



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: 21 August 2020

Appeal Ref: APP/P1560/W/20/3245853

The Rose, 63 The Street, Kirby-le-Soken, Frinton-on-Sea, Essex CO16 0EG

- 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 Keith Jeeves against the decision of Tendring District Council.
 - The application Ref 19/01154/OUT, dated 6 August 2019, was refused by notice dated 13 November 2019.
 - The development proposed is three 3-bed chalet style bungalows.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is for outline planning permission with access applied for in full and all other matters reserved. An indicative layout plan has been submitted, detailing the access, 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 and the policies may be subject to modification. The policies of the emerging LP therefore have limited weight at this time.
4. The appellant has submitted a signed Unilateral Undertaking (UU) with the appeal, proposing payments in relation to habitats and play space. However, the UU has not been dated and is not therefore legally sound. I therefore afford this document no weight. I refer to this as relevant in my decision below.
5. Kirby-le-Soken is spelt in a number of different ways in different documentation submitted in relation to the appeal. I have adopted the spelling of 'Kirby-le-Soken' as used in the Tendring District Local Plan 2007 (the LP).

Main Issues

6. The main issues in this case are:
 - Whether the site is in a suitable location for housing, with adequate access to services;
 - The effect of the development on the character and appearance of the area, with particular regard to landscape and to the setting of the Kirby-le-Soken Conservation Area;

- The effect of the development on the integrity of the Hamford Water Special Protection Area and Special Area of Conservation; and
- Whether the effect on play space is acceptable.

Reasons

Location

7. The site is located to the end of the western arm of Kirby-le-Soken, at the end of a linear line of development leading away from the village centre along the road. The site lies outside of the defined Settlement Boundary of the village, as set out in the LP. However, it is directly adjacent to an unbroken line of development running along the road towards the village centre. The site is therefore part of the linear development along the road and feels physically connected to the village. It is not in an isolated location.
8. However, access from the site to the centre of the village is poor. It is a relatively long walk along a fairly busy and narrow road with no footpaths on either side. I observed on my site visit that this route felt unsafe for pedestrians. There are no bus stops easily accessible to the site. In addition, the village is in the lowest tier of four tiers of Defined Settlement in the LP and it only provides a limited range of facilities and services. Therefore, the site provides poor access to facilities and services and it is likely that the vast majority of journeys to and from the site would be by car.
9. Consequently, the site is in an unsuitable location for dwellings, with inadequate access to local services. The proposal therefore fails to comply with the relevant parts of Policy QL1 of the LP which, amongst other criteria, seeks development within defined Settlement Boundaries to facilitate controlled growth. It also fails to comply with the relevant parts of Policy SPL1 of the emerging LP which, amongst other criteria, also seeks development within defined Settlement Boundaries.

Character and appearance

10. The site is mostly hard standing with 2 mobile homes and some associated development such as gates and boundary fencing. It is directly adjacent to the nearest part of the village and feels a part of the linear development along The Street although, because the site is at the end of the village, it is surrounded to three sides by open farmland. The site lies adjacent to the Kirby-le-Soken Conservation Area. The nearest part of the conservation area is characterised by dwellings, often 2-storeys, in large plots with substantial hedgerows, although the immediately adjacent site is a small terrace of dwellings, and there are a variety of dwelling styles, plot sizes, and layouts in the area.
11. Appearance, landscaping, layout and scale have not been applied for in full. The detail of the layout, landscaping, and design would be controlled through future reserved matters and condition discharge submissions. In this regard, there is sufficient space on the site to accommodate the proposed 3 chalet-style bungalows in a number of different layouts, and in a number of different detailed designs. There is also sufficient space on the site to provide suitable boundary screening and greater amounts of soft landscaping compared to the existing situation, which could mitigate the effect of the proposed 1 and a half storey dwellings on the wider landscape.

12. Consequently, the proposal would not harm the character and appearance of the area and would preserve the setting of the Kirby-le-Soken Conservation Area. The proposal therefore complies with the relevant parts of Policies EN1, EN17 and QL9 of the LP which, amongst other criteria, seek high quality design, the protection of landscape character, and the protection of the setting of conservation areas. It also complies with Chapters 12 and 16 of the National Planning Policy Framework (the Framework) which, amongst other criteria, seek high quality design and the protection and enhancement of the historic environment. The proposal complies with Policies SPL3 and PPL3 of the emerging LP which, amongst other criteria, seek high quality design and the protection of rural landscape.

