
Appeal Decision

Site visit made on 1 October 2019

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th November 2019

Appeal Ref: APP/P1560/W/19/3233001

Land off Shair Lane, Tendring, Essex CO19 9AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Mark Allen against Tendring District Council.
 - The application Ref 19/00277/OUT, is dated 14 February 2019.
 - The development proposed is an outline planning application with all matters reserved for the construction of two detached bungalows and associated double garages.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The appeal results from the Council's failure to determine the planning application within the prescribed period. There is no formal decision on the application, as jurisdiction over that was taken away when the appeal was lodged. However, the Council's statement of case includes the reasons why the planning application would have been refused had it been empowered to do so. I have also taken into account the appellant's statement of case and representations received from a number of interested parties. I have drawn on this, together with other evidence before me, to inform the main issues in this appeal.
3. The planning application was submitted in outline form with all matters reserved. The appellant has provided a layout plan, which is a revision of a similar plan submitted at the planning application stage. I have treated the layout plans as indicative only for the purposes of this appeal.
4. Both the Council and the appellant refer to policies from the emerging Tendring District Council Local Plan 2013-2033 and Beyond Publication Draft June 2017. Although Section 1 of the plan has been through public examination, it remains the subject of outstanding concerns that were raised by the Inspector, and Section 2 will not progress until these matters have been resolved. Therefore, the emerging local plan does not yet form part of the development plan and due to the unresolved objections to it, I have afforded its policies only limited weight in the determination of this appeal.

Main Issues

5. The main issues in this case are:

- Whether or not the appeal site is an appropriate location for housing, including with regard to the accessibility of services and facilities, and the character and appearance of the area; and,
- The effect of the development on highway safety.

Reasons

Location

6. The Tendring District Local Plan 2007 (the Local Plan) was adopted prior to the National Planning Policy Framework (the Framework). The Council considers that the development would be at odds with Saved Policies QL1, QL9 and EN1 of the Local Plan which contain elements which are inconsistent with the Framework. However, in terms of the matters before me as part of this appeal, Saved Policies QL9 and EN1 include a requirement that development protects or enhances the particular character of the part of the countryside within which it sits, which is generally consistent with paragraph 170 of the Framework. Saved Policy QL1 encourages new housing within established settlement boundaries in order to promote sustainable modes of travel in accordance with paragraphs 78 and 79 of the Framework.
7. The appeal site comprises a parcel of grassland, trees and vegetation located off Shair Lane. Despite the appellant's assertion to the contrary, it is located outside any of the settlement development boundaries defined by Saved Policy QL1 of the Local Plan. This Policy seeks to focus new development within existing urban areas and defined settlement boundaries. Therefore, for the purposes of planning policy, the appeal site is located in the countryside.
8. The appeal site is situated along a stretch of Shair Lane where housing is present, and, in that sense, and for the purposes of the Framework, the proposal would not constitute an isolated home in the countryside. Nevertheless, there are shortcomings in respect of the site's location relative to services and facilities, and its accessibility.
9. The village of Great Bentley hosts a range of services and facilities which would allow future occupants of the proposed dwellings to meet their day to day needs. However, the most direct route to the centre of the village from the appeal site would involve negotiating narrow and winding country lanes, which would mean walking or cycling a distance well in excess of 1.5km. This distance alone would have the effect of discouraging future residents to access the village on foot. Moreover, there is a distinct lack of footpaths or street lighting along this route which would be a further impediment for pedestrians, as well as dissuading cycle use outside daylight hours.
10. A limited number of services and facilities are clustered together off a roundabout approximately 800m to the east of the appeal site, including a shop, fast food restaurant and pub/restaurant. The most direct access to these facilities would involve walking along a series of rural footpaths, which are accessible adjacent to the appeal site, routing through the countryside and away from nearby roads. However, as I discovered on my site visit, a large majority of this route is unlit and unevenly and poorly surfaced to the extent

that it would be an unsuitable route for those residing in the proposed dwellings to access these services, particularly during inclement weather or at night. Additional provisions, including a railway station, can be found in the village of Weeley, *circa* 1.4km away. However, access to it would involve utilising the same footpath route, albeit over a longer distance, and I am not persuaded that this route would be an attractive alternative to using a private car.

