



Appeal Decision

Site visit made on 23 June 2020

by L Gilbert BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th August 2020

Appeal Ref: APP/P1560/W/19/3241149

Land west of 182 Thorpe Road, Kirby Cross

- 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 HCS (Essex) Ltd against the decision of Tendring District Council.
 - The application Ref 19/00550/OUT, dated 27 March 2019, was refused by notice dated 31 May 2019.
 - The development proposed is residential development of six bungalows.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal proposes outline permission relating to the principle of the development and layout only, with all other matters reserved.
3. An emerging plan, The Tendring District Local Plan 2013-2033 and Beyond Publication Draft, is currently under examination. It is not part of the adopted development plan. The emerging plan proposes amendments to the development boundary of Kirby Cross so the appeal site would adjoin the boundary. It also proposes the removal of the 'Local Green Gaps,' which currently includes the appeal site. As more work is required to demonstrate the soundness of the plan, it is not clear the extent to which any objections to its policies are unresolved or the extent to which its policies are consistent with the National Planning Policy Framework (the Framework). I therefore give these policies limited weight and they do not alter my conclusions.

Main Issues

4. The main issues are the effect of the appeal development on:
 - The setting and significance of two nearby listed buildings;
 - The Hamford Water RAMSAR and Special Protection Area;
 - Play equipment provision in Kirby Cross; and
 - Trees within the curtilage of 182 Thorpe Road.

Reasons

Listed Buildings

5. Two Grade II Listed Buildings are located close to the appeal site. These are Blue House Farmhouse (BH), 182 Thorpe Road, which borders the appeal site and opposite lies White Ladies (WL), 205 Thorpe Road.
6. BH is a distinctive house on the street with its blue coloured walls. According to its listing it has a 17th century or earlier rear wing and 18th century front range and is two storeys high with attics. The appellant's have provided maps of the appeal site, which indicates that the appeal site has been in agricultural use since at least 1840. According to the appellant's Heritage Appeal Statement (2019), the appeal site and BH have in the past been under the same ownership.
7. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires special regard to the desirability of preserving the setting of listed buildings. Paragraph 193 of the National Planning Policy Framework (the Framework) states that great weight should be given 'to the asset's conservation (and the more important the asset, the greater the weight should be)'.
8. The BH has historically appeared in relative isolation along the northern side of the road and a level of openness remains. I acknowledge that changes and domestication have occurred to the BH, however, the modern buildings to the rear of the farmhouse appear ancillary in terms of their scale and appearance and are sympathetically designed. Historically there were farm buildings in a similar location. However, there remains a sense of spaciousness around the listed building when viewed from the street. The appeal site provides a link to the agrarian heritage of the listed farmhouse and helps to reinforce its position near the edge of Kirby Cross, which both contribute to its setting and significance. The proposed introduction of 6 dwellings and associated residential paraphernalia will notably change and erode the historic agrarian openness surrounding the listed building. This is of significance to the historic setting of the listed farmhouse and influences how it is valued and understood.
9. Over time a site boundary was introduced between BH and the appeal site, and today a hedge and mature trees line this boundary. This creates a sense of separation between these sites, however the level of screening would diminish in the winter months when the trees lose their foliage. Consequently, this would strengthen the relationship between the two sites through greater inter-visibility and would reinforce the agrarian contribution the appeal site makes to the setting of this listed farmhouse.
10. I acknowledge that the proposed 6 dwellings would be set back from the road at staggered intervals and would be set away from the boundary with the BH. Also, the proposed dwellings would correspond with the position and footprint of the extensions at BH, which would create a sense of subservience in views with the BH. Open planned landscaping is also proposed at the front of the site which would allow views of the listed building. However, these features would not overcome the harm I have identified to the setting and significance to the BH. As the influence of the proposed development on the setting of the listed building would not affect all vantage points, the harm would be less than substantial to the significance of the designated heritage asset.

