



Appeal Decisions

Site visit made on 4 August 2020

by David Wallis BSc (HONS) PG DipEP MRTPI

an Inspector appointed by the Secretary of State

Decision(s) date: 14 August 2020

Appeal A Ref: APP/P1560/W/20/3248847

Grange Farm Bungalow, Clacton Road, Elmstead Market CO7 7DF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr S Williams against the decision of Tendring District Council.
 - The application Ref 19/01596/FUL, dated 22 October 2019, was refused by notice dated 17 December 2019.
 - The development proposed is the erection of two dwellings and associated car parking.
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Appeal B Ref: APP/P1560/W/20/3248849

Grange Farm Bungalow, Clacton Road, Elmstead Market CO7 7DF

- 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 S Williams against the decision of Tendring District Council.
- The application Ref 19/01031/OUT, dated 10 July 2019, was refused by notice dated 16 October 2019.
- The development proposed is the demolition of existing bungalow and erection of up to nine dwellings and associated garaging.

Decisions

1. Appeal A is allowed, and planning permission is granted for the erection of two dwellings and associated car parking at Grange Farm Bungalow, Clacton Road, Elmstead Market CO7 7DF in accordance with the terms of the application, Ref 19/01596/FUL, dated 22 October 2019 subject to the conditions in the attached schedule.
2. Appeal B is allowed, and planning permission is granted for the demolition of existing bungalow and erection of up to nine dwellings and associated garaging at Grange Farm Bungalow, Clacton Road, Elmstead Market CO7 7DF in accordance with the terms of the application, Ref 19/01031/OUT, dated 10 July 2019 subject to the conditions in the attached schedule.

Preliminary Matters

3. 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, which contains District-specific development management policies, can be examined. I have taken account of emerging

policies in my decision, but where I have done so I have given them appropriate weight in view of their stage of preparation with regards paragraph 48 of the National Planning Policy Framework (the Framework).

4. Appeal A is made as a full application whilst Appeal B is made in outline form with all matters reserved. I have determined the appeal on this basis.
5. During the course of both appeals, Unilateral Undertakings (UU) were signed on 29 July 2020 and submitted. For Appeal A, the UU secured provision of contributions towards the Colne Estuary Ramsar and Special Protection Area (SPA). For Appeal B, the UU secured the same SPA contribution as well as provision for public open space contributions. The Council confirmed that both UUs were acceptable for their purposes and thus would not be defending those related reasons for refusal. I shall come to these matters later in my decision.

Main Issues

6. Upon my reading of the documents, the main issues common to both appeals are (1) the provision of affordable housing and (2) the effect of the development upon the Colne Estuary Ramsar and Special Protection Area.
7. Appeal A has a third main issue, that being the effect of the development on the character and appearance of the area.
8. Appeal B has a third main issue, that being contributions towards open space provision.

Reasons

Provision of Affordable Housing

9. The statutory basis for determining applications is Section 38(6) of the Planning and Compulsory Purchase Act 2004. The adopted Local Plan 2007 is a key constituent of the Development Plan for Tendring and, despite being adopted prior to the publication of the National Planning Policy Framework (the Framework), remains in force and its policies are not reduced in weight simply because of their age.
10. The appellant has drawn my attention to policy HG4 of the adopted Local Plan, which states that affordable housing should be provided at a rate of 40% in settlements with a population of 3,000 or fewer, on sites that have potential for 5 or more dwellings or over 0.15 hectares in size. In addition, criterion (i)(c) of policy HG4 states affordable housing should be provided on sites falling below the relevant site-size threshold that are 'demonstrated to form part of a more substantial development'.
11. The appeals are close to, though outside of, the settlement of Elmstead that has a population of less than 3,000 people. Appeal A is for 2 dwellings on a 0.14-hectare site and therefore falls below the site-size thresholds. Appeal B is for 9 dwellings (net gain of 8 following replacement of the existing bungalow) and therefore would exceed the site-size threshold in its own right. The Council contends that both appeals should be read alongside earlier planning permissions on land immediately to the south, for 2 and 5 dwellings respectively, although in doing so the Council does not cite criterion (i)(c) of policy HG4 in any of their documentation, relying instead on the Framework.

