



Appeal Decision

Site visit made on 6 July 2020

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2020

Appeal Ref: APP/P1560/W/19/3244087

Cherrytree Farm, Harwich Road, Ardleigh CO7 7LS

- 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 and Mrs N Orrin against the decision of Tendring District Council.
 - The application Ref 19/00968/OUT, dated 17 June 2019, was refused by notice dated 18 December 2019.
 - The development proposed is described as an 'outline application for the erection of four detached dwellings with associated garaging, parking and a private drive'.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of four detached dwellings with associated garaging, parking and a private drive with access to be determined and appearance, landscaping, layout and scale reserved for subsequent approval at Cherrytree Farm, Harwich Road, Ardleigh CO7 7LS in accordance with the terms of the application Ref 19/00968/OUT, dated 17 June 2019, subject to the conditions set out in the attached schedule.

Procedural Matters

2. Outline planning permission is sought but with access to be considered at this stage. The proposal's appearance, layout, scale and also landscaping are matters which are therefore reserved for future consideration. I have determined the appeal accordingly. Drawings showing an indicative layout of the development were also submitted with the application, and I have considered them on this basis.
3. Although not referenced within the Council's reason for refusal, the evidence before me draws my attention to policies from the emerging Tendring District Council Local Plan 2013-2033 and Beyond Publication Draft (ELP). Whilst Section 1 of the plan has been through public examination, it remains the subject of outstanding concerns that were raised by the Inspector. Section 2 will not progress until these matters have been resolved. Therefore, the ELP does not yet form part of the development plan and I have afforded its policies only limited weight in the determination of this appeal.

Main Issues

4. The main issues are:

- whether or not the proposal should contribute towards affordable housing provision, with particular regard to the National Planning Policy Framework (the Framework); and
- the effect of the proposal on the integrity of European sites.

Reasons

Affordable Housing

5. The appeal site is a broadly rectangular parcel of land to the south east of Cherrytree Farmhouse. It is approximately 0.49 hectares in size and accommodates a large, disused glasshouse, an overgrown reservoir with associated pump houses and an area of scrub grassland. Access is taken from Harwich Road via a newly constructed road. A development of five detached dwellings has been allowed at appeal¹ on 0.39 hectares of land immediately to the north east of the appeal site. I henceforth refer to this as 'the adjacent development'.
6. This proposal seeks outline permission for the construction of four detached dwellings and associated garaging. Paragraph 63 of the Framework states that provision for affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas. Annex 2 of the Framework clarifies that major development is, for housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more.
7. The appeal site does not appear to be within a designated rural area. However, the Council state that the proposal should be considered as part of a larger housing scheme with the adjacent development. Such a scheme would be constructed on land greater than 0.5 hectares in size and would therefore represent major development. Consequently, the Council contend that affordable housing should be provided through this appeal scheme, which would effectively be a phased addition to the adjacent development.
8. Relevant case law² has considered whether two or more development proposals could be aggregated or considered to form part of a larger whole. This shows a 'tripartite test' for considering whether a proposal constitutes phased development. This test relates to ownership, whether the site is a single planning unit and whether the development should be treated as a single development. It should, however, be noted that these criteria form a helpful guide, but they are not necessarily definitive as the merits of each proposal will vary.
9. The appellants own both the adjacent site to the north east and the appeal site. One of the appellants was also the applicant for the adjacent development. However, these factors by themselves do not demonstrate that the appeal proposal should be considered as an additional phase of the adjacent development.

¹ Ref APP/P1560/W/18/3196926

² R (Westminster City Council) v First Secretary of State and Brandlford Limited [2003] J.P.L 1066

10. From the evidence, permission was originally granted in February 2017 for four dwellings at the site immediately to the north east. At this point, the appellants explain that an attempt was made to sell this development. However, they were later advised by a third party that there was capacity at the site, as well as a favourable policy climate, to enable them to increase the quantum by an additional dwelling. Consequently, an application was submitted for five dwellings in July 2017 (the adjacent development). The application for this current appeal proposal was submitted in June 2019. To my mind, there was therefore a clear break between the submission of applications for the development on land to the north east of the appeal site and this current appeal scheme.
11. Moreover, the appellants contend that they have no experience of property development, including sophisticated strategies to avoid the need to provide affordable housing. This assertion is reinforced given that they elected not to submit a scheme for nine dwellings on land under 0.5 hectares across the appeal site and adjacent land to the north east. This would have negated the need to provide any affordable houses.
12. Taking all of the above factors into consideration, with particular regard to the nature of the two developments, the timescales for which respective applications were submitted and the intentions of the appellants, I am not persuaded that the appeal proposal represents a phased addition to the adjacent development. Neither am I persuaded that it was deliberately designed to circumvent the requirement to provide affordable housing. Rather, the appeal proposal forms a separate windfall scheme which would be read as an extension to the adjacent development. It should therefore be considered as a stand-alone development for four dwellings on a site measuring approximately 0.49 hectares. The Council has confirmed that such a scheme would not constitute major development and I see no reason to conclude otherwise on this matter.
13. Accordingly, I conclude that the proposal should not contribute towards affordable housing provision, with particular regard to paragraph 63 of the Framework.