11. Appeal decision APP/P1560/W/15/3141169 for 8 bungalows at land between 176 & 178 Thorpe Road, Kirby Cross was allowed on appeal. This site is next to the grade II listed, 178 Thorpe Road. The Inspector found no historic or functional justification for maintaining an 'open' setting of any particular size with respect to the appeal site. This differs to the current appeal as the appeal site has in the past been in the same ownership as the BH. Furthermore, the appeal site has historically been in agricultural use and is positioned adjacent to the listed farmhouse and therefore there is a historical linkage between the two sites.
12. According to its listing, the WL is a 17th/18th century or earlier timber framed and rough rendered one storey cottage with gabled dormers. It has red plain roof tiles with red brick chimney stacks. The appellant's appraisal of the WL did not find a linkage between the appeal site and this listed building. The appeal site along with neighbouring fields, provides the transition between the built-up edge of the village and the open countryside, which contributes towards the setting of the WL. However, the proposed bungalows would be set back from the road which lessens their impact on its setting. The WL is on the southern side of the road and already sits within a linear pattern of residential development. Consequently, I am of the view that the proposed development would not affect the setting of this listed building.
13. Two bungalows were allowed behind WL under appeal decision APP/P1560/W/17/3190924. I understand there was no association between the WL and the site where the appeal was allowed. The scheme was also behind the WL with very limited close range glimpsed views from the appeal site. Consequently, I do not see this scheme to be directly comparable with the current appeal in terms of its position and lack of association with the adjoining listed building.
14. The public benefits of the proposal are the contribution of 6 dwellings for the local area that would add to the variety of homes in the district, economic benefits through construction jobs and spending in the local economy via the future occupiers. The appeal site is near to local services and facilities for day-to-day needs, without the need to rely on private vehicles; and the development proposes new planting and landscaping around the site which would enhance biodiversity. However, the public benefits in that respect would be limited and do not outweigh the great weight given to the conservation of the Grade II listed Blue House Farmhouse and the less than substantial harm to its setting and significance that I have identified.
15. Accordingly, I conclude that the proposal would fail to preserve the setting thereby harming the significance of BH as a building of special architectural and historic interest and it would fail to comply with Policy EN23 of the Tendring District Local Plan (2007) (LP), which seeks that proposals for development that would adversely affect the setting of a Listed Building, including group value and long distance views will not be permitted. There would also be conflict with the Framework.

Hamford Water RAMSAR and Special Protection Area

16. The appeal site is within the Zone of Influence (ZoI) for Hamford Water RAMSAR and the Special Protection Area (SPA). These are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Without

mitigation, new residential development in the area of this scale would likely have a significant effect on the sensitive interest features of the coastal European designated sites, through increased recreational pressure resulting from the occupants of new residential development, such as the appeal scheme.

17. Work has been made on a Unilateral Undertaking and a draft copy has been produced. The appellant's have cited that it is not possible to complete the legal agreement within the timeframe, due to miscommunication and delays in dealing with the Council. However, without a completed legal agreement, mitigation has not been provided for the additional recreational pressure for using the RAMSAR and SPA that would be likely to arise from the appeal development. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) includes a financial tariff for residential developments within the ZoI. Without this mitigation the proposal fails to comply with Policies EN6 and EN11a of the LP.
18. Consequently, the appeal development would be likely to harm the Hamford Water RAMSAR and the Special Protection Area and fails to accord with Policies EN6 and EN11a of the LP. These seek amongst other things that development proposals will not be granted planning permission unless the existing local biodiversity and geodiversity is protected and enhanced.

Play equipment provision in Kirby Cross

19. A deficit of play equipment has been identified in Frinton, Walton and Kirby Cross, which the appellant's accept. There is a play area in Halstead Road, Kirby Cross, and the Council is seeking a financial contribution to provide a new safety surface around this equipment.
20. Paragraph 56 of the Framework sets out the tests for planning obligations. As the proposal relates to six dwellings, it is considered reasonable to request a contribution towards play equipment as a need has been identified by the Council.
21. As previously explained, although work has been made towards a Unilateral Undertaking, it has not been finalised. Without financial mitigation the proposal is at odds with Policy COM6 of the LP.
22. Accordingly, without a contribution towards play equipment provision in Kirby Cross the appeal development fails to comply with Policy COM6 of the LP, which seeks amongst other things that residential development below 1.5 hectares in size, where existing open space facilities are inadequate to meet the projected needs of the future occupiers of the development, a financial contribution shall be made to the provision of new or improved off-site facilities in scale and kind to meet these needs.