12. However, policy HG4 refers that the site-size thresholds are relevant to being 'in settlements.' Criterion (i)(c), by making reference to the site-size thresholds, is therefore intrinsically linked to settlements in its intention, indicated in the explanatory text at paragraph 4.53. Policy QL1 of the adopted Local Plan defines the extent of the settlements as having settlement boundaries, and the appeal sites fall beyond the boundary of the nearest settlement of Elmstead. In addition, the policy thresholds that are stated in policy HG4 are inconsistent with those that define major development within the Framework as being where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. Neither Appeal A nor Appeal B constitute a major development in their own right.
13. On this basis the adopted policy is considered to be out-of-date, and can therefore only be attributed little weight. There is no equivalent policy regarding affordable housing provision in the emerging Local Plan that can be attributed weight at this time, although I note that a lower target of 30% affordable housing is suggested at paragraph 5.13 of that plan, indicating a continuing need for affordable housing provision.
14. I have not been presented with any evidence to suggest the appeal sites form part of an allocated site and nor have I been directed to any national guidance that suggests multiple sites for housing could or should be cumulatively considered when assessing affordable housing delivery.
15. I acknowledge the appeal sites are connected to the recently permitted and developed dwellings to the south by both land ownership and a shared common access road. However, in my view, the provision of 2 new dwellings in Appeal A and 8 new dwellings in Appeal B alongside the permitted, constructed and occupied 7 dwellings to the south, would not amount to part of a 'more substantial development', in any case.
16. Therefore, I conclude there is not a requirement to provide affordable housing on Appeal A or Appeal B. The proposal does not therefore contravene the terms of policy HG4 of the adopted Local Plan.

Effect on the Colne Estuary Ramsar and SPA

17. 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.
18. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European sites.
19. The site falls within the 13 kilometre 'Zone of Influence' for the Colne Estuary Ramsar and SPA, as defined in the Essex Coast Recreational disturbance and Mitigation Strategy (RAMS) Supplementary Planning Document. This site is designated at European level for its environmental importance, since it provides habitats for wintering birds, wildfowl and wading birds including little terns, bitterns and brent geese. 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. I have no reason to disagree with the Council's conclusion relating to the potential significant effects.

20. Having concluded 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, which are to protect important migratory species of birds and to prevent disturbance to their habitat, on the identified site would be ensured.
21. 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.
22. The main parties agree that the mitigation can be delivered via the appellant entering into an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (the Act). The appellant has supplied UUs during the appeals with all requisite signatories upon it. The Council has listed the specifics of the infrastructure to which the payment would contribute towards, in the technical report underpinning the RAMS.
23. This legal agreement would therefore serve to mitigate the recreational impacts arising from the proposal. I am therefore able to favourably conclude my Appropriate Assessment.
24. 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 either alone or in combination with other projects. Both Appeal A and Appeal B would comply with policy EN11a of the adopted Local Plan, which requires proposals not to adversely affect the integrity of a designated European site.

Appeal A Character and Appearance of the Area

25. The appeal site sits within a rural area beyond any settlement boundary in a partially agricultural setting with large business premises to the north and a small ribbon development of houses to the south. I observed that the earlier housing permissions for 2 and 5 dwellings had been built-out in full and all properties were occupied. I noted vacant land immediately north of the appeal sites, where an extant planning permission for office buildings exists, which was enclosed by managed landscaping at the time of my visit.
26. The proposed 2 new dwellings would be positioned on corner plots, with the same design and architectural form as the dwellings already constructed. The proposed dwelling on plot 1 shares a directly comparable layout and arrangement to the dwelling built on the opposite side of Grange Farm Bungalow, with similar spatial separation from the public highway. Similarly, the proposed plot 2 dwelling would be a mirror form to the existing dwelling on

the corner plot of No 7 Grange Farm Close, which sits to the southeast of the appeal site.

27. Grange Farm Bungalow would be retained in its current form and layout, with its boundaries shared by the proposed new dwellings. However, the proposed dwellings would be set a modest distance away from these boundaries and would have sufficient garden and parking space in their own right to meet the needs of their occupiers. Whilst the retained bungalow would appear enclosed by the modern development, the proposed housing would be similar in design and layout to the nearby recent residential development, thus not appearing out of place.
28. On this basis the proposed dwellings would not be any more prominent in the locality than the existing extent of built development, appearing instead to harmonise with the character and appearance of the residential area. The proposal therefore would comply with policies QL9, QL10 and QL11 of the adopted Local Plan and policy SPL3 of the emerging Draft Local Plan, which together seek to ensure new development contributes to the quality of the local environment and character.

