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## 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: 8<sup>th</sup> January 2021**

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**Appeal Ref: APP/P1560/W/20/3253927**

**Land South-West of Ardleigh Bowls Club, Colchester Road (A137),  
Ardleigh, Colchester, Essex CO7 7PQ**

- 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 Thompson against the decision of Tendring District Council.
  - The application Ref 20/00158/OUT, dated 3 February 2020, was refused by notice dated 13 May 2020.
  - The development proposed is erection of 3 no 'self-build' single-storey dwellings, ancillary outbuildings and change of use of land (utilising existing vehicular access).
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### Decision

1. The appeal is allowed and planning permission is granted for erection of 3 no 'self-build' single-storey dwellings, ancillary outbuildings and change of use of land (utilising existing vehicular access) at Land South-West of Ardleigh Bowls Club, Colchester Road (A137), Ardleigh, Colchester, Essex CO7 7PQ in accordance with the terms of the application, Ref 20/00158/OUT, dated 3 February 2020, subject to the conditions set out in the attached schedule.

### Procedural Matters

2. Outline planning permission is sought with details of access to be considered at this point and appearance, landscaping, layout and scale reserved for future consideration. I have therefore taken the proposed site plan (drawing reference 20/11/02) into account insofar as it relates to access but otherwise treated it and all other application drawings as illustrative.
3. The emerging Local Plan (eLP)<sup>1</sup> is currently being examined in relation to its strategy for growth, which has been prepared jointly with other councils in North Essex. An examination of more specific policies and proposals for Tendring has not commenced. The eLP is therefore subject to change and thus it attracts limited weight in my decision.
4. A unilateral undertaking (UU) dated 27 April 2020 has been submitted. It intends to secure the provision of financial contributions to address the effects of the development on the Stour and Orwell Estuaries Special Protection Area and Ramsar site (the European site) and improve public open space.

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<sup>1</sup> Tendring District Local Plan 2013-2033 and Beyond Publication Draft

## **Main Issues**

5. The main issues are: (i) whether the proposal would be in an appropriate location, with particular regard to the character and appearance of the area; and (ii) the effect of the proposal on the integrity of the European site.

## **Reasons**

### *Location*

6. The appeal site is not located within any settlement boundaries and as such it is in the countryside for planning policy purposes. Policy QL1 of the Tendring District Local Plan (LP) sets out the Council's spatial strategy. It aims to create sustainable communities by focusing development towards settlements where services and facilities are accessible and the need to travel is minimised. It explains that only development which is consistent with countryside policies will be permitted outside settlements. I have not been referred to any countryside policies in the LP which the proposal accords with and thus it is contrary to LP Policy QL1.
7. The site comprises land that forms part of a vineyard. It is beside and shares an access onto Colchester Road with a bowls club. The site has an open and spacious character, albeit this is not readily apparent from the road as a result of hedges which extend across its frontage. Nonetheless, it provides a visual break in built form along the road.
8. Residential properties are visible along the road and nearby in Clover Way. The properties range from small bungalows to large detached houses and their ages, designs and plot sizes vary widely; however, many are set behind hedges. A bungalow located near to the access and the bowls club's buildings each comprise of a single storey. There are often undeveloped spaces between or opposite groups of properties along the road that are also located behind vegetation, which provide the area with a semi-settled and spacious character.
9. The illustrative drawings suggest that the proposed dwellings could be set back from the hedge and oriented to face the road in a similar manner to other properties. The widths of the plots could be comparable with those nearby. A sense of spaciousness could be retained between the dwellings and other properties along the road, as the bowls club's car park would be located on one side of them and a high pressure gas pipeline constrains development on their other side.
10. From the road views of the dwellings could be largely screened by the hedge and have limited prominence in the street scene. Whilst the upper parts and roofs of the dwellings may be visible, this is already the case for the buildings at the bowls club and thus they would not appear discordant. Moreover, even if the dwellings were not screened, they would appear as another group of properties with open space around and beside them. They would be viewed in the context of other properties along the road and would not appear incongruous within the landscape. The development could therefore be designed to be compatible with the prevailing character of the area.
11. The Council has raised concerns that the approval of this scheme would set a precedent for similar development in the vicinity. However, the characteristics of the spaces between properties vary considerably along the road and no

directly comparable sites to which this might apply have been put forward. Therefore, a specific precedent would not be set in allowing this proposal.

12. In conclusion, there is sufficient scope for a scheme to be put forward at the reserved matters stage that would not harm the character and appearance of the area. In this respect the proposal accords with LP Policies QL9 and EN1, which seek to protect local character and landscapes. It also accords with paragraphs 8 and 127 of the Framework and eLP Policies SPL3 and PPL3, which have similar objectives.
13. Notwithstanding this, the proposal harms the integrity of the settlement strategy set out by LP Policy QL1. The decision notice also refers to eLP Policy SPL1 in respect of this matter, which also puts forward a settlement hierarchy. However, it does not specify an approach to locating development in itself and thus the proposal does not conflict with it directly.

