



Appeal Decision

Site visit made on 16 July 2020

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 August 2020

Appeal Ref: APP/P1560/W/19/3243894

Land to the East of New Road, Mistley CO11 2AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by CALA Homes (North Home Counties) against the decision of Tendring District Council.
 - The application Ref 19/00978/OUT, dated 1 July 2019, was refused by notice dated 1 November 2019.
 - The application sought planning permission for the erection of 67 dwellings together with the formation of an access without complying with a condition attached to planning permission Ref 17/00004/OUT dated 19 February 2018.
 - The condition in dispute is No 4 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Drawing No. 0964-F01 rev D – Access Plan; and Drawing No. 1628 URB XX XX GA 90 001 Rev H – Site Layout.
 - The reason given for the condition is: In the interests of certainty.
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Decision

1. The appeal is dismissed.

Background

2. Outline planning permission (Ref 17/00004/OUT) was granted on appeal (Ref APP/P1560/W/17/3176089) on 19 February 2018 for the erection of 67 dwellings on a triangular site to the east of New Road with the means of access and site layout part of the approval. Condition No 4 specified in the interests of certainty that the development should be carried out in accordance with a location plan, access plan and site layout plan.
3. Subsequently, an application to vary condition 4 to substitute an amended site layout plan to improve the road network and alter the housing types was refused, following which the current appeal application was submitted. This seeks to overcome the previous refusal and again seeks to vary condition 4 to substitute an alternative site layout plan.

Main Issue

4. The main issue is whether the proposed layout would provide adequate private amenity space for future occupiers.
5. Two further reasons for refusal were that no planning obligation had been entered into to secure on-site affordable housing or financial contributions

towards educational provision and the avoidance/mitigation of recreational disturbance to various Essex Coast Natura 2000 sites. However, the Council confirm that a satisfactory unilateral undertaking has now been submitted which overcomes these concerns.

Reasons

6. The dispute between the parties centres on the weight to be placed on saved Policy HSG9 of the Tendring District Local Plan 2007 and the associated level of private amenity space to be provided within the scheme.
7. Amongst other standards, Policy HSG9 requires new two bedroom houses to provide a minimum of 75 m² of private amenity space and three or more bedroom houses to provide a minimum of 100 m². However, the Council's statement of case lists 20 of the 55 houses proposed within the scheme which would not meet the necessary standard¹.
8. The appellant does not dispute this, but points out that of these 20, nine would provide above 95% of the requirement, seven between 90% and 95% and only four below 90%. However, in the worst cases, three 3-bedroom houses would have just 81%, 81% and 85% of the requirement and a 4-bedroom house just 86%. These figures are well below what are set as *minimum* standards and would provide a poor amount of private amenity space for family use.
9. Policy HSG9 forms part of the development plan and is not out of date merely because of the passage of time. It is consistent with paragraph 127 of the National Planning Policy Framework which seeks to ensure development provides a high standard of amenity for future users. The more recent Essex Design Guide does not set minimum standards and allows for smaller gardens where there is access to public open space as here, but the Council has not adopted it as supplementary planning guidance and in any event it carries less weight than the development plan. Small garden sizes were not a reason for refusal of the original appeal scheme and were thus not considered at the inquiry, but the focus at that stage was on the principle of development. The committee report for the current case concludes, on balance, that the layout would be acceptable, but the Council is not bound to follow officer advice.
10. The requirement for garden sizes to meet Policy HSG9 need not affect the number of dwellings provided on the site as there is no evidence that a compliant layout, potentially involving a different mix of house types, would not be possible. Housing land supply is thus not an issue in this case.

Conclusion

11. To conclude, the proposed layout would provide inadequate private amenity space for future occupiers in conflict with Policy HSG9, and other material considerations in this case are not sufficient to outweigh this finding.
12. The appeal should therefore be dismissed.

David Reed

INSPECTOR

¹ The scheme would also include 12 apartments with communal garden space.