



Appeal Decision

Hearing Held on 15 October 2019

Site visit made on 15 October 2019

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 January 2020

Appeal Ref: APP/W1525/W/18/3217969

**Land between Back Lane and Old Church Road, East Hanningfield,
Chelmsford CM3 8BG**

- 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 P Morris against the decision of Chelmsford City Council.
 - The application Ref 17/01646/OUT, dated 28 August 2017, was refused by notice dated 13 June 2018.
 - The development proposed was originally described as: 'Erect Twenty Six Two-Storey Detached, Semi-Detached and Terraced Houses, Flats and Bungalows (Including 10 Affordable Homes) with Associated Garages, Lay Out Parking, Public and Private Open Space/Amenity Areas, Estate Roads, Drainage Infrastructure and Landscaping and Form New Access onto Old Church Road (Appearance, Landscaping and Scale are Reserved).'
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Decision

1. The appeal is allowed and outline planning permission is granted to Erect Twenty Six Two-Storey Detached and Semi-Detached Houses, Flats and Bungalows (Including 10 Affordable Homes) with Associated Garages, Lay Out Parking, Public and Private Open Space/Amenity Areas, Estate Roads, Drainage Infrastructure and Landscaping and Form New Access onto Old Church Road (Appearance, Landscaping and Scale are Reserved) at Land between Back Lane and Old Church Road, East Hanningfield, Chelmsford CM3 8BG, in accordance with the terms of the application ref: 17/01646/OUT, dated 28 August 2017, subject to the attached schedule of conditions.

Procedural Matters

2. In allowing the appeal, I have amended the description of development by removing the reference to terraced houses. During the course of the original application, the layout was altered to remove the terraced houses and therefore the amended description is more accurate. The parties have agreed to this change in their statement of common ground and consequently, I am satisfied that in making this change, their interests have not been compromised.

Main Issues

3. The main issues are:
 - i) the effect of the proposal on the Blackwater Estuary and Crouch and Roach Estuaries Special Protection Areas and the Essex Estuaries Special Area of Conservation;

- ii) whether the proposal makes suitable provision for affordable housing, having regard to local plan policy;
- iii) whether the proposal makes suitable provision for secondary school transport arrangements; and
- iv) whether the appeal site is suitable for the development proposed, having regard to the provisions of local and national policy, and other material considerations.

Reasons

Effect on European Sites

4. Although it did not form part of the refusal reasons, at the Hearing, both parties referred to the effect of the proposal on relevant European Sites. The appeal site is located within the Zone of Influence of the Blackwater Estuary and the Crouch and Roach Estuaries Special Protection Areas (SPAs), as well as the Essex Estuaries Special Area of Conservation (SAC). The SPAs support an internationally important assemblage of birds and the SAC contains important natural habitats, including sandbanks, estuaries, mudflats, sandflats and Atlantic salt meadows.
5. Due to the location of the appeal site, the requirements of the Conservation of Habitat and Species Regulations 2017 apply (the Regulations). This requires that I, as the competent authority, must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the European Sites.
6. The SPAs and SAC are important resources that can be affected by recreational activity. The proposal would increase the local population in the area. Therefore, taking a precautionary approach, and when combined with other development within the area, I am satisfied that the proposal would result in an increase in such recreational activity which would lead to a likely significant adverse effect on the integrity of the SPAs and SAC.
7. Due to this effect, the Regulations place a duty on competent authorities to make an appropriate assessment of the implications of the development proposed in view of the site's conservation objectives. In this respect, the appeal has been accompanied by a Unilateral Undertaking (UU) which would require the appellant to make a financial contribution per dwelling to mitigate the impact of the development. This approach is in full accordance with the Draft Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS).
8. Natural England have been consulted as part of the appropriate assessment. In response, they are satisfied with the mitigation proposed and have not objected to the proposal. Based on the evidence before me, I am also satisfied that the undertaking provided would enable the delivery of suitable mitigation that would address the level of harm likely to be caused by the development. In this respect, the UU is entirely compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010. Accordingly, subject to the

necessary mitigation, I conclude that the proposal would not result in a significant harmful effect on the integrity of the SPAs or SAC.

Affordable Housing

9. In accordance with Policy DC31 of the Core Strategy and Development Control Policies, Development Plan Document 2001 – 2021 (2008) (CS), the proposal is required to provide 35% of the total number of residential units to be provided and maintained as affordable housing. Accordingly, the appeal has been accompanied by a completed UU which meets the policy requirement. At the hearing, the parties confirmed that the UU overcomes the Council's concerns in relation to affordable housing.
10. I am satisfied that the provisions of the UU are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development. Accordingly, the UU is compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010.
11. Due to the successful completion of the UU, I conclude that the proposal would make suitable provision for affordable housing. Consequently, it would accord with Policy DC31 of the CS which requires 35% of the total number of residential units to be provided and maintained as affordable housing.

