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## Appeal Decision

Site visit made on 30 November 2020

**by Jonathan Price BA(Hons) DMS DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24 December 2020**

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**Appeal Ref: APP/P1560/W/20/3254569**

**Land east of Bentley Road, Weeley, Essex CO16 9DP**

- 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 St Osyth Beach Estate Ltd against the decision of Tendring District Council.
  - The application Ref 19/01201/OUT, dated 1 August 2019, was refused by notice dated 23 December 2019.
  - The development proposed is residential development comprising up to 80 dwellings, approximately 150m<sup>2</sup> retail/pharmacy unit, public open space and associated infrastructure.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application was in outline, with all detailed matters reserved for later consideration, and I have dealt with the appeal accordingly. The indicative masterplan has been considered as such. A Landscape and Visual Impact Assessment<sup>1</sup> was provided with the appeal, to which I have had regard.
3. The appellant has provided a unilateral undertaking (UU), dated 17 November 2020, made under section 106 of the Town and Country Planning Act 1990 (as amended). This has been signed and executed as a deed and I have taken it into account in making this decision. The UU secures that 40% of the dwellings proposed would be affordable housing. It also provides for the financial contributions sought by the relevant authorities towards primary education, secondary education/transport, local NHS healthcare, off-site highway improvements, on-site play/open space provision/maintenance and for the mitigation measures required through the Essex coast Recreational disturbance Avoidance and Mitigation Strategy. The UU means the Council is no longer defending refusal reasons three and four, over the absence of the above, which now fall away.

### Main Issues

4. Whether this proposal would be appropriate, with particular regard to (i) local and national planning policies over the location of new housing development and (ii) the character and appearance of the area.

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<sup>1</sup> Land at Bentley Road, Weeley Heath Landscape and Visual Impact Assessment by James Blake Associates March 2020.

## Reasons

### (i) Local and national planning policies for the location of new housing

5. The proposal relates to a roughly rectangular arable field of about 4.8 hectares. It is located within the settlement of Weeley Heath and lies adjacent to the nearly complete Millers Green development of 46 homes, built on the site of the former Willow Farm piggeries. The appeal site is otherwise almost completely surrounded by the frontage housing development along Clacton Road, Bentley Road and Mill Lane. This proposal would fill the undeveloped gap on Bentley Road. The other remaining open frontage, on the opposite side of Mill Lane, has permission for housing which, if built, would enclose the appeal site entirely.
6. Planning law requires that proposals be determined in accordance with the development plan, unless material considerations indicate otherwise. The development plan is therefore the starting point and comprises the saved policies of the Tendring District Local Plan of 2007 (LP).
7. The strategic objectives of the LP include making efficient use of urban land, particularly where previously developed, directing development to places with good accessibility through a choice of transport modes to jobs, shops and other facilities, encouraging town regeneration and supporting rural communities and their economies.
8. To this end, the spatial strategy of LP Policy QL1 is to steer most development to the urban areas, where there is a wide range of services and choice in travel means, and a more limited amount consistent with community needs to within the settlement development boundaries (SDB) defined for villages. Unless part of a specific allocation, development outside of an SDB is permitted only where consistent with countryside policies. These countryside policies are not specifically identified in LP Policy QL1, but the supporting text explains that, outside SDBs, policies that aim to conserve and enhance the countryside for its own sake will apply, and that only development that does not detract from its appearance or character is to be permitted.
9. Whilst in the same parish, the LP differentiates between the settlements of Weeley Heath and Weeley. The two are not quite contiguous, separated by a short stretch of undeveloped frontage either side of the Clacton Road, just to the south of the railway line. A train station is roughly equidistant between the two settlements. Weeley is the larger centre and defined a *principal village and rural settlement*, allowing developments of six or more dwellings within the SDB. Weeley Heath is lower down the LP hierarchy, defined as *other village and rural settlement*, which limits housing within the SDB to infill of one or two dwellings. Since the LP was adopted, both the villages have experienced significantly greater housing growth than planned for.
10. The SDB for Weeley Heath defines two separate parts of the village. The appeal site lies adjacent but outside the part drawn around the housing along Bentley Road and Mill Lane. The other part of the SDB lies beyond the Millers Green development and encompasses housing further along Mill Lane, in the triangle of development up to Clacton Road. Not supported by any specific countryside policy nor allocated for development, the location outside the SDB renders this proposal contrary to LP Policy QL1.

