



Appeal Decision

Site visit made on 30 June 2020

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2020

Appeal Ref: APP/P1560/W/20/3246105

Heath Lodge, Clacton Road, Weeley 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 T Foster against the decision of Tendring District Council.
 - The application Ref 19/01283/OUT, dated 23 August 2019, was refused by notice dated 26 November 2019.
 - The development proposed is an outline application for six detached houses.
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Decision

1. The appeal is allowed, and planning permission is granted for an outline application for six detached houses at Heath Lodge, Clacton Road, Weeley CO16 9EF in accordance with the terms of the application, Ref 19/01283/OUT, dated 23 August 2019, subject to the conditions as set out at Schedule 1.

Preliminary Matters

2. The appeal is for outline planning permission with access applied for in full and all other matters reserved. A proposed layout plan has been submitted, detailing the access in full, and also providing an indicative site layout and landscaping scheme.
3. The examination of the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft (emerging LP) is at a relatively early stage. The policies of the emerging LP may be the subject of modification and therefore have limited weight at this time.
4. The appellant has submitted a Unilateral Undertaking (UU), dated 28 April 2020, in support of the appeal. I have reviewed the UU and am satisfied that it is legally sound. The UU commits the appellant to making a payment in mitigation of the proposal's effect on European protected sites and public open space. These were the subject of the fourth and fifth reasons for refusal of the appeal application. The Council have confirmed that they are content that the UU overcomes their objections to the appeal in these regards and do not wish to defend either reason for refusal. I have dealt with the appeal on this basis.

Main Issues

5. The main issues are the effect of the development on:
 - the character and appearance of the area;
 - trees, in particular those protected by Tree Preservation Order; and

- highway safety, in particular in relation to the proposed access to the site, the provision of car parking, and the adequacy of the proposed turning areas.

Reasons

Character and appearance

6. The appeal site comprises a detached house with a large garden. It has clearly defined borders from the extensive hedging and tree lines to the side and rear boundaries. The house and garden are clearly connected to one another and have a domesticated character that feels detached from the surrounding countryside. The site is located on Clacton Road. This part of Clacton Road is characterised by detached dwellings in large plots, partially in linear development along the road but also set along side roads, such as the Barnfields development immediately adjacent to the site. Slightly further along the road in both directions, and also along Victoria Road directly opposite the site, is more densely laid out residential development. The surrounding urban grain is therefore mixed.
7. It is proposed to demolish the existing house and replace it with 6 detached dwellings. Layout has not been applied for in full, but an indicative plan has been provided showing the proposed dwellings being accessed from a central access road and set within relatively spacious plots. Irrespective of this indicative layout, there is sufficient space on the site that 6 dwellings could be accommodated in a number of different arrangements and it is likely that a layout could be achieved that is successful on its own terms and also that respects the mixed nature of the surrounding urban grain.
8. The principle of housing development at the appeal site is established by the existing dwelling and garden. In addition, housing development along a side road from Clacton Road has been established at Victoria Road, the Barnfields, and on several roads slightly further away to the south east, such as Connaught Road. The Victoria Road and Barnfields properties are single-storey but the Connaught Road properties are 2-storey, as are the existing detached dwellings on and immediately surrounding the site along Clacton Road.
9. Whatever precise layout and design could be agreed as part of future reserved matters submissions, it would result in significantly more built form on the site and more hardstanding to provide vehicular access to the proposed houses. However, this would all be within the strongly defined, already domesticated, confines of the existing site. In addition, there is sufficient space on the site so that the extensive hedging to the side and rear boundaries could be largely retained, severely restricting the visibility of the proposal from the countryside. This could also be supplemented by additional planting, if found necessary, and these factors could be controlled as part of future reserved matters submissions. I am not therefore persuaded that the proposal would result in a harmful visual intrusion into the countryside and surrounding landscape, or in harmful urbanisation of the site.
10. My attention has been drawn to an appeal decision¹, dated 31 January 2019, at The Oaks site, located slightly further along Clacton Road, where a development of detached houses was dismissed. I have not been provided with

¹ Ref APP/P1560/W/18/3200806

the full circumstances of the case but I have carefully considered this decision. It does not provide precedent because The Oaks development was set entirely behind the frontage of Clacton Road and represented backland development with a different relationship to the neighbouring dwellings and Clacton Road.

11. Consequently, the proposal would preserve the character and appearance of the area. The proposal therefore complies with the relevant parts of Policies QL9, EN1 of the Tendring District Local Plan 2007 (the LP) which, amongst other things, seek the protection of landscape character and high quality design that protects or enhances local character. The proposal complies with the relevant parts of Chapter 12 of the National Planning Policy Framework (the Framework) which, amongst other criteria, seeks high quality design. It also complies with emerging Policies SPL3 and PPL3 of the emerging LP which, amongst other criteria, seek high quality design and the protection of the rural landscape.