Transport contribution

12. The location of the appeal site would be in excess of the statutory walking distance from the nearest secondary school (The Sandon School). Consequently, due to the requirement of the County Council to provide transport, the submitted UU makes provision for a financial contribution towards this matter. The parties have confirmed that the UU overcomes the concern of the Council. Moreover, as with the affordable housing obligations, I am satisfied that the UU is compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010.
13. Due to the successful completion of the UU, I conclude that the proposal would make suitable provision for secondary school transport arrangements. Consequently, it would accord with Policy CP4 of the CS which requires that all new development meets the necessary on and off-site infrastructure requirements to support the development.

Suitability of the site for the development proposed

14. Policy DC32 of the CS relates to rural housing need. It states that planning permission may be granted for affordable housing on small sites within or adjoining small rural Defined Settlements, which would not otherwise be released for housing, in order to meet local rural housing need. The appeal site is located within the defined settlement boundary of East Hanningfield and, in accordance with Policy DC32, it is allocated for affordable housing within the adopted Site Allocations Development Plan Document (2012).
15. Policy DC32 establishes a series of criteria against which development proposals will be assessed. Criterion 'i' of the policy relates to need and requires the City Council to be satisfied that there is a clearly evidenced local need for the number and type of housing proposed. The appellant has not provided a needs survey. However, it is common ground between the parties

that there is a need for affordable housing and based on the evidence before me, I have no reason to dispute this matter. The proposal therefore meets criterion 'i'. The second and third criteria relate to accessibility and location and compliance with these matters is not disputed by the Council. In addition, the parties accept that criterion 'iv', which relates to the mechanisms of securing affordable housing, would be complied with through a suitably worded legal undertaking and I am satisfied that this matter has been suitably resolved.

16. However, as identified above, the overall thrust of the policy relates directly to affordable housing and in this respect, the majority of the houses proposed would be open market dwellings with 38% being made available for affordable housing. The Policy does allow for a proportion of market housing where it can be demonstrated that this is essential to cross-subsidise the delivery of the affordable housing, and that the development would not be viable without this cross-subsidy. However, no viability arguments have been advanced by the appellant to suggest that the level of open market housing is necessary.
17. Due to the split between open market and affordable housing, the parties agree that the proposal represents a standard housing development rather than a proposal that seeks to meet rural housing need. Consequently, it was common ground at the hearing that the proposal would conflict with the requirements of policy DC32 of the CS. Such a direct conflict with the development plan weighs heavily against the proposal.
18. Nevertheless, despite this conflict, it is the view of the appellant that there are material considerations that indicate a decision other than in accordance with the development plan. These matters were fully discussed at the hearing and I will therefore now turn my attention to them in my assessment of the appeal.

Emerging Local Plan

19. The Council is in the process of developing a new Local Plan. Whilst this has not yet been adopted, the parties agreed that this would be likely to happen soon. Indeed, at the time of the Hearing, the Council were considering a tentative date for adoption in December 2019.
20. Within the emerging plan, the site would remain within the Defined Settlement boundary of East Hanningfield. However, it is proposed that the affordable housing allocation for the appeal site would be removed. As a consequence, the appeal site would no longer be considered as a rural exception site, but instead it would constitute a parcel of land within the settlement boundary with no specific designations. There would therefore be no specific policy restriction against development of the site and accordingly, any proposals for development after the adoption of the plan would have to be dealt with on their own merits against the provisions of the development plan.
21. Paragraph 48 of the National Planning Policy Framework (the Framework) enables weight to be given to emerging policies subject to three matters. The first relates to how advanced the emerging policy is, and on this point, it was agreed at the hearing that the emerging plan is at a very advanced stage. Indeed, it was suggested by the Council that it has gone as far as it can go without being adopted.
22. The second relates to whether there are any unresolved objections to the emerging plan. Although the Parish Council objected to the proposed alteration

to the settlement boundary, this is not a matter that has been the subject of any main modifications. Consequently, it seems highly improbable that the Defined Settlement boundary would be revisited at this advanced stage. Therefore, based on the evidence before me, I am satisfied that in respect of the appeal site and the status of the relevant settlement boundary, there are no unresolved objections to this part of the emerging plan.

