
Appeal Decision

Site visit made on 20 October 2020

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th November 2020

Appeal Ref: APP/P1560/W/20/3253897

Land Adj Old Thatched Cottage, Stones Green Road, Tendring CO16 0DD

- 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 G Flanagan against the decision of Tendring District Council.
 - The application Ref 19/01576/FUL, dated 21 October 2019, was refused by notice dated 16 December 2019.
 - The development proposed is one new dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: (i) whether the site represents an appropriate location for housing with particular regard to the Council's settlement strategy and access to services, facilities and sustainable transport options; and (ii) the effects of the proposal on the integrity of the Hamford Water Special Protection Area (SPA) and Ramsar site.

Reasons

Location

3. The appeal site comprises part of the garden of Old Thatched Cottage, which is accessed from Stones Green Road. It is common ground that the site is not located within any settlement boundaries. The site is therefore within the countryside for the purposes of planning policy.
4. Policy QL1 of the Tendring District Local Plan (LP) sets out the Council's spatial strategy and aims to create sustainable communities. It directs development towards settlements and explains that only development which is consistent with countryside policies will be permitted outside them. It has not been put forward that the proposal is consistent with countryside policies in the LP. The proposal is therefore contrary to LP Policy QL1.
5. The Council has stated that the nearest defined settlements of Wix and Tendring have limited services and facilities and are approximately 3.4km and 1.9km from the site, respectively. The appellant has stated that there are bus stops within 0.75 miles of the site with routes to Clacton-on-Sea and Colchester. However, I have not been provided with details regarding the location of those bus stops or the frequency of the bus services.

6. An appeal decision¹ relating to another site on Stones Green Road has been provided which indicates that there are bus stops located on Heath Road which offer regular and readily accessible bus services. However, that decision is now over 3 years old and thus I cannot be certain that this remains the case. The decision also refers to a nearby care facility, but I have not been provided with information as to its current status. Moreover, that site is approximately 1.2km from this one, according to the Council, and Stones Green Road does not have any pavements or streetlights along it. Therefore, it is likely that the occupiers of the proposed dwelling would find walking along the road to the bus stops and the limited services and facilities in the immediate area unattractive.
7. I noted from my site visit that the road forms part of National Cycle Route No 51. However, it is unlikely that the occupiers would rely on this to fulfil their requirements for day-to-day living as a result of the limited services and facilities nearby, the distance to Wix and Tendring and the lack of a cycle lane along the road. The occupiers would therefore be reliant on private motor vehicles to meet their needs.
8. The site is within a short travelling time of Wix, Tendring and the A120 by private motor vehicles, albeit the larger settlements of Colchester, Clacton-on-Sea and Harwich, and the Great Bentley train station, are further afield. I also acknowledge that opportunities to maximise sustainable transport options will vary between urban and rural areas and that travel by private motor vehicles cannot be completely avoided. However, even taking these matters into account, I do not consider that the accessibility of the site to services, facilities and sustainable transport options is adequate.
9. The appellant has referred to an appeal decision² in relation to accessibility matters, which identifies that there would be limited harm from the occupiers of 2 dwellings using private motor vehicles to access services and facilities. However, it relates to a site within a different administrative district and its accessibility credentials are not directly comparable with this appeal site. Moreover, that proposal was not found to be accessible, but it was allowed in the context of the presumption in favour of sustainable development, as set out by paragraph 11 of the National Planning Policy Framework (the Framework). It thus has no bearing on my findings.
10. I conclude that the proposal would harm the Council's settlement strategy and the site has limited accessibility to services, facilities and sustainable transport options. The proposal conflicts with Policy QL1 of the LP. The decision notice also refers to Policy SPL1 of the emerging Local Plan³ (eLP) in respect of these matters, which puts forward a settlement hierarchy in a similar manner to LP Policy QL1. However, it does not specify an approach to locating development in itself and thus I find no direct conflict with it.

SPA and Ramsar site

11. The site is located within the zone of influence (ZOI) of the Hamford Water SPA and Ramsar site, which is a European site as designated by the Conservation of Habitats and Species Regulations 2017.

¹ Appeal ref: APP/P1560/W/16/3165144

² Appeal ref: APP/Z1510/W/3243946

³ Tendring District Local Plan 2013-2033 and Beyond Publication Draft

12. The Council has provided an Essex Coast RAMS⁴ Habitat Regulation Assessment (HRA) Record which sets out that residential development within the ZOI of the European site will have likely significant effects on its interest features through increased recreational disturbance. Its findings are not disputed by the appellant.
13. The HRA Record goes on to explain that a financial contribution in line with the Essex Coast RAMS is required. This is in order to provide the mitigation needed to conclude that the development would not have an adverse effect on the integrity of the European site from recreational disturbance, when considered in combination with other development. The appellant has stated that they would be prepared to provide a financial contribution by way of an obligation or a direct payment to the Council, in order to secure mitigation.
14. No evidence has been provided which confirms that an obligation has been completed or a direct payment to the Council has been made. I can therefore only conclude that the proposal does not provide any mitigation. If it did so, it would have been necessary to consider whether the specific mitigation necessary to ensure that the proposal would not adversely affect the European site would have been secured. However, as no mitigation has been secured, I do not need to consider this matter further.
15. As mitigation has not been secured, I conclude that the proposal would adversely affect the integrity of the European site. It is therefore contrary to LP Policies EN6 and EN11a, which seek to protect biodiversity and European sites. It is also contrary to Policy PPL4 of the eLP which echoes these LP policies.

Planning Balance

16. LP Policy QL1 adopts a prohibitive approach to development outside settlements. However, it seeks to create sustainable communities by focusing development in accessible locations, which is broadly consistent with the aims of the Framework, and in this case the proposal would have limited accessibility. I thus attach moderate weight to the proposal's conflict with LP Policy QL1.
17. The eLP consists of 2 sections. The first section relates to a joint growth strategy with other Councils in North Essex and is being examined. The examination of the second section, which relates to more specific policies and proposals for Tendring, has not begun. The eLP is therefore subject to change and thus the proposal's conflict with Policy PPL4 attracts very limited weight.
18. It is common ground that the Council cannot demonstrate a 5 year supply of deliverable housing sites. The appellant has also provided appeal decisions which illustrate this, with the most recent one from May 2020 indicating that the Council has a supply of 4 years⁵. However, paragraph 177 of the Framework makes clear that the presumption in favour of sustainable development does not apply where a project is likely to have a significant effect on a habitats site, unless an appropriate assessment has concluded that the project would not adversely affect the integrity of a habitats site. I have found that the proposal would adversely affect the European site and thus the presumption in favour of sustainable development is not applicable.

⁴ The emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy

⁵ Appeal ref: APP/P1560/W/19/3231554

19. Notwithstanding this, the proposal would contribute to the district's housing supply. The appellant has also put forward that the proposal would be constructed with energy efficiency features above Building Regulations requirements and provide private amenity space in excess of the Council's standards. In addition, the Council has not contested the appellant's view that the proposal would make efficient use of previously developed land or raised concerns regarding its effect on the character of the countryside. However, these matters do not outweigh the harm to the integrity of the Council's spatial strategy, the proposal's limited accessibility and its reliance on private motor vehicles, and its effect on the European site.
20. I conclude that the proposal is contrary to the development plan taken as a whole. There are no material considerations which indicate that a decision should be taken other in accordance with the development plan.

Conclusion

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

Mark Philpott

INSPECTOR