



Appeal Decision

Site visit made on 11 February 2020

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th March 2020

Appeal Ref: APP/P1560/W/19/3238476

3 Mill Lane, Weeley Heath CO16 9BG

- 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 John Lynch of South East Developments Limited against the decision of Tendring District Council.
 - The application Ref 17/01912/OUT, dated 5 November 2017, was refused by notice dated 4 April 2019.
 - The development proposed is residential development of five bungalows.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application form described the proposed development as "residential development of seven bungalows to land at the rear of 3 Mill Lane, Weeley Heath with access from new development on former Kidbys Nurseries, Clacton Road, Weeley Heath." However, the Council's decision notice describes the proposal as "Residential development of five bungalows" and this is also set out in the appeal form. It is evident that this description has been accepted by both parties. I have therefore determined the appeal on the basis of the amended description.
3. The application was made in outline with all matters reserved for future determination. I have had regard to the indicative layout for 5 dwellings shown on the submitted drawings in reaching my decision.
4. Notwithstanding the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) the development plan for the area comprises the saved policies of the Tendring District Council Local Plan 2007 (Local Plan). The National Planning Policy Framework (the Framework) is also a significant material consideration.
5. The Council advise that the signed and dated unilateral undertaking (UU) submitted by the appellant in respect of financial contributions to be made in accordance with the emerging Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS); and with the provision of public open space provision addresses the third and fourth reasons for refusal on the decision notice. I have taken this into account in my decision below.

Main Issues

6. In light of the above, the main issues are:

- the effect of the proposed development on the character and appearance of the surrounding area; and
- whether the appeal site is a suitable location for new dwellings having regard to local and national policy for the delivery of housing.

Reasons

Character and appearance

7. The appeal site is part of a large residential garden at the rear of 3 Mill Lane (No 3), a detached cottage. The area is semi-rural in character, with the gardens to residential properties abutting the site on three sides and an open field to the south-west where there is a recently completed development of 6 bungalows fronting Mill Lane.
8. The indicative drawings show five bungalows set within varying sized plots arranged as a cul-de-sac. This would be served by a narrow access road running between No 3 and the recently constructed bungalows fronting Mill Lane and along the edge of the field. Whilst the drawings are indicative, alternative options for the proposed access road are limited due to the shape and position of the appeal site.
9. Paragraph 127 of the National Planning Policy Framework (the Framework) sets out that developments should function well and add to the overall quality of the area and establish a sense of place. The proposed houses would be some distance to the rear of both No 3 and the adjacent bungalow at 5 Mill Lane. Due to its long access from Mill Lane, the proposed development would be unconnected to and separate from surrounding development and the wider village, therefore limiting the opportunities for social interactions. The long access would have no active frontage for much of its length and would not encourage pedestrian and cycle access to the village and services, particularly during the evening when the access would be unlit and less easy to navigate.
10. Cul-de-sac developments are not uncommon within the vicinity of the appeal site. However, the pattern of development arising from the appeal scheme with the long access leading to an area of housing is not characteristic of nearby cul-de-sac developments and would therefore appear out of keeping.
11. Due to its backland position and being single-storey, the proposed development would not be widely visible from the surrounding area with the existing development along Mill Lane screening it from view from the street. Whilst not visually prominent, it would nevertheless be visible and introduce a more urban form of development and a harder edge to the village away from any established streets.
12. I have been referred to other approved schemes for housing developments on backland sites including a scheme for 4 bungalows on land at the rear of 8A Holland Road and one at Bradfield. From the information provided, the Holland Road scheme has a similar long access to the appeal scheme. However, unlike the appeal scheme, this access appears to have been existing and the new development in this case would not be physically separate from other houses

using that access. The Bradfield scheme is enclosed on all sides by residential development and gardens which differs from the appeal scheme on the edge of the built up area adjacent to open fields. As such, these schemes are not directly comparable to the scheme before me.

13. I conclude that the proposed development would significantly harm the character and appearance of the surrounding area. It would therefore conflict with Saved Policies HG13, QL9, QL10 and QL11 of the Local Plan. These policies in combination require development to make a positive contribution and protect or enhance local character as well as discouraging long or narrow driveways. It would also not accord with the place-making objectives of the Framework.