23. The final requirement of Paragraph 48 relates to the degree of consistency of the emerging policy with the Framework. On this point, the plan has only recently been examined and it is likely to be adopted imminently. The parties both therefore agreed that the plan is entirely consistent with the Framework. It seems implausible that the plan would get to such an advanced stage if this were not to be the case. Consequently, I have no reason to disagree with the parties.
24. Due to the advanced nature of the plan, the lack of unresolved objections and the consistency with the Framework, it is my view that the emerging plan should be attributed a considerable level of weight in my assessment of the appeal. Moreover, when assessed against the provisions of the emerging plan, as identified above, there would be no overriding policy constraints to the proposal. This is a matter that weighs very heavily in favour of the appeal.

Extant planning permission

25. At the time of the Hearing, the appeal site benefitted from an outline planning permission for the erection of 20 dwellings, 10 of which would be affordable housing. That outline permission would have expired on 6 December 2019. However, the parties have confirmed that a reserved matters application was submitted to the Council on 4 December 2019 to ensure that the outline permission did not lapse.
26. The outline permission was deemed to comply with Policy DC32 and in this respect, it was determined as a rural exception site. That approval is therefore materially different to this proposal. However, through the outline permission, the principle of developing the site has been established. The reserved matters application is now being advanced and I have no evidence before me to suggest that the development would not be implemented if the circumstances required it. The outline permission therefore represents a fallback position of considerable weight in my assessment of the appeal.

Affordable Housing

27. Due to the requirements of Policy DC32, the proposal includes mechanisms within the submitted UU to ensure that the affordable houses would be exclusively for local need. If the proposal were to be considered upon adoption of the emerging plan, these provisions would be less likely to be deliverable because the policy framework would no longer require it. The provision of affordable housing exclusively for local need also therefore weighs in favour of the proposal.

Effective use of land

28. The proposal would provide 6 more dwellings than the previously granted outline planning permission. However, concerns have been raised by interested parties, including the Parish Council, that the density of the proposal would be

inappropriate due to the location of the site adjacent to the open countryside. It has also been suggested that the parking provision would be insufficient.

29. Both of these matters were raised during the application process and the Council provided advice to its Planning Committee accordingly. The Council stated that although the density of the proposal would be higher than its immediate surroundings, it would still be relatively low for an edge of settlement context. In addition, the Council were satisfied that the parking provision complied with its relevant standards.
30. Based on the evidence before me, I am satisfied that the proposal would respond in an appropriate manner to the character and appearance of the area. Moreover, I agree with the Council's conclusions that there are no indicators within the proposal that it represents an overdevelopment of the site. Accordingly, I am satisfied that the proposal would make an effective use of land, as required by the Framework and in this respect, it would contribute towards the Government's objective of significantly boosting the supply of homes. Consequently, the value of six additional units beyond the extant outline permission also weighs in favour of the proposal.

Planning Balance

31. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions are made in accordance with the development plan unless material considerations indicate otherwise.
32. I have found that the proposal would directly conflict with Policy DC32 of the CS and this is a matter which weighs heavily in my assessment of the appeal. However, the emerging plan is well advanced, it is consistent with the Framework, and there are no outstanding objections to the relevant sections for this appeal. Moreover, once adopted, the emerging plan would remove the affordable housing allocation but retain the site within the settlement boundary. Accordingly, the policy constraints of the existing plan would no longer exist, and the site could be brought forward for development. Due to the stage of the plan, the limited objections, and the degree of consistency with the Framework, it is a material consideration of considerable weight.
33. The proposal would also provide 10 affordable housing units and would make an effective use of the site in accordance with the Framework. These matters weigh heavily in my assessment of the appeal. Finally, for the reasons identified above, the outline permission that is being advanced through the reserved matters stage is also a relevant material consideration that weighs in favour of the appeal.
34. Consequently, despite the conflict with the adopted plan, based on the evidence before me, the significant cumulative weight of the material considerations identified above is such that they clearly and demonstrably indicate a decision contrary to the adopted development plan. Accordingly, I conclude that the appeal site is suitable for the development proposed.

Other Matters

35. Within the completed UU, there is an obligation in relation to the management of open space within the development. Both parties are content with the provisions and I am satisfied that it complies with the requirements of the CIL Regulations 2010.