#### *European site*

14. The European site includes mudflats and saltmarsh and supports predominantly wildfowl and wading birds, including breeding avocets. The site is not within or directly adjacent to the European site, but in its zone of influence. Natural England considers that residents within this area will travel to the European site for recreational purposes and thus development in it is likely to have significant effects on the interest features of the European site from disturbance arising from recreation. The main parties concur regarding this matter. Adopting a precautionary approach, I cannot rule out that the effects would not be significant.
15. The Council and Natural England have agreed a strategic approach to mitigating the effects of recreational disturbance, which is set out in the Essex Coastal Recreational disturbance Avoidance and Mitigation Strategy (RAMS). It requires contributions to be made on a tariff per dwelling basis towards mitigation measures including access management, wardening, monitoring and information and awareness raising. In this case, Natural England is satisfied that the use of a contribution in accordance with the RAMS would prevent the development from creating adverse impacts on the European site.
16. The UU includes a contribution of £122.30 per dwelling as per the RAMS. The Council is satisfied with the content of the UU. Taking into account the secured mitigation, the established RAMS approach and Natural England's advice, I find that the development would not adversely affect the integrity of the European site. The contribution is necessary and directly related to the development and fairly and reasonably related in scale and kind to it. Accordingly, I am satisfied that the contribution would meet the tests set out at Regulation 122 of the CIL Regulations<sup>2</sup> and paragraph 56 of the Framework. I conclude that the proposal accords with LP Policies EN6 and EN11a and eLP Policy PPL4, which seek to protect biodiversity and European sites.

#### **Other Matters**

17. For residential development below 1.5 hectares in size, LP Policy COM6 requires financial contributions to be made towards open space provision where existing facilities are inadequate to meet the projected needs of future occupiers. Policy

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<sup>2</sup> The Community Infrastructure Levy Regulations 2010

- HP5 of the eLP also seeks to ensure that adequate open space is provided, albeit contributions would only be sought from schemes for larger sites.
18. The Council has identified a deficit of 1.7 hectares of equipped play/open space in Ardleigh and that any additional development would increase pressure on the existing facilities in the area. A contribution is therefore sought to make improvements to the nearest play area, which is located on Colchester Road. The UU would provide a contribution based on the number of bedrooms in each dwelling, in accordance with the Council's Open Space SPD<sup>3</sup>.
  19. The contribution would be necessary to make the proposal's impact on open space acceptable. It would also be directly related to the development and fairly and reasonably related to it in scale and kind. The contribution satisfies the aforementioned tests of the CIL Regulations and paragraph 56 of the Framework. The proposal would therefore make satisfactory provision for open space in accordance with LP Policy COM6.
  20. Government policy is supportive of self-build housing. Policy LP7 of the eLP sets out that the Council will consider proposals for this type of housing outside settlement boundaries on their merits and subject to certain criteria being satisfied. The Council and interested parties suggest that there is not a current need for more self-build homes in the district or Ardleigh, albeit this has not been substantiated. However, firm evidence has not been provided which demonstrates that the proposal would accord with the definition of self-build and custom housebuilding<sup>4</sup> and no mechanism is before me which would ensure that it would be so. I therefore attach negligible weight to this matter.
  21. De Bois Hall is a Grade II listed building which is located along Colchester Road. The Council and its heritage advisor have advised that the proposal would not adversely affect the setting of the listed building. I have no reason to reach a different conclusion and thus find that the setting of the listed building would be preserved.
  22. Ardleigh Parish Council puts forward that Ardleigh should not be considered a sustainable location for growth as public transport is inadequate and local facilities such as schools are at capacity. However, the Council and other interested parties have not raised such concerns and no evidence has been provided which shows that the proposal would adversely impact local facilities. The site is within walking and cycling distance of Ardleigh and the services and facilities therein. It is also close to a bus stop and approximately 750m from a public house and a convenience store within a petrol station, according to the Council. Colchester Road is reasonably straight and visibility when crossing it to reach the pavement is adequate. The Highway Authority has not raised safety concerns. The occupiers of the dwellings would thus be able to access services and facilities without reliance on private motor vehicles.

### **Conditions**

23. I have considered the conditions put forward by the Council with regard to the tests set out at paragraph 55 of the Framework. Some minor editing of the suggested wording of the conditions is necessary for precision and clarity.