Trees

12. There are four trees on the site, two Oaks and two Lime trees, that are subject to Tree Preservation Order Ref TPO/19/11 (the TPO). I observed on site that the trees are mature and provide visual amenity value to the site and the wider area. All four trees are located towards the boundary with Clacton Road, away from the centre of the site and leaving the majority of the site free from constraints in this regard. I am therefore persuaded that a suitable layout could be achieved whilst respecting these existing trees and their Root Protection Areas. A condition is necessary to ensure that this is taken into account, and, subject to this condition, the proposal would protect the four trees subject to the TPO and it complies with the relevant parts of Policy EN1 of the LP which, amongst other criteria, seeks the protection of important trees.
13. I acknowledge that the appellant has stated that two of the trees have resulted in the undermining of the existing dwellings structure and that they are seeking to remove the TPO in relation to those two trees. No evidence has been provided of the status of this. In any event, if there any changes to the TPO prior to either reserved matters or condition discharge submissions, then the changes could be taken into account at that stage.

Highway safety

14. Clacton Road is a 2-lane road with a 30mph limit outside the site. The Highway Authority (HA) have stated that average vehicle speeds are close to the limit, at between 30 and 35mph. It is a fairly busy road. There are footways on both sides of the road in both directions, and streetlights. The HA have confirmed that this section of the road has a good non-collision record, with only one slight collision recorded north of the appeal site for the most recent 3-year period.
15. The 6 proposed dwellings would represent an uplift of 5 dwellings on the existing situation. Using the Council's estimation of an average of 6 vehicle movements a day per dwelling, the proposed development would lead to an increase of 30 vehicle movements a day. However, the increase in vehicle movements over the existing situation would be modest in the context of a fairly busy road. Access roads serving a limited number of dwellings are a common feature along this part of Clacton Road, such as Connaught Road, the Barnfields development, Kempton Park, and Springfield Meadows. In this

context, and also given the relatively low traffic speeds and good non-collision record, I am not persuaded that the modest intensification of use would lead to unacceptable harm to highway safety.

16. The proposed access point would be almost directly opposite where Victoria Road has its junction with Clacton Road. This would lead to an element of interference with traffic entering and exiting this junction to and from Clacton Road. However, Victoria Road only serves 7 dwellings and a Dental Laboratory and is likely to be relatively lightly used. The increase in conflict would therefore be limited. In addition, having two access points opposite one another on a road through a village is a common occurrence on the highway network. There is an example nearby along Clacton Road, at Connaught Road and Kempton Park. I acknowledge that the Essex Design Guide contains guidance on the spacing of junctions, but the HA themselves have conceded that this guidance related to use within residential estates, and not access points onto existing roads. In this context, I am not persuaded that the proposed access location would lead to unacceptable harm to highway safety.
17. The Council have additionally found harm because of the failure to provide adequate inter-visibility between vehicles from the proposed access and those on the highway, and also the failure to demonstrate that suitable pedestrian visibility splays could be achieved. I note that the HA do not object to the proposal on these grounds. A condition can control the visibility splays to ensure appropriate inter-visibility both between vehicles and pedestrians. The footway ensures that any boundary conditions should be kept back from the visibility splays in both directions. The condition would also ensure that landscaping and the front boundary treatment within the appeal site itself would not impinge on the visibility splays. The condition is therefore reasonable, enforceable, and necessary. Subject to this condition, I am therefore persuaded that adequate visibility would be provided and maintained.
18. While layout is a matter reserved for future consideration, the indicative layout shows two internal and two surface level car parking spaces per dwelling, in excess of the policy standards of 2 spaces per dwelling. The HA have confirmed that they have no objection to the indicative layout with regard to off-street car parking provision or turning facilities. Even if the spaces as drawn on the indicative plan do not meet the required sizes as set out in policy, or the turning head area is not large enough, there is sufficient space on the site to allow for this to be resolved at the reserved matters stages. Therefore, the proposal would not lead to an increase in on-street car parking and would not harm highway safety in this regard.
19. Consequently, the proposal would not be likely to harm highway safety and would comply with the relevant parts of Policy QL10 of the LP which, amongst other criteria, seeks safe and practicable access to the highway network. It also complies with Paragraphs 108 and 109 of the Framework which, amongst other criteria, seek safe and suitable access for all users and highlight that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The proposal complies with emerging Policy SPL3 of the emerging LP which, amongst other criteria, seeks safe and convenient access and that the highway network.

