



Appeal Decision

Site visit made on 4 August 2020

by David Wallis BSc (HONS) PG DipEP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2020

Appeal Ref: APP/P1560/W/20/3246370

**Land adjacent The Oaks, Clacton Road, Weeley Heath, Clacton-on-Sea
CO16 9EF**

- 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 Barrington-Fuller against the decision of Tendring District Council.
 - The application Ref 19/00723/OUT, dated 30 April 2019, was refused by notice dated 11 December 2019.
 - The development proposed is demolition of dwelling and development of four self-build or custom-built houses.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of dwelling and development of four self-build or custom-built houses at land adjacent The Oaks, Clacton Road, Weeley Heath, Clacton-on-Sea CO16 9EF in accordance with the terms of the application, Ref 19/00723/OUT, dated 30 April 2019, and the plans submitted with it, subject to the following conditions:
 - 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
 - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 5 years from the date of this permission.
 - 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
 - 4) The development hereby approved shall be carried out in strict accordance with the Tree Survey, Arboricultural Impact Assessment Preliminary Arboricultural Method Statement & Tree Protection Plan Proj. No. 7646 dated 02/12/2019 and Drawing No: 7646 D 28 AIA.

Preliminary Matters

2. The application is made in outline form with all matters reserved. I have had regard to the submitted illustrative drawings submitted with the application as these are a useful guide as to how the site might be developed.

3. The application was accompanied by a Unilateral Undertaking (UU), making contributions towards the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). I shall deal with this matter later in my decision.
4. The development plan for Tendring consists of the Saved Policies of the adopted Tendring Local Plan 2007 (adopted Local Plan). The Tendring District Local Plan 2013-2033 and Beyond Publication Draft (emerging Draft Local Plan) is a forthcoming policy document, currently with Section 1 requiring modification before Section 2 can be examined. I have taken account of emerging policies in my decision, but where I have done so I have given them moderate weight due to their stage of preparation.

Main Issue

5. The main issue for the appeal is the effect of the development upon the character and appearance of the area.

Reasons

6. Clacton Road, in the vicinity of the appeal site, has a semi-rural character formed by a linear pattern of development. Dwellings are set back varying distances from the highway with either landscaping or ornamental walls and fences separating the front gardens from the public footpath. In the wider area and on nearby roads, dwellings also follow a prevailing linear pattern of development along their respective roads.
7. The appeal site consists of a large garden plot with substantial landscaping on its rear and flank boundaries. The host dwelling of The Oaks occupies a central position close to the public highway, surrounded by and absorbed within its own spacious and extensive grounds. The frontage of the appeal site onto Clacton Road is formed with a low post and rail fence as well a mix of hedgerows and trees.
8. The development would introduce four houses with accompanying garages and hard surfacing into the open and spacious areas behind The Oaks in a loosely defined cul-de-sac arrangement. This would introduce a backland form of development that would be wholly inconsistent with the prevailing pattern of development in the locality. Whilst public views into the appeal site and views out of the site to the wider countryside are limited given the prominence of boundary landscaping, the characteristically urban layout would result in the erosion of the open and spacious nature of the landscape.
9. I acknowledge planning permission exists to replace The Oaks with three new dwellings in a linear form of development. However, this modern development, if implemented, would appear as a foreground to the appeal site and would therefore intensify the appearance of urbanisation.
10. On this basis I conclude that the proposal would cause harm to the character and appearance of the area. This would be contrary to policies EN1 and HG13 of the adopted Local Plan, which seek proposals to contribute to local distinctiveness.

Other Matters

Economic and Social Matters

11. Under Section 2A of The Self Build and Custom Housebuilding Act 2015 (as amended), (the Act), local authorities should seek to “give suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority’s area.”
12. The adopted Local Plan policies, whilst restricting housing growth to within development boundaries, are silent on the matter of self-build housing strategy. Although emerging, policy LP7 in the emerging Local Plan recognises a need to provide such housing within the Council’s future housing strategy.
13. Neither party has submitted information to quantify the level of delivery of self-build housing to date, albeit both parties agree that the Council cannot at this time demonstrate a five-year housing land supply, and thus there is a housing shortfall generally. Paragraph 61 of the Framework sets a requirement to provide a mix and tenure of housing in the community including (footnote 26) a requirement to provide self-build housing in accordance with the Act. The proposal is for four self-build and custom houses to be constructed at the appeal site. This would make a modest contribution towards the housing shortfall as well as towards meeting the need for serviced plots, increasing the housing stock and choice in the locality. Given these factors, I give significant weight to the proposed provision of self-build housing and the contribution to housing supply generally.
14. I observed, during my site visit, footpaths on both sides of Clacton Road with some degree of lighting along its length, providing a safe walking route between Weeley Heath and Little Clacton as well as nearby bus stops. I note differing approaches in earlier appeal decisions relative to this site and the surrounding development with regards accessibility. In my view, which reflects the position of the Council with regard to the social strand of sustainability, whilst it is likely that the development would be car dependent it would be possible for residents at the appeal site to access shops and facilities in Little Clacton by foot, bicycle or bus. The site is therefore in an accessible location and would be in accordance the objectives of the Framework in supporting a prosperous rural economy.