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<sup>3</sup> Supplementary Planning Document For Policy COM6 of the Tendring District Local Plan 2007 – Provision of Recreational Open Space for New Development

<sup>4</sup> Defined by Section 1(A1) and (A2) of the Self-build and Custom Housebuilding Act 2015

24. Conditions relating to the submission and timing of the reserved matters and the commencement of development are necessary. Conditions are also needed to require the development to accord with the proposed site plan insofar as it relates to matters of access and to prevent no more than 3 dwellings being erected on the site, as the proposal has been assessed on those terms.
25. A condition to control the construction process is necessary in order to limit its effects on the living conditions of the occupiers of nearby properties and conflicts in the highway. A condition to prevent unbound surfacing materials being used near the vehicular access is required in order to prevent loose materials being deposited on the highway in the interests of highway safety. Conditions specifying the criteria for the location of a waste collection point and the width of carriageways are necessary for the same reason.
26. The Highway Authority has put forward conditions to require car parking and turning areas to be provided in accordance with its parking standards and details of bicycle storage to be provided. However, the Council has not suggested that these are imposed. Such matters can be assessed when the reserved matters are considered and thus those conditions are not currently necessary. Matters of landscaping and the materials to be used in the external surfaces of the dwellings can also be dealt with when the reserved matters are considered.
27. The Council has suggested a condition to require the internal private drive to be kept clear of vegetation at ground level to either side of it. However, as the layout is illustrative and the private drive is subject to change, such a condition is not necessary.

### **Planning Balance**

28. The Council has confirmed that it cannot demonstrate a 5 year supply of deliverable housing sites. It is contended that the eLP's housing requirement for the district is less than the housing need figure calculated using the standard method and that the shortfall in supply is limited. Ardleigh Parish Council also puts forward that there is no need for further dwellings in Ardleigh, but work on a neighbourhood plan is currently at a very early stage. However, paragraph 11d of the Framework is nevertheless engaged.
29. I have found that the proposal would not adversely affect the European site and it is not in conflict with policies in the Framework that protect other areas or assets of particular importance.
30. The proposal would contribute to housing supply in a location where services and facilities are accessible by means other than private motor vehicles. The contribution towards open space improvements would benefit the local community. In addition, there would be benefits from employment during construction of the properties and from future occupants utilising services and facilities in the area to contribute to the vitality of the rural community. Overall, the proposal's benefits are moderate.
31. Although the development would not adversely affect the integrity of the European site, this constitutes a neutral consideration rather than a benefit weighing in favour of the proposal.
32. I attach limited weight to the conflict with LP Policy QL1 and thus the harm to the integrity of the spatial strategy. This is because there is a shortfall in

housing supply, the site is accessible and the policy is more prohibitive of development within the countryside than the Framework, which says that housing should be located where it will enhance or maintain the vitality of rural communities. The adverse impacts of the development are therefore limited.

33. I find that the adverse impacts of the development would not significantly and demonstrably outweigh the benefits when the policies in the Framework are taken as a whole. Therefore, the proposal benefits from the presumption in favour of sustainable development.
34. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any determination must be taken in accordance with the development plan unless material considerations indicate otherwise. In this case the presumption in favour of sustainable development is a material consideration which outweighs the conflicts with the development plan. A decision should thus be taken otherwise than in accordance with the development plan.

### **Conclusion**

35. For the reasons set out above, and having regard to the submitted UU, the appeal is allowed, subject to the conditions identified.

*Mark Philpott*

INSPECTOR

### **Schedule of Conditions**

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 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 drawing number 20/11/02 insofar as it relates to matters of access.
- 5) No more than 3 dwellings shall be erected on the site.
- 6) All carriageways should be provided at 5.5 metres between kerbed footways or 6.0 metres where vehicular access is taken but without kerbing.
- 7) No unbound materials shall be used in the surface treatment of the proposed vehicular access with the highway and the existing turning head shown on drawing number 20/11/02.
- 8) Prior to the commencement of development, a Construction Method Statement (CMS) shall be submitted to and approved in writing by the local planning authority. The CMS shall provide for: (i) safe access to/from the site; (ii) the parking of vehicles of site operatives and visitors; (iii) the loading, unloading and storage of plant and materials; (iv) wheel washing facilities; (v) measures to control the emission of dust and dirt during demolition and construction; (vi) a scheme for recycling/disposing of waste resulting from demolition and construction works; (vii) details of hours of deliveries relating to the demolition and construction of the development; (viii) details of hours of site clearance or construction; and (ix) a scheme to control noise and vibration during the demolition and construction phase, including details of any piling operations. The approved CMS shall be adhered to throughout the construction period for the development.
- 9) Prior to first occupation of the proposed development, a communal recycling/bin/refuse collection point shall be provided within 15 metres of the highway boundary or adjacent to the highway boundary and clear of all visibility splays at accesses and retained thereafter.