. The appeal site is situated just outside the settlement boundary of Great Holland and as such falls within an area defined as countryside by Policy QL1 of the Local Plan. It is therefore in the countryside for planning purposes where development will only be permitted subject to the exceptions set out in the Council's countryside policies. No argument has been made that any of these exceptions apply. Therefore, the proposal does not comply with Policy QL1 of the Local Plan.
12. Similarly, although, for the reasons given above, carrying limited weight, the appeal site is, other than part of the connection to Pork Lane, outside the settlement Boundary for Great Holland as defined within policy SPL1 of the Emerging Local Plan.
13. There are, however, newly built houses on either side of the site, and it is surrounded on three sides by housing with planning permission to develop housing on the fourth. Therefore, the development would visually appear to sit within the settlement boundary of Great Holland despite my observations above. Paragraph 78 of the National Planning Policy Framework (the Framework) supports new housing where it will enhance or maintain the vitality of rural communities and so, whilst the site is outside the settlement boundary this in itself does not persuade me that the site is in an unsustainable location.

14. The village of Great Holland is defined in the Local Plan as a 'smaller village' and as such contains a limited range of services. Nevertheless, there are services here which can be reached by a short walk or bicycle ride, although the lack of a continuous footway may, to a degree, discourage such a journey. These services include a farm shop, public house, community and church halls, a small business park and a children's play area. It is also served by bus services connecting to Clacton-on-Sea, Kirby Cross and Frinton-on-Sea, which contain a full range of services to cater for the day-to-day needs of residents. The bus further provides a connection to train stations in Kirby Cross and Frinton-on-Sea giving access to national rail routes. The travel required to access facilities providing for the day-to-day needs of residents would therefore not be restricted to use of a private car.
15. Policy EN1 of the Local Plan states that the quality of the district's landscape and its distinctive local character will be protected and, where possible, enhanced and any development which would significantly harm landscape character or quality will not be permitted. The policy identifies certain specific features of the landscape for particular consideration. Policy LP8 of the Emerging Local Plan has similar aims.
16. Policy HG13 of the Local Plan sets out various criteria for backland developments, including the requirements that the development should be within a defined settlement boundary; a safe and convenient means of access is provided that does not cause undue disturbance or loss of privacy to neighbouring residents, or create a long or narrow driveway; comprise an awkwardly shaped or fragmented parcel that would be difficult to develop; or be out of character in its particular setting. Several of these aims are also contained within policy LP8 of the Emerging Local Plan, although the requirement for the development to be within a defined settlement boundary is absent.
17. The site lies within, and to the rear of, existing and proposed development without a presence on the existing frontage and is, therefore backland development. It has been established that the site falls outside a defined settlement boundary.
18. Whilst access is a reserved matter for determination at a later date, the appeal site connects to the local highway network at only one location, and the appeal documents identify this as being the intended point of access. This access passes between two existing properties but has no active frontage to those properties, resulting in a long, straight accessway. However, this access is segregated from the plots of those existing dwellings and separated from them by sufficient distance so as not to cause undue disturbance or loss of privacy. Further, it is wide enough for two vehicles to pass. It would be shared with the recently permitted scheme to the north of the site which was the subject of 3202946.
19. Currently the appeal site is wooded but forms a rectangular residual space within an area fronted on three sides by residential development. Views of the site from the public realm would be limited by the retention of a belt of trees largely surrounding the site. The residual space does not make a significant positive contribution to the appearance of the area. Any residual degree of openness and views from the wider countryside would be further reduced by the extant permission which will complete the enclosure of the site by housing.

20. Whilst the site lies within a backland area, it is in a similar context to the scheme permitted under 3202946. The development can, therefore, no longer be said to be incongruous with regard to the character of the immediate area. Although the site would be largely enclosed within a surrounding belt of retained planting, producing a degree of separation from the adjacent development to the north, I do not consider that this would constitute a significant fragmentation of development and I have little evidence before me to demonstrate that the shape of the site would be difficult to develop in isolation.
21. The proposed development would be contrary to Policies QL1 and HG13 of the Local Plan in as much as the site lies outside any defined settlement boundary. Similarly, the proposed development would be contrary to policy SPL1 of the Emerging Local Plan. However, the proposed development would provide new housing in a location with access to transport and services and where it would enhance or maintain the vitality of the rural economy. Given the particular characteristics of the site, its location and the relationship with the adjacent settlement, particularly its position surrounded on three sides by development and with planning permission to develop the fourth, I conclude that these material considerations outweigh the policy conflict I have found above.
22. I further conclude that the development would not result in harm to the character and appearance of the site and the surrounding area and thus it would not be in conflict with Policy EN1 of the Tendring District Local Plan (2007) (the Local Plan) or Policy HG13 in as much as the latter policy relates to matters of design. Similarly, I have found that the proposal would not be in conflict with policy LP8 of the Emerging Local Plan.

European Designated Sites

23. The appeal site falls within the Zones of Influence around Holland Haven Site of Special Scientific Interest (SSSI) and Hamford Water SSSI, Ramsar site, Special Protection Area and Special Area of Conservation (the Protected Sites).
24. Paragraph 175 of the National Planning Policy Framework (the Framework) states, with regard to habitats sites, that "if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused". The Protected Sites are used for public recreation and therefore the proposed development is likely to generate an increased recreational use and thus, in combination with other development, have a significant effect on the features of interest of the Protected Sites.
25. Natural England and the Council have indicated that there is an agreed strategic solution to mitigate the effects of the proposal, in the form of the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (Essex Coast RAMS). However, I have not been provided with a copy of this document and so I have been unable to ascertain whether the mitigation would be appropriate and, as no specific measures have been identified to be delivered by the monies provided by the UU, whether the mitigation is relevant in regard to this specific proposal.
26. Further, the Council has indicated that they are dissatisfied with the UU that has been submitted in that the description of the development does not accord

with that provided in the application and the sum to be paid is incorrectly stated, providing £122.30, whereas the Council calculate a requirement for £611.30. I am unable to verify either figure. I am therefore unable to favourably conclude my Appropriate Assessment.

27. As such, I must conclude that, following Appropriate Assessment, the proposal would cause harm to the Protected Sites. Therefore, the scheme would conflict with Policies EN6 and EN11a of the Local Plan, which seek, amongst other things, to protect biodiversity and International Sites from harm. The proposed development would also be contrary to policy PPL4 of the Emerging Local Plan which seeks to protect biodiversity and protected sites in a similar way to EN6 and EN11a.

Other Matters

28. I have been made aware of various appeal decisions relating to apparently similar proposals in the area. From the limited evidence before me it would appear that none are directly comparable in relation to effect on a Protected Site. In any case, I have determined this appeal upon its own merits.

Conclusion

29. I note that the Council cannot currently demonstrate a five-year supply of land for housing. However, Paragraph 177 of the Framework makes it clear that the presumption in favour of development does not apply where a proposal is likely to have a significant effect on a Protected Site.
30. My findings in respect of whether the site is a suitable location for housing indicate that planning permission should be granted notwithstanding the conflict with the development plan that I have found. However, I have also found that the development could have a likely significant effect in combination on a habitats site and, on the evidence before me, I cannot be satisfied that the likely significant effects can be screened out on the basis of avoidance or reduction measures. The appeal is therefore dismissed for this reason.

I Dyer

INSPECTOR