11. Bus stops are positioned alongside Colchester Road, close to its junction with Shair Lane, within a reasonable walking distance of the appeal site. Despite the regularity of bus services from these stops to Clacton-on-Sea, Colchester and several places in between, pedestrian accessibility from the appeal site is impaired by a lack of lighting or suitable footpaths, making it an undesirable and potentially unsafe route with a lack of suitable segregation between vehicles and those walking along Shair Lane. This would be compounded by inadequate visibility during the hours of darkness. Furthermore, the bus stop located on the opposite side of Colchester Road would require pedestrians to cross a busy, poorly lit road with limited pedestrian refuge either within the carriageway, or at either side of the road, to aid with safe crossing. Consequently, despite the proximity of bus stops to the appeal site, access to them by foot is somewhat precarious.
12. I have had regard to paragraph 103 of the Framework which states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. It is to be expected, therefore, that some travel by private motor vehicles is likely in rural areas such as this. I also appreciate that the proximity of bus stops would give future residents some degree of choice over transport modes. However, even taking this into account, the distance between the proposed dwellings and the services and facilities on which future occupiers would rely for day to day living, and the aforementioned factors which would restrict access to those services and facilities for pedestrians and cyclists, means it is likely that residents would be heavily reliant on the use of the private car, which is the least sustainable travel option.
13. In terms of the impact on the character and appearance of the area, the appeal site is well screened from the road and the surrounding area by trees and vegetation. Whilst the land is used regularly for a variety of recreational purposes, and waste items have been stored there, it retains a rich and verdurous character and appearance which is more akin with the surrounding countryside than the properties which are interspersed intermittently alongside Shair Lane.
14. I accept that the submitted layout plans are indicative, but it is clear that to accommodate the dwellings proposed, whatever the final form of the development, it would involve permanent encroachment into an area of countryside, diminishing the contribution the site makes to its verdant surroundings, thus undermining its intrinsic character. I appreciate that there would be opportunities to bolster existing landscaping, and even though no specific details are before me, I have assumed that all existing trees within the appeal site would be retained. Nevertheless, this would not negate the harmful effect this urban form would have on the rural character and appearance of the area.

15. In conclusion, the appeal site would not be an appropriate location for housing, including with regard to the accessibility of services and facilities, and the character and appearance of the area. The development would be in conflict with Saved Policy QL1 of the Local Plan and the Framework which seek, amongst other matters, to ensure that developments are appropriately located so they enhance or maintain the vitality of rural communities, where accessibility to services and facilities is maximised, and ensures a choice of sustainable transport modes. There would also be conflict with Saved Policies QL9 and EN1 of the Local Plan and the Framework which require local character and distinctiveness to be maintained or enhanced, and the intrinsic character of the countryside to be recognised.

Highway safety

16. The GDPO¹ requires that applications for outline planning permission must at the very least state the area, or areas, where access points to the development would be situated.
17. The appeal site is accessed from Shair Lane via a gate taken from a short section of track that connects to the road. I am told by the appellant that the existing access was previously approved², a point which is not disputed by the Council. However, based on the indicative layout, the Council raises concerns over the intensification of the access as a result of the proposal, and the obtainable visibility for vehicles exiting the site onto Shair Lane.
18. In order to address the Council's concerns during the planning application, the appellant submitted a further plan³ which would propose the point of access more centrally along the site frontage and immediately adjacent to Shair Lane.
19. As I have set out in the preliminary matters, the submitted layout plan is indicative only and I have considered the point of access, as depicted by the additional plan³ which was considered by the Council during the course of the planning application. In this regard, there is nothing before me in the evidence, or from what I saw on my site visit, to suggest that adequate visibility would not be achievable and that an access in this location would be unsafe or otherwise harmful to highway safety. Moreover, the local highway authority raises no objections in principle to this point of access. Therefore, a safe and suitable access has been demonstrated as part of this outline proposal and would be capable of being provided as part of any subsequent access details submitted as reserved matters.
20. For the foregoing reasons, the development would not lead to unacceptable highway impacts. As a result, the development would comply with Saved Policy TR1a of the Local Plan and paragraph 108 of the Framework which seeks, amongst other matters, to ensure that development reduces and prevents hazards and inconvenience to traffic and that safe and suitable access could be achieved for all users.