Trees

23. Although there are no trees on the appeal site, there are trees within the curtilage of 182 Thorpe Road close to the appeal site boundary. An established hedge of Hawthorn, Hornbeam, Field Maple and Dog Rose runs by the boundary and there are several mature Sycamore and Hornbeam trees at this adjoining property. These positively contribute to the public realm. The closest proposed bungalow (Plot 6) would be set back from the shared boundary.

24. The submitted Arboricultural Report and Tree Protection Plan both dated 29th October 2019 confirm that no trees would need to be removed or worked on in order to implement the appeal development. It acknowledges that a small part of the outer Root Protection Area would need to be accessed during landscape works to create the lawn, it proposes the use of hand tools for this works. A tree condition would ensure the protection of these nearby trees during the construction of the appeal development. New planting is also suggested.
25. Consequently, it has been demonstrated that the appeal development can be constructed without causing harm to the trees that make a positive contribution to the local area. It therefore complies with Policy EN1 of the LP, which seeks amongst other things that the quality of the district's landscape and its distinctive local character will be protected and, where possible, enhanced. Any development which would significantly harm landscape character or quality will not be permitted. The proposal is also in accordance with Paragraph 170 of the Framework.

Other Matters

26. I have not afforded any weight to the proposed residential development next to BH, referred to on the proposed plan. This is because there is a lack of information about this scheme, including whether it has been granted planning permission.
27. The appellant has raised frustrations with the Council's handling of the application, in particular with their communication during the preparation of the Unilateral Undertaking. I note these comments, however I have assessed the scheme on its own merit.

Planning Balance and Conclusion

28. The Framework does not change the statutory status of the development plan as the starting point for decision making and I have identified a less than substantial harm to the setting of Grade II listed Blue House Farmhouse. The proposal is not in accordance with the development plan due to the harmful effect upon the character, setting and significance of the Grade II listed Blue House Farmhouse and the consequent failure to preserve or enhance the heritage asset. Furthermore, the appeal development would be likely to harm the Hamford Water RAMSAR and the Special Protection Area.
29. Both parties agree that there is a shortfall in the 5-year housing land supply when using the standard method and I have no evidence that would lead me to a different conclusion. However, at the recent Examination in Public of the emerging Local Plan the deficit was found to be less than that calculated using the standard method. Recent appeal decisions have taken into account both of these positions. Also, I consider that Policy QL1 of the LP is not fully consistent with the Framework, as the Framework does not apply a blanket restriction on development in the countryside. However, even if I were to accept the appellant's views in those respects and were to consider the proposal against paragraph 11(d) of the Framework, it falls under footnote 6 for the purposes of 11d(i). In that regard, based upon my previous findings, the application of policies in the Framework relating to designated heritage assets and habitats sites provides a clear reason for refusing the application. Consequently, the presumption in favour of sustainable development does not apply in this case.

30. The conflict with the development plan and the Framework when taken as a whole, and the associated harm identified are significant and overriding factors. Consequently, the material considerations in this case, including the proposal would provide 6 dwellings for the local area and increase the variety of homes in the district and would make a modest contribution to the Council's housing land supply. It would also offer modest economic benefits through construction jobs and spending in the local economy via the future occupiers. The appeal site is near to local services and facilities for day-to-day needs, without the need to rely on private vehicles; and the development proposes new planting and landscaping around the site which would enhance biodiversity and associated benefits in that respect, do not indicate that the application should be determined otherwise than in accordance with the development plan.
31. Consequently, for the reasons set out above, I conclude that the appeal should be dismissed.

L Gilbert

INSPECTOR