Suitable location

14. The Council's strategy for managing the location of development is set out in Saved Policy QL1 of the Local Plan. This applies a sequential approach to the location of new development based on a settlement hierarchy and focuses most new development in larger urban areas and permits limited development consistent with local community needs, within the settlement development boundaries of smaller towns and villages. The policy restricts development outside these areas within the countryside in order to conserve and enhance the countryside for its own sake.
15. Policy SPL1 of the emerging Plan also sets out a settlement hierarchy, directing new development towards the most sustainable locations. However, as an emerging plan, I can afford the policies therein only limited weight. I have however noted that they do not suggest a change to the Council's approach regarding settlement boundaries and the appeal site would not be included within the settlement boundary.
16. The appeal site forms part of the rear garden of No 3. The settlement boundary of Weeley Heath, as defined in the Local Plan, runs along Mill Lane with properties on the southern side of the street including the appeal site lying beyond the boundary. The proposed development being outside the settlement boundary, would therefore conflict with Policy QL1.
17. Weeley Heath, as a smaller rural settlement, has a limited number of services and facilities. However, I saw a primary school, a church, a pub and a railway station which would be in walking distance of the appeal site along Clacton Road. Furthermore, the appellant's evidence has indicated that there are bus stops some 90 metres from the site with regular daily services to both Colchester and Clacton-on-Sea. On this basis, the appeal site is accessible to services and facilities without relying on the use of a private car. I also accept that the proposed development could be closer to some of these facilities and services than other recent developments within the area.
18. The Council accepts that it does not have a 5 year housing land supply (5YHLS) of deliverable sites. Consequently, policies for housing delivery are considered out of date. I return to this later in my decision.
19. My attention has been drawn to a number of recent developments within Weeley Heath including a development of 6 bungalows adjacent to No 3 on Mill Lane and at Kidbys Way off Clacton Road, both of which also lie outside the settlement boundary. I have not been provided with full details of these cases, however, I note that these developments either provide significantly more

houses than the appeal proposal or have a frontage directly onto an existing street and therefore would be more in character with the existing pattern of development, as I have covered in my reasoning on character and appearance. On this basis they are not comparable with the appeal scheme.

20. I conclude that the appeal site is not a suitable location for new dwellings having regard to local and national policy for the delivery of housing. It would therefore conflict with Saved Policy QL1 of the Local Plan which restricts development outside defined settlement development boundaries as referred to above.

Other Matters

21. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard must be given to the desirability of preserving a listed building or its setting. The appeal site forms part of the garden to No 3, a Grade II listed building and thatched cottage. No 3 has previously been extended which has significantly enlarged the original cottage. Despite this more modern extension, the features of the original cottage are retained and its character remains that of a traditional, rural cottage. The cottage is set on the edge of the village within a semi-rural landscape of linear housing development and an open field.
22. The proposed access would be adjacent to the more modern two-storey extension to the building and would not be a prominent feature adjacent to this building and would retain the level of openness towards the fields that currently exists. Furthermore, the proposed houses, due to their distance from the listed building, in combination with the large area of retained garden and proposed screening to No 3 would not interfere with the setting of this listed building. I therefore consider the proposed development would not harm the setting of the listed building.
23. The appeal site lies within the Zone of influence for the Colne Estuary Special Protection Area and Ramsar site and Essex Estuaries Special Area of Conservation. These sites are protected as European Sites of Nature Conservation Importance and are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017. Regulation 63(5) imposes a duty on local planning authorities as the competent authority, to consider whether any proposal may have a significant effect on such protected areas either alone, or in combination with other plans and projects.
24. The Council undertook an Appropriate Assessment (AA) of the effect of the proposed development and concluded that appropriate mitigation would be required. The Council has adopted the RAMS which sets out the mitigation in the form of financial contributions towards mitigation projects in the Strategy. The appellant has accepted the need to provide a financial contribution towards the RAMS and has submitted a UU. The Council has accepted this and withdrawn its objection.
25. Irrespective of this, the requirement to carry out an AA now falls to me, as the competent authority. However, as I have found that the scheme is unacceptable for other reasons, I do not need to pursue this matter further.

Planning Balance

26. The Council acknowledges that it cannot demonstrate a five year supply of deliverable housing sites. The appellant has referred me to recent appeal decisions¹ which indicates that the Council has, at best, a 5YHLS of 4.04 years. I appreciate that whilst a HLS of 4 years is not substantial, nor is it 'modest' as asserted by the Council. It nevertheless constitutes a notable shortfall.
27. In such circumstances, paragraph 11 of the Framework indicates that housing policies should be regarded as out of date. Paragraph 11 d) of the Framework makes it clear that where development plan policies are out of date planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
28. While the development would not accord with planning policies in terms of its location, given the absence of a 5YHLS I give this conflict with policy only moderate weight. The provision of five dwellings which could meet the needs of an older population in an accessible location would make a small contribution to the supply of housing and provide some limited social benefits. Additionally, during both the construction phase and once occupied, the proposed development would provide some limited economic benefits and support for local services.
29. However, my finding is that the significant harm to the character and appearance of the area would be in conflict with both development plan policies and the Framework policies that seek to achieve well-designed places.
30. In my view, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. Therefore, the proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework.
31. The proposal would conflict with the development plan overall, and there are no material considerations that would cause me to determine this appeal other than in accordance with the development plan for the area. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed.

Conclusion

32. For the reasons set out above, I conclude the appeal should be dismissed.

Rachael Pipkin

INSPECTOR

¹ Edenside, Frinton-on-Sea and Frinton Road, Thorpe-Le-Soken