Habitats

13. The site falls within the Zone of Influence of the Hamford Water Special Protection Area (SPA) and Special Area of Conservation (SAC), as defined in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy 2018-2038. 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 these European designated sites, through increased recreational pressure when considered 'in combination' with other plans and projects. The proposed 3 dwellings, which represent an uplift on the existing 2 mobile homes, are therefore, both on their own and in combination with other development projects, likely to have significant effects on the integrity of the SPA and SAC. As the Competent Authority, and in accordance with the Conservation of Habitats and Species Regulations 2017, I have therefore undertaken an Appropriate Assessment.
14. The SPA is a large shallow estuarine basin that provides habitat for a number of breeding and non-breeding birds. The SAC provides one of the best habitats in the country for the Fisher's estuarine moth. The conservation objectives include maintaining or restoring the extent, distribution, structure and function of the habitats. The mitigation measures proposed in the RAMS are to increase the resilience of the SPA and SAC to increased recreational pressure from new residential development, for example through funding existing wardening schemes at the sites.
15. I have considered the proposed mitigation measures and I am satisfied that these would be effective in ensuring that the proposal would cause no adverse effect on the European Sites. It is proposed by the appellant that these mitigation measures would be implemented by way of a financial contribution to be secured by the UU, which provides that the appellant will pay £125.58 per uplift in residential unit, prior to commencement of development.
16. The principle of securing a payment as the mitigatory measure is agreed between the parties and is supported by NE. However, the amount of the payment has not been agreed. Nor has the uplift in dwellings for the purposes of calculating the payment. The existing use of the site is as 2 mobile homes and therefore the net uplift in dwellings is not clear and is not agreed between the parties. This needs to be established in order to calculate the required mitigation payment. In addition, the UU is not dated and therefore has no weight in any event. It has not therefore been demonstrated that there would be no adverse effect on the integrity of the European designated sites.

17. There are no feasible alternative solutions that would achieve the aims of the proposed development without also increasing recreational pressure on the SPA and SAC. The provision of 3 new dwellings would have limited public benefits and does not provide an overriding public interest that would outweigh the identified harm.
18. Consequently, in the absence of suitable mitigatory measures having been secured, the proposal would harm the integrity of the SPA and SAC. The proposal therefore fails to comply with the relevant parts of Policies EN6 and EN11a of the LP which, amongst other criteria, seek to protect biodiversity and the integrity of 'European Sites'. It also fails to comply with the relevant parts of Paragraphs 175 and 176 of the Framework which, amongst other criteria, seek to protect habitats sites. The proposal fails to comply with the relevant parts of Policy PPL4 of the emerging LP which, amongst other criteria, seeks to protect SPAs, SACs, and biodiversity.

Open space

19. The existing site provides 2 mobile homes. The appellant has stated on the planning application form that there are a total of 5 bedrooms between the 2 mobile homes and this is not contested by the Council. The proposal would be for three 3-bed houses, providing a total of 9 bedrooms. 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.
20. In this regard, the Council's Summary of Play Area and Sports Pitch Need by Town & Parish Area, dated February 2011, identifies a shortfall of equipped play facilities in the 'Frinton, Walton and Kirby' area, where the appeal site is located. The document also specifically identifies the requirement for seating, bins, fencing, and new equipment to the Halstead Road play area, which is the nearest play area to the site.
21. The proposal would therefore increase demand for the play area and that a contribution is required for new or improved facilities. The appellant's UU commits to a mitigation payment with respect to this issue. The payment amount would be for the net uplift in dwellings and linked to the payment schedule set out in Table 4 related to Policy COM6 of the LP. The net uplift for the purposes of this calculation has not been established. In addition, the UU has not been dated and I therefore afford this document no weight.
22. Consequently, in the absence of a legally sound UU and agreed mitigation payment, the proposal would not mitigate its effect on public open space as a result of the increased demand from the likely increase in occupancy on the site, and the effect on play space would be unacceptable. The proposal therefore fails to comply with the relevant parts of Policy COM6 of the LP which, where existing open space facilities are inadequate to meet the projected needs of the future occupiers of the development, seeks a financial contribution for new or improved off-site facilities. The proposal also fails to comply with Paragraph 97 of the Framework which, amongst other criteria, finds that access to high quality open spaces and opportunities for sport and physical activity are important for the health and well-being of communities.

Planning Balance

23. The Council can only demonstrate a 4.6 year housing land supply as assessed against the 'standard method' of calculating local housing need, as is required as set out in Paragraph 73 of the Framework and the Planning Practice Guidance. However, the proposal would harm the integrity of two habitats sites. Therefore, as directed by Paragraph 177 of the Framework, Paragraph 11d of the Framework is not engaged.
24. The proposal would result in the creation of 3 housing units, an uplift on the 2 existing mobile homes, which would help the Council to meet its housing land supply. It would bring temporary economic benefit from the construction process. It would provide long-term economic benefit from the boost to local facilities and services from the new occupancy on the site. These factors weigh in favour of the proposal, but the benefits would be limited because only a modest uplift is proposed from the 2 existing mobile homes.
25. The proposal would not cause harm to the character and appearance of the site, when these matters come forward for detailed consideration at the reserved matters stage. As it has not yet been demonstrated that the proposal would result in an enhancement, this weighs neutrally in the planning balance.
26. The site is inaccessible by transport modes other than the car, and the majority of trips from the proposed dwellings would likely be by car. The proposal would harm the integrity of the SPA and SAC and this has not been mitigated. The increased demand for use of play facilities has not been mitigated. Overall, these harms would outweigh the benefits of the proposal.

Conclusion

27. For the reasons above, I conclude that the appeal be dismissed.

O S Woodward

INSPECTOR