36. Due to the location and nature of the appeal site, it has some ecological value. Accordingly, through the course of the application, the ecological reports were scrutinised by the Council's relevant officers. Following the appeal, I have been provided with details of the responses provided by the relevant officers, and based on this evidence, I am satisfied that subject to the attached conditions below, the ecological value of the site would be suitably safeguarded.
37. At the hearing, there was some detailed discussion about the implications of the development on foul and surface water drainage. It was suggested that the existing sewage pumping station close to the site cannot process existing loads with the consequence of surface water being contaminated. A further suggestion was therefore made in relation to the need for a legal undertaking to require a contribution to the upgrading of the pumping station.
38. Despite these comments, neither the Lead Local Flood Authority (LLFA) or Anglian Water have objected to the proposal. However, the LLFA did suggest a number of detailed conditions in the event that outline planning permission was granted. The suggested conditions advanced by the Council did not include the level of detail in relation to the surface water drainage scheme. They also make no reference to ongoing maintenance. Whilst it would be unreasonable to expect the development to fix pre-existing concerns in relation to drainage, it would not be unreasonable to ensure that it does not make the situation worse. Consequently, despite the comments from the Council and appellant at the hearing, I am satisfied that there is sufficient justification to attach a more onerous condition in relation to drainage. However, subject to the attached conditions, I am satisfied that the proposal would suitably cater for foul and surface water drainage.

Conditions

39. Due to my findings set out above, conditions 1, 2 and 3 are necessary in the interests of clarity to establish the time frame for the reserved matters approval and condition 4 is also necessary in the interests of precision. Condition 5 is necessary due to the relationship of the site with adjacent dwellings and to safeguard existing living conditions, with particular regard to privacy, and conditions 6 and 7 are necessary to ensure that the proposed materials and boundary enclosures are appropriate for their context.
40. Conditions 8, 9, 10, 11, 12, 13 and 14 are necessary in the interests of highway safety and conditions 15 and 16 are necessary to promote alternative forms of transport other than the private motor vehicle. As identified above, the site also has some drainage sensitivities. Consequently, conditions 17, 18, and 19 are necessary to establish the drainage requirements of the proposal.
41. To ensure the development promotes sustainable methods of construction, condition 20 is necessary, and conditions 21 and 22 are necessary to ensure that the proposal meets its requirements in relation to ecology and habitat protection. In addition, condition 23 is necessary to protect the presence of important trees and mature landscaping.
42. Condition 24 is necessary to ensure that suitable refuse and recycling storage facilities are provided prior to the occupation of the dwellings and finally, condition 25 is necessary to safeguard the archaeological sensitivities of the site.

43. Where the conditions require work to be carried out prior to the commencement of development, the appellant has agreed to this requirement in writing.

Conclusion

44. For the reasons identified above and subject to the attached conditions and the completed Unilateral Undertakings, the appeal should be allowed.

Martin Chandler

INSPECTOR

SCHEDULE OF CONDITIONS

1. Application for the approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters.
3. Approval of the details of the scale, appearance of the buildings, and the landscaping of the site (hereinafter called "the reserved matters"), shall be obtained from the local planning authority in writing before the development is begun.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: 13/19/10; 13/19/11 Rev. C; 13/19/13 Rev. A; 13/19/14 Rev. A; and 13/19/15.
5. Prior to the digging of any foundations, detailed drawings and sections showing the finished levels of all parts of the development in relation to the levels of the surrounding area and any neighbouring buildings shall have been submitted to and approved by the local planning authority.
6. Prior to their use details of the materials to be used in the construction of the development hereby permitted shall be submitted to and approved by the local planning authority.
7. Details of the proposed treatment of all boundaries, including drawings of any gates, fences, walls, railings or piers, shall be submitted to and approved by the local planning authority. The development shall not be occupied until the boundary treatments have been provided in accordance with the approved details.
8. No development shall take place, including any ground works, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - (i) the parking of vehicles of site operatives and visitors;
 - (ii) loading and unloading of plant and materials;
 - (iii) storage of plant and materials used in constructing the development;
 - (iv) wheel and underbody washing facilities.
9. Prior to first occupation of the development, the new junction/access road onto Old Church Road as shown in principle in the Proposed Site Plan drawing no. 13/19/11 Rev C at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 43 metres in both directions as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided and retained free of any obstruction in perpetuity.