Appeal B Open Space Provision

29. Policy COM6 of the adopted Local Plan specifies a requirement for financial contributions towards open space provision from developments below 1.5 hectares where existing facilities are inadequate to meet the projected needs of future occupiers. In this case the Council has identified a shortfall of space in the nearest settlement of Elmstead that, if the development in Appeal B were to proceed, would be put under increased pressure from the additional residents.
30. At the time of the application, the appellant had not secured any contribution towards open space. However, the appellant has supplied a UU during the appeal that makes provision for contributions towards open space relative to the size of development.
31. I have considered the legal agreement in light of the amended Community Infrastructure Levy Regulations and the Framework. The obligations sought would be necessary to mitigate the development's impacts on open space and would be related to the size of the development, which the Council agree would be suitably secured by way of the legal agreement.
32. I therefore conclude that, with the legal agreement in place, the proposal would make satisfactory provision for open space and thus would comply with policy COM6 of the adopted Local Plan.

Other Matters

33. I note that the main parties agree there is a housing shortfall at present. In such circumstances, where policies for the supply of housing are out-of-date, the Framework directs that the so-called 'tilted balance' is engaged and therefore planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
34. Both Appeal A and Appeal B provide open market housing, adding to local housing stock and choice, increasing footfall to local shops and services, and contributing to the objectives of supporting a prosperous rural economy. For

both appeals the securing of mitigation in respect of the SPA, though neutral in the planning balance (since there would not be any harm to mitigate if development were not to go ahead), demonstrates the proposals could be delivered without adverse environmental effects.

35. There are clearly economic, social and environmental benefits arising from both appeals, with Appeal B having added benefit in the sense of a greater housing yield as well as contributions towards open space, which supports both the social and environmental vitality of local facilities for the benefit of the wider community.
36. In respect of both appeals, I conclude there is no conflict with the relevant planning policies of the adopted Development Plan. There would not be any adverse effects arising from the development that, individually nor cumulatively, would outweigh the benefits of either appeal scheme.
37. Both Appeal A and Appeal B should succeed in this instance.

Conditions

Appeal A

38. I have imposed conditions regarding commencement and requiring the development to be carried out in accordance with the approved plans for certainty as to the development approved.
39. Given the semi-rural nature of the surroundings, I have considered it necessary to require a condition regarding landscaping works. Whilst I recognise that other properties in the locality have loose-stone driveways, it is reasonable in respect of highway safety to restrict the surface finishes of the accesses to each property given their prominent positions on Grange Farm Close.
40. I have also imposed a condition regarding construction management due to the semi-rural sensitivities of the site and in the interests of protecting the living conditions of nearby residences.
41. Conditions regarding visibility splays, dropped kerbs, parking spaces and garage sizes appear unnecessary and irrelevant given the nature of the development proposed and these matters are detailed on the submitted plans. Equally, the Council recommended condition regarding provision of a footpath through plot 1 into the garden of Grange Farm Bungalow would be unreasonable and unnecessary since no pedestrian access is operational at present.

Appeal B

42. I have imposed conditions appropriate to outline and reserved matters applications for certainty as to the development hereby permitted. I have also imposed conditions regarding access surfacing and construction management for the same reasons identified above for Appeal A.
43. Since access is a reserved matter subject to further consideration, it is not necessary at this stage to impose conditions with regards parking, cycle parking or any other technical highway standard.

44. The Council requested a condition regarding provision of a new bus stop eastbound opposite the development site. This element has not featured in the Council's assessment of Appeal B and there is no evidence before me to suggest why this is reasonable or proportionate to the development, nor that the appellant has control of the land to enable this to be constructed. I have no sufficient justification to impose the condition.

Conclusion

45. For the reasons given above, Appeal A and Appeal B are allowed subject to the relevant signed legal agreements and the conditions in the attached schedule.

David Wallis

INSPECTOR

Appeal A Ref: APP/P1560/W/20/3248847

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 17050 P 02 A, 17050/P/03/-, 17050/P/04/-, 17050/P/05/-, 17050/P/06/- and 17050/P/07-.
- 3) No above ground works shall take place until a scheme of hard and soft landscaping works has been submitted to, and approved in writing by, the Local Planning Authority. The scheme which shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection. The scheme shall be implemented in accordance with the approval details and retained as such thereafter.
- 4) No unbound materials shall be used in the surface treatment of the proposed vehicular accesses.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. 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 washing facilities;
 - v) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

Appeal B Ref: APP/P1560/W/20/3248849

Schedule of Conditions

- 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) 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.
- 3) No unbound materials shall be used in the surface treatment of the proposed vehicular accesses.
- 4) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. 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 washing facilities;
 - v) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.