11. The more recent policies in the National Planning Policy Framework (the Framework), published in February 2019, are material considerations in this appeal. However, Framework paragraph 213 makes it clear that existing development plan policies should not be considered out-of-date simply because they were adopted or made prior to its publication. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
12. LP Policy Q1 remains broadly consistent with the Framework objective for achieving sustainable development. This is through a plan-led approach that focuses significant development on locations which are or can be made sustainable, limiting the need to travel and offering a genuine choice of transport modes. This also includes making effective use of land, particularly that which is previously developed, in meeting the need for homes. Those planned for rural areas should be responsive to local circumstances and support local needs, whilst recognising the intrinsic character and beauty of the countryside.
13. As of 16 June 2017, the emerging Local Plan is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (ELP). Section 1 of the ELP (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018, with further hearing sessions in January 2020. The strategy has been found sound and, subject to modifications, is at an advanced stage towards adoption.
14. However, the Section 2 ELP, which is more relevant to decisions over the actual distribution of growth within Tendring, is at a much earlier stage and has yet to be the subject of examination. The ELP follows the approach of the LP in having separate SDBs defined for Weeley and Weeley Heath, similarly differentiated as a *rural service centre* and *smaller rural settlement* respectively. Their individual SDBs reflect housing developments and permissions granted since the LP was produced, which in the case of Weeley Heath includes, for example, the Millers Green development. The SDB in the ELP is more reflective of the actual shape of this village and also includes stretches of housing missing from that provided with the LP.
15. ELP Policy SPL1 identifies Weeley Heath as a *smaller rural settlement*, the fifth and lowest category in sustainability terms. It falls below those defined as *strategic urban settlements*, *smaller urban settlements*, *expanded settlements* and *rural service centres*. The supporting text states that the smaller villages within Tendring District's rural heartland have much less in the way of job opportunities, local services, facilities and other infrastructure. Residents of these smaller villages are often reliant on neighbouring towns and villages for work, shopping and other services and frequently need to travel distances either by public transport or private car.
16. Therefore the SDB for Weeley Heath has been drawn to limit growth in this category of rural settlement to the small scale of residential infill needed to help younger people to continue to live in the area, keep local shops and services viable and help bring balance to any ageing population. This text indicates that schemes be limited to 10 dwellings unless there is local support from the Parish Council or through an approved Neighbourhood Plan. The mixed scheme of up to 80 dwellings, situated outside the SDB, greatly exceeds

the amount of housing growth proposed by the ELP for this scale of settlement and conflicts with Policy SPL 2.

17. These ELP policies gain traction due to the same consistency with the Framework as found in respect of those in the LP. However, based on Framework paragraph 48, the pre-examination stage of the Section 2 ELP and the unknown extent to which there are unresolved objections, means I give these policies lesser weight, giving a greater amount to those of the current LP.
18. The appellant makes the case for Weeley and Weeley Heath combined having collectively the good range of services to support the development proposed. The train station is situated midway between the two, and is within walking distance of the appeal site, which also benefits from a reasonable bus service. However, the other services provided in Weeley are not so conveniently accessible by means other than private car and so I more inclined to assess the appeal upon what is offered in Weeley Heath itself. In addition to the train station these include the church, primary school, village hall, the White Hart public house and a garden centre with a café.
19. The development brings forward a 150m<sup>2</sup> retail/pharmacy unit. However, this amount of service provision comprises a very small foundation for a development of up to 80 dwellings. Accounting for some public transport use, a scheme of this scale in a quite small rural settlement would still likely generate a significant increase in private car journeys in, out and around this locality. This would be in order to access regular household needs such as secondary schools, places of work, supermarkets and medical centres. This degree of additional travel, including by private car, would be in excess of the amount from the same amount of housing in an urban area or larger settlement, where essential services are likely to be more concentrated and closer by and sustainable transport options greater. Consequently, there would be significant adverse environmental impacts from the amount of housing proposed for this small village, due to the increase in travel, vehicular movements, carbon emissions and a concomitant harm to public health from reduced air quality.
20. In respect of the size of settlement, its rural location and the low level of services provided, the up to 80 dwellings proposed would be inappropriate for the reasons explained, conflicting harmfully with the policies of the adopted and emerging development plan and those of the Framework.

*(ii) Character and appearance*

21. The appeal site is a large arable field, which is level, quite featureless and typical of the surrounding farmed plateau landscape. Its value lies in preserving the large gap between the sections of mainly roadside frontage housing, and some smaller estates, which provide the quite well spread out form to this village. Whilst of limited intrinsic landscape value, this undeveloped field helps preserve the open, semi-rural character of Weeley Heath.
22. The proposal would fill this central greenfield site within the village with a large and concentrated estate of housing. This would have a significant effect on the character and appearance of this modestly sized semi-rural settlement, which appears to have previously grown more gradually and incrementally. This earlier growth seems to have been mainly through the development of smaller scale infill or brownfield sites, such as Willow Farm and Kidbys' Nurseries.