Special Protection Area

14. From the evidence, the appeal site is within the Zone of Influence for several protected European sites. These seem to be designated primarily to protect wader and wildfowl. In 2018 the Court of Justice of the European Union held 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 screening stage³. This is a responsibility that now falls to me as the competent authority.
15. Nearby European sites are important recreational and economic resources and I have no evidence to show that future occupants would not be likely to visit them. Consequently, in isolation or when seen in conjunction with surrounding developments, this proposal could have a likely significant effect on these habitat designations through increased disturbance as a result of recreational activity.

³ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

16. The Council has strategic measures to mitigate impacts upon European sites. This includes projects identified within the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). Natural England (NE) do not appear to consider such an approach to be inappropriate, and I have no evidence to show that RAMS projects would not be deliverable or effective.
17. In this instance the Council has requested financial contributions towards the RAMS. The appellant has provided an executed Unilateral Undertaking (UU) which, amongst other things, would secure a total of £489.20 to fund strategic mitigation measures. I have no evidence to show that this fee is not proportionate to this appeal proposal. In addition, I have consulted NE and it has not objected to this mechanism for securing mitigation. On the evidence, the secured financial contribution would therefore be effective in terms of avoiding adverse impacts to the integrity of the European sites.
18. As such, I am satisfied, on the basis of the specific evidence before me, that the UU is a sufficient mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the Council's strategy for development which could affect nearby European sites. I therefore find within my Appropriate Assessment that, with the provided mitigation, the proposal would not harm the integrity of designated European sites.

Other Material Considerations

19. There is no substantive evidence before me that the development would lead to problems in terms of highway safety. In addition, the Council, including its technical highway experts, has not raised any concerns in relation to this matter. I see no reason to take a different view in this case.
20. In terms of impacts upon the character and appearance of the area, the proposed dwellings would replace an existing glasshouse and they would be bound by residential development on three sides. The Council has not raised any objection in this regard, and I see no reason to conclude otherwise on this matter. In addition, I accept that the appeal site is outside of the settlement boundary. Nevertheless, the evidence before me does not show that this scheme would place an unacceptable reliance on the use of privately owned vehicles or undermine the Council's ability to manage growth through its planned approach. Neither, do I have any substantive evidence to show that the proposal would unduly burden local services and facilities.
21. Furthermore, as an application for the provision of housing in circumstances where the Council cannot demonstrate a five year supply of deliverable housing land, paragraph 11 of the Framework is engaged. Given my findings in relation to the main issues, there are no adverse impacts that significantly and demonstrably outweigh the benefits associated with the provision of four dwellings. In this instance, the presumption in favour of sustainable development therefore applies.

Conditions

22. I have considered the conditions put forward by the Council. Having regard to the tests set out in paragraph 55 of the Framework, I have amended the wording where necessary in the interests of clarity and simplicity. Conditions setting reasonable time limits and the provision of details on the reserved

matters are necessary as the application made is for outline permission. I have also imposed a condition specifying the approved plans for reasons of certainty.

23. I have imposed a condition requiring the submission of a Construction Method Statement. This is necessary in the interests of highway safety. In addition, a condition requiring hardstanding to be made of porous materials, or suitable provision to be made to direct surface water run-off to permeable areas of the site, is necessary in the interest of minimising risk from surface water flooding.
24. As landscaping, layout, appearance and scale are reserved matters, it is not necessary to impose a condition requesting details of boundary treatments. Neither is there clear justification at this stage to remove permitted development rights for extensions to the dwellings, additions or other alterations to their roofs and for buildings incidental to their enjoyment under Classes A, B, C and E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. However, the option would still remain open to the Council to remove such permitted development rights through consideration of reserved matters applications if there arises clear justification to do so.

Conclusion

25. The Council's decision notice does not refer to any policies within its adopted development plan. Rather, it makes reference to the provisions of the Framework, which is a material consideration that carries significant weight in my decision. For the reasons set out above, the appeal scheme would accord with the advice of the Framework and there are no other material considerations that indicate that planning permission should not be granted in this instance. Accordingly, the appeal is allowed.

M Heron

INSPECTOR

Schedule of Conditions

- 1) No development shall commence until details of the appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the local planning authority (LPA). Development shall be carried out in accordance with the approved details.
- 2) Application for approval of the reserved matters shall be made to the LPA not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (scale of 1:1250) and 1901/1.
- 5) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the LPA. The Statement shall provide for; safe access to/from the site, the parking of vehicles of site operatives and visitors, the loading and unloading of plant and materials, the storage of plant and materials, wheel washing facilities, measures to control the emission of dust and dirt, a scheme for recycling/disposing of waste resulting from development, details of hours of deliveries, details of hours of site clearance and construction and a scheme to manage noise and vibration for development. The approved CMS shall be adhered to throughout the demolition and construction period for the development.
- 6) All new areas of hardstanding, including parking areas, shall be constructed using porous materials, or provision shall be made to direct surface water run-off to permeable or porous areas within the site.

End of Schedule of Conditions