Hamford Water RAMSAR and SPA

15. In 2018 the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage. This responsibility now falls to me within this appeal.
16. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European sites.
17. The site falls within 8 kilometres of the Hamford Water RAMSAR and Special Protection Area (SPA). These are sites designated at European level for their environmental importance, since they provide habitats for wintering birds, wildfowl and wading birds. All sites are used for public recreation and there is no dispute between the parties that it cannot be ruled out that the proposal, when considered alone or in combination with other schemes, would have significant effects on the quality features of interest of the SPAs due to the increased recreational use.

18. Having agreed that the scheme, either alone or in combination with other schemes, would have a significant effect on the quality features of interest of the identified European sites, it is incumbent upon me to undertake an Appropriate Assessment. In this Appropriate Assessment I may consider any conditions or other restrictions which could secure mitigation of this harm, and which would therefore allow development to proceed in the knowledge that the Conservation Objectives of the identified site would be ensured.
19. 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 Council's Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This strategy requires financial contributions from developments and allocates detailed and costed infrastructure and non-infrastructure projects to proposals dependent on their scale and location.
20. The main parties agree that the mitigation can be delivered via the appellant's signed UU, dated 11 December 2019, which was supplied with the application documents. Subject to the imposition of this legal agreement, the effects of the recreational impacts arising from the proposal would be suitably mitigated. I am therefore able to favourably conclude my Appropriate Assessment.
21. On this basis I am able to conclude that the required mitigation would be properly secured and that the proposals would be unlikely to have a significant effect on the identified SPA or Ramsar. The proposal would accord with policy EN11a of the adopted Local Plan.

Planning Balance

22. The proposal would be out of character with the rurality of the surroundings, causing harm to the character and appearance of the area and thus contrary to policies EN1 and HG13 of the Development Plan.
23. Both the main parties acknowledge that the Council cannot demonstrate a five-year housing land supply, albeit my attention is drawn to a potential lower housing target emerging from the emerging Draft Local Plan Examination. Regardless of how this is calculated, this must be recognised as a minimum figure in light of the Framework, which encourages significantly boosting the supply of new homes. In this instance the housing proposed is of a specific type, being for self-build housing, which is supported by the Framework.
24. In view of the lack of a five-year housing land supply, paragraph 11(d) of the Framework is engaged (via footnote 7) and planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
25. The densely landscaped boundaries of the appeal site would contain the visual harm arising from the development, even when not in leaf, so as that the development would only have a highly localised effect only. Thus, the harm to any wider landscape context would be limited. Weighing against this are the significant benefits arising from the development in terms of housing supply and addressing a particular housing need, together with the increased support for a prosperous rural economy in an accessible location.
26. I conclude that, in this instance, the adverse effects of the development and the subsequent conflict with the Development Plan would not significantly and demonstrably outweigh the benefits and thus the appeal proposals are

acceptable. Whilst my attention has been drawn to other appeals that have occurred on this appeal site and the surrounding area, I have determined this case on its own merits and on the basis of current circumstances.

Conditions

27. The standard conditions for the grant of outline planning permission are to be applied and amended to reflect that self-build dwellings would likely progress at different rates. Therefore, a longer timescale for submission of the reserved matters is necessary and has been included.
28. A condition securing tree protection measures to preserve important biodiversity around the development site is necessary.
29. I note the Highways Authority recommended a number of conditions in respect to visibility splays and engineering of the access. Since 'access' is a reserved matter, and subsequent submissions in respect of it would need to demonstrate the acceptability of any proposed access, it is not necessary to impose these conditions at this time.
30. The permission is also subject to the signed UU submitted with, and forming part of, the application in respect of RAMS mitigation payment. I have considered the UU in light of the amended Community Infrastructure Regulations and the Framework and conclude that it meets the statutory tests for requiring an obligation.

Conclusion

31. For the reasons given above, I allow the appeal.

David Wallis

INSPECTOR