23. The village does not have a conservation area and is not part of a landscape that is the subject of any special protective designation. The land is not identified as a Local Green Gap in the LP. As indicated in the illustrative masterplan, a landscaping belt along the undeveloped edges of the site could help soften the visual impact of the housing.
24. Nevertheless, due to its large size and central position, the appeal site currently contributes strongly to the semi-rural character and open setting of this settlement. A development of this relatively large scale would detract significantly from the local distinctiveness of this area, in conflict with LP Policy EN1 and ELP Policy PPL3. However, there would be less significant harm in respect of the wider landscape. I accept that, should this amount of new housing be otherwise appropriate in this settlement, the appeal site would be an obvious candidate for accommodating it. This is due to its enclosure on all sides by existing or committed development, which would confine the housing and avoid the need for it to spread out more widely into the surrounding countryside.

### **Planning balance and conclusion**

25. As the strategic policies in the LP are more than five years old, paragraph 73 of the Framework requires the Council identifies and updates annually a supply of specific deliverable sites sufficient to provide a minimum five year housing land supply (5 YHLS), based on local housing need calculated using the standard method set out in national planning guidance (the standard method). As set out in the Council's most recent Strategic Housing Land Availability Assessment (SHLAA) of May 2020, the standard method shows a 4.45 YHLS, thus triggering the tilted balance in Framework paragraph 11 d) ii.
26. Whilst this is an appreciable shortfall in 5YHLS, it is rather less than substantial. Furthermore, the SHLAA provides evidence, accepted by the Examining Inspector, that the standard method is based on demographic evidence which over-inflates Tendring's projected housing need. As an alternative to housing supply determined under the standard method, there is an objectively assessed need (OAN) upon which the Part 1 ELP is predicated. This is a requirement for 550 dwellings per annum which has been found to be sound following examination. Once the Part 1 ELP is adopted, this OAN would provide for a 6.5 YHLS.
27. Any proposal for a relatively large number of new houses will inevitably lead to a commensurate degree of social benefit towards meeting housing supply requirements, as well as the Government's broader objective to significantly boost the numbers of homes built. In this case, these social benefits are enhanced through a LP policy-compliant 40% level of affordable housing; a requirement which will eventually be reduced to 30% through the ELP. I accept that compared to a series of smaller proposals, a larger scheme such as this is also better able to deliver affordable housing and make other contributions, such as in this case the open space with equipped play area and the small retail unit, both of which would be of benefit to this village.
28. The economic benefits derived from the construction and future servicing of the dwellings, and the additional household spend, would provide significant benefits to the local economy. However, such benefits would be the same were the development in a location that accorded with development plan policy, and so this moderates the weight I give.

29. I agree there might be a delay in adopting the ELP and, currently, the standard method dictates weight be given to the Framework's tilted balance. As the latest SHLAA was published quite soon after the current Covid pandemic took hold, its housing delivery rates might be somewhat over optimistic. The appellant has provided a brief assessment on the progress on key residential sites. However, as the agreed appeal procedure was by written representations, I am unable to fully test this evidence.
30. In allowing a recent appeal<sup>2</sup> for up to 136 houses on the edge of nearby Great Bentley, the Inspector did not have the most recent 2020 SHLAA evidence before him. That decision was made when there was a lower, 4 YHLS and related to a site on the edge of a settlement in a higher category of the LP hierarchy than Weeley Heath, with a greater number of houses and range of services. Therefore, I do not feel bound to reach the same conclusion as in that appeal decision, where my colleague found the scheme not to undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development central to the ELP.
31. That appeal decision of 15 May 2020 was based on evidence heard much earlier at a Hearing on 3 October 2019. I am satisfied that the housing supply situation in Tendring has since altered materially and the soundly based Part 1 ELP is now much closer to adoption. This situation, and the latest OAN, tempers significantly the weight that needs to be given to the housing supply benefits and increases that applied to an advancing plan-led approach over the amount and distribution of residential development.
32. I consider that this proposal would prejudice the effective and coordinated delivery of growth through a plan-led process and be disproportionate in scale for this location, pre-empting decisions to be arrived at over distribution of housing growth within Tendring through the Part 2 ELP. This harm, and the adverse environmental impacts found in my two main issues, would significantly and demonstrably outweigh the social and economic benefits provided by this scheme.
33. The proposal would therefore not benefit from the presumption in favour of sustainable development provided by paragraph 11 of the Framework. As a material consideration, this would thus not indicate the appeal be decided other than in accordance with the development plan, with which I find there to be conflict when considered as a whole. Therefore, for the reasons set out above and having considered all further matters raised, I conclude that the appeal should be dismissed.

*Jonathan Price*

Inspector

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<sup>2</sup> APP/P1560/W/19/3231554 dated 15 May 2020.