Other Matters

21. The appeal site lies within the zone of influence in relation to several European Protected Sites which are subject to statutory protection under the

¹ The Town and Country Planning (Development Management Procedure) (England) Order 2015 'GDPO'

² Tendring District Council planning permission reference 05/01230/FUL

³ Plan reference 19/01/106

Conservation of Habitats and Species Regulations 2017. New residential development would place additional pressure, in combination with other projects, on the sensitive interest features of one or more of these sites. As the appeal is being dismissed on other substantive issues, it is not necessary for me to look at these in detail, or the mitigation measures proposed by the appellant. Furthermore, if I had been minded to allow the appeal, I would have explored the necessity for undertaking an Appropriate Assessment.

22. The appellant has drawn my attention to a number of other cases where planning permission has been granted for new dwellings both by the Council and on appeal on sites that have some similarities with the one before me. The Council have also provided me with a copy of a dismissed appeal which they consider is comparable. However, each of the cases differ in terms of their functional relationship with the nearest serviced settlements, and their impact on the character and appearance of the area. Therefore, I am not satisfied that the circumstances of each case are sufficiently similar to the appeal scheme such that it would warrant me reaching a different conclusion on the main issues. In any event, I have determined the appeal case on its own merits, whilst having regard to the evidence submitted.
23. It is put to me by the appellant that a large detached garage and additional facilities have been erected at a property close to the appeal site. Be that as it may, the current appeal proposal would involve the provision of two new dwellings, as opposed to a domestic outbuilding. The example I have been provided with is not comparable in terms of its location or the use proposed, and it does not detract from the harm I have identified in this case.
24. In the event that the appeal was dismissed, the appellant states that works could be undertaken within the appeal site which would make it less desirable, including the removal of the hedgerow. Be that as it may, and notwithstanding the fact that I do not know the scope or likelihood of any potential works that could be undertaken, it does not compensate for the harm I have identified to the character and appearance of the area as a result of the appeal proposal.

Planning Balance and Conclusion

25. There is no dispute between the main parties that the Council are unable to demonstrate a five-year housing land supply. Paragraph 11 of the Framework states at '(d) where there are no relevant development plan policies, or the policies most important for determining the application are out-of-date (including housing, where the LPA cannot demonstrate a five year supply of deliverable housing sites), permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.'
26. There would be conflict with relevant development plan policies. The Local Plan dates from 2007 but the weight to be attached does not hinge on its age. Rather, paragraph 213 of the Framework makes it clear that weight should be given to existing policies according to their degree of consistency with the Framework. The countryside is not protected for its own sake, but its intrinsic character and beauty is recognised by the Framework, which also seeks to promote walking, cycling and public transport use. Even taking account of the objective of significantly boosting the supply of homes and the Council's position, the conflict between the proposal and Saved Policies QL1, QL9 and

EN1 of the Local Plan should therefore be given significant weight in this appeal.

27. Set against the harm identified there would be limited social and economic benefits associated with the proposal. The development would provide two dwellings which would generate employment opportunities during construction, and through the employment of local services for the upkeep and maintenance of the houses when they were occupied. The dwellings, by design, would cater for the needs of older and disabled persons. However, two additional units would make little difference to the overall supply and mix of housing and the support that the households would provide to the local economy would also be limited.
28. Consequently, the adverse impacts on the character and appearance of the area and of increasing travel by car and associated environmental harm would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
29. The proposal would conflict with the development plan as a whole and there are no other material considerations which outweigh this finding. Therefore, for the reasons given, I conclude that the appeal is dismissed.

Matthew Woodward

INSPECTOR