10. Prior to first occupation of the development, each vehicular access onto Old Church Road shall be constructed at right angles to the highway boundary and to the existing carriageway as shown in principle in the Proposed Site Plan drawing no. 13/19/11 Rev C. and shall be provided with an appropriate vehicular crossing of the footway/highway verge.
11. Prior to first occupation the footway connections into the development from Old Church Road shall be provided as shown on approved drawing no. 13/19/11 rev C.
12. Prior to first occupation of the development the size 3 vehicular turning facility, as shown in principle in the Proposed Site Plan drawing no. 13/19/11 Rev C, shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.
13. No unbound material shall be used in the surface treatment of any vehicular access within 6 metres of the highway boundary or land to be dedicated as highway as part of the proposal.
14. The parking areas for each dwelling shall be provided and be available for use prior to the occupation of the dwelling units or other accommodation that they are intended to serve and shall not thereafter be used for any purpose other than the parking of motor vehicles ancillary to the use of the dwellings.
15. Details of bicycle parking facilities to serve the development shall be submitted to and approved in writing by the local planning authority. The bicycle parking facilities shall be provided in accordance with the approved details prior to occupation of any part of the development they are intended to serve.
16. Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator for each new dwelling.
17. No works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:
 - Limiting discharge rates to the greenfield 1 in 1 for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change;
 - Provide sufficient storage to ensure no off-site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event;
 - Final modelling and calculations for all areas of the drainage system;
 - The appropriate level of treatment for all runoff leaving the site, in line with the CIRIA SuDS Manual C753;
 - Detailed engineering drawings of each component of the drainage scheme;

- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features;
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy;
- Appropriate maintenance arrangements to enable the surface water drainage system to function as intended.

The scheme shall subsequently be implemented prior to occupation.

18. No works shall take place until a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented as approved.
19. No development shall commence until a foul water strategy has been submitted to and approved in writing by the local planning authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved.
20. Within 6 months of commencement of development, details of how the development will achieve a minimum of 10% reduction in carbon dioxide emissions above the requirements of Building Regulations to include, where appropriate, drawings and specifications of any renewable energy or low-carbon technology proposed to meet this requirement, shall be submitted to and approved in writing by the local planning authority. The detailed methodology for achieving these standards of construction shall be implemented as agreed.
21. The development hereby permitted shall only be carried out in accordance with the recommendations within the Preliminary Ecological Appraisal dated April 2018 by t4ecology Ltd.
22. No development, including demolition, grounds works or vegetation clearance, shall take place until a Reptile Mitigation Strategy has been submitted to and approved in writing by the local planning authority. The Reptile Mitigation Strategy shall include the following:
 - a) results of the reptile monitoring surveys;
 - b) a scheme of mitigation/enhancement works, including a method statement, to minimise the adverse effects of the development on protected species;
 - c) a scheme of translocation to be submitted, if necessary;
 - d) timings of the works;
 - e) ecological clerk of works;
 - f) details of the aftercare and long term maintenance of the mitigation area;
 - g) details for monitoring and remedial measures of the mitigation area.

- 23.No trees or hedges within the site other than those shown to be removed on the approved plan number 13/19/11 rev C shall be felled, uprooted, damaged, or disturbed or removed prior to the commencement of the development or within a period of 5 years following commencement of the development unless the local planning authority gives its written consent to any variation.
- 24.Prior to their installation, details of the facilities for the storage of refuse and recyclable materials shall be submitted to and approved in writing by the local planning authority. The development shall not be occupied until the facilities for the storage of refuse and recyclable materials have been provided in accordance with the approved details. The facilities for the storage of refuse and recyclable materials shall be provided in accordance with the approved details prior to the occupation of any building they are intended to serve.
- 25.No development or preliminary groundworks shall take place within the site until the implementation of a programme of archaeological work in accordance with a written scheme of investigation has been secured and has been submitted to and approved in writing by the local planning authority.

APPEARANCES

FOR THE APPELLANT

Stewart Rowe DipTP MRTPI
Mr Sharp
Steven Hopkins

The Planning and Design Bureau Ltd
Site owner
Solicitor – Holmes and Hills LLP

FOR THE LOCAL PLANNING AUTHORITY

Matthew Perry
Jeremy Potter
Robin Hosegood

Senior Planning Officer
Spatial Planning Manager
Strategic Development Team Leader

INTERESTED PERSONS

Councillor Richard Poulter
Councillor Sue Dobson
Stephen Snewin
David Rackham
Malcolm Thomas

Borough Councillor
Borough Councillor
Local Resident
Local Resident
East Hanningfield Parish Council and
East Hanningfield Action Group

DOCUMENTS SUBMITTED DURING THE HEARING

1. Statement to Planning Inspector – Malcolm Thomas
2. Statement to Planning Inspector – Stephen Snewin
3. Statement to Planning Inspector – David Rackham

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Letter on behalf of the appellant in relation to pre-commencement planning conditions
2. Topographical Survey 710/01A
3. Ecology Note including appendices in relation to consultation response
4. Land Registry Title Document
5. Note on Natural England's edict and the draft Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) – jointly signed on behalf of the Council and the appellant
6. Unilateral Undertaking dated 15 October 2019 and covering letter dated 17 October 2019