Other Matters

Habitats

20. The site falls within the Zone of Influence for the Colne Estuary Special Protection Area, Special Area of Conservation and Ramsar (the Sites), as defined in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy 2018-2038 (RAMS). These are European Designated Sites.
21. Natural England (NE) have stated that new residential development in this area is likely to have a significant effect on the sensitive interest features of the Sites, through increased recreational pressure when considered 'in combination' with other plans and projects. The proposed uplift of 5 dwellings is therefore, both on its own and in combination with other development projects, likely to have significant effects on the integrity of the Sites. As the Competent Authority, and in accordance with the Conservation of Habitats and Species Regulations 2017, I have therefore undertaken an Appropriate Assessment.
22. The Sites provide habitat for breeding and non-breeding birds, including waders and wildfowl. The conservation objectives include to maintain and restore the habitats and therefore the population and distribution of a number of wild birds. The mitigation measures proposed in the RAMS are to increase the resilience of the Sites to recreational pressure, including through education and awareness raising, fencing, waymarking and screening, controlling access, and greater enforcement of the rules and regulations.
23. I have considered the proposed measures to mitigate the potential for significant impacts, and I am satisfied that these would be effective in ensuring that the proposal would cause no adverse effect on the Sites. These mitigation measures would be implemented by way of a financial contribution to be secured by the UU, which provides that the appellant would pay £125.58 (index-linked to the Index of Retail Prices) for the net increase in dwellings proposed, prior to commencement. The obligation is necessary, directly related to the development, and fairly and reasonably related in scale and kind to the development. I am therefore satisfied that, subject to the mitigation payment, it has been demonstrated that there would be no adverse effect on the integrity of the Sites.

Public open space

24. The proposal would be for six 4-bed houses, to replace one 4-bed house. The proposal would therefore likely lead to an increase in people and children on the site and therefore increase the demand for the use of public open space. In this regard, the Council's Summary of Play Area and Sports Pitch Need by Town & Parish Area February 2011 document identifies that, although there are two play areas in Weeley there is currently a deficit of 2.18 hectares of equipped play and formal open space in the village.
25. Therefore, the proposal would increase the need for play facilities. In this regard, the Council have identified that additional teenage play equipment is required at the Village Hall Play Area, Clacton Road, Weeley. The appellant's UU commits to a mitigation payment with respect to this issue, related to the net increase in dwellings and linked to the payment schedule set out in Table 4 related to Policy COM6 of the LP. The obligation is therefore necessary, directly

related to the development, and fairly and reasonably related in scale and kind to the development. Consequently, the proposal would mitigate its effect on public open space as a result of the increased demand from the likely increase in occupancy on the site.

Conditions

26. In addition to the standard time limit condition relating to commencement, two conditions are necessary to secure the timing and type of submission of reserved matters.
27. A condition specifying the relevant drawings provides certainty. I note that drawing Ref 368/01/103 includes elements which are indicative but also includes details of the access, which has been applied for in full. I have therefore listed this drawing under this condition.
28. The Council have requested a number of other conditions which I have considered and amended in the light of government guidance on the use of conditions in planning permissions. The trees condition is necessary in order to ensure the protection of the trees subject to the TPO. The private drive, visibility splays, dropped kerb, and unbound material conditions are necessary in order to ensure highway safety. I have amended the condition relating to the proposed access width to only refer to the requirement for a dropped kerb. This is because the access width has already been applied for in full and it is not necessary to further control this by condition.

Conclusion

29. For the reasons above, I conclude that the appeal be allowed.

O S Woodward

INSPECTOR

Schedule 1 – Conditions for Appeal Ref APP/P1560/W/20/3246105

- 1) 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.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) Details of the appearance, landscaping, layout, and scale 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.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Refs 368/01/101, 368/01/102, 368/01/103.
- 5) Concurrently or prior to the submission of reserved matters for either landscaping or layout, a Tree Survey and Report in accordance with BS5837: 2012 Trees in relation to design, demolition and construction; Recommendations (or in an equivalent British Standard if replaced) shall be submitted to and approved in writing by the local planning authority in order to show the extent of Root Protection Areas of the protected trees and other retained trees and to show how they will be physically protected for the duration of the construction phase of the development. The development shall be carried out in accordance with the approved Tree Survey and Report.
- 6) Prior to occupation of the development, an appropriate dropped kerb shall be provided to the crossing of the access to the footway/verge. This shall thereafter be retained.
- 7) Prior to occupation of the development, the access at its centre line shall be provided with a visibility splay with dimensions of 2.4 metres by 43 metres in both directions measured from and along the nearside edge of the carriageway, and shall be clear to ground level at all times. This shall thereafter be retained.
- 8) No unbound material shall be used in the surface finish of the driveway within 6 metres of the highway boundary of the site.