
Appeal Decision

Site visit made on 6 January 2021

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2021

Appeal Ref: APP/P1560/W/20/3259216
19 Harwich Road, Ardleigh CO7 7LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Gavin Poulter against Tendring District Council.
 - The application Ref 20/00942/OUT, is dated 15 July 2020.
 - The development proposed is 'to erect 8 houses and garages and access.'
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Decision

1. The appeal is dismissed, and planning permission is refused.

Main Issues

2. There are four main issues. These are a) the effect of the proposed development on the character and appearance of the area; b) the effect of the proposed development on the integrity of designated habitat sites; c) whether the proposed development would make appropriate provision for open/play space and affordable housing; and d) the principle of the proposed development with specific regard to its location and access to services.

Reasons

Character and Appearance

3. The appeal site is located in the countryside, to the south of the dwelling at No 19 Harwich Road. There is some recent residential development to the south in the shape of three detached units and a small cluster of dwellings opposite No 19, fronting Home Farm Lane. A plant hire business operates from a premise immediately southeast with a larger scale commercial glasshouse company just opposite. There are other dwellings locally, fronting Harwich Road and Coggeshall Road. There are some other commercial uses in an around. Despite this, there is a prevailing rural character to the area reflected by open fields, nursery businesses and generally large, spacious gardens.
4. Whilst in outline form, the appeal scheme would introduce up to eight units, spread across a contextually large land area. On the basis of the indicative plan that I have seen (and considering the outline nature of the appeal scheme) it would seem possible to space the units out and have relatively generous plots. That said, they would be directly adjacent and most likely linked to an existing small development of three and result in something of an estate of up to eleven in total. This would give rise to, both on its own and in

conjunction with the existing three, something of a contained urban form of development which would accordingly jar with the type and layout of existing housing in the area. This scale and density of development would thus degrade the areas prevailing rurality, causing harm to its character and appearance.

5. As such, the appeal scheme would be contrary to saved Policies QL9 and EN1 of the Local Plan¹ which seek to ensure, amongst other things, that new development should make a positive contribution to the quality of the local environment and not harm the quality of the distinctive character of the landscape.

Designated Habitat Sites

6. The appeal site is within the Zone of Influence (ZoL) for the Colne Estuary Special Protection Area (SPA) and Ramsar Site as per the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The RAMS sets out a strategy to minimise the adverse effects on designated habitat sites. Amongst other things, it anticipates that new residential development in the ZoL is likely to have a significant effect upon the interest features of the aforementioned designated site(s) through increased recreational pressure, when considered either alone or in combination with other schemes, owing to it resulting in an increase in the local population.
7. The RAMS has also identified a series of management and mitigation measures that will safeguard against the longer term effects of visitor pressure. The Council require the payment of monies, delivered through development proposals, to fund these measures as per the RAMS. Funding should be provided through a planning obligation either unilaterally or bilaterally. Such an obligation is not before me with the appeal documentation.
8. As the appeal scheme stands therefore, there is insufficient certainty that the development would not adversely affect the integrity of the Ramsar and SPA site, one of the aims of saved Policies EN6a and EN11a of the Local Plan to which, as a result, the appeal scheme would be contrary. There would also be conflict with section 15 of the Framework² which, amongst other things, affords protection to and asserts the importance of avoiding harm to designated habitats sites such as Ramsar and SPAs.

Open/Play Space and Affordable Housing

9. Saved Policy COM6 of the Local Plan sets out the requirements for new development to provide or improve existing locally available recreational open space. Amongst other things, it states that developments below 1.5 hectares in size, where existing open space facilities are inadequate to meet the projected needs of the future occupiers of the development, a financial contribution shall be made to the provision of new or improved off-site facilities in scale and kind to meet these needs.
10. The size of the appeal site meets this requirement and the Council's evidence, via their own open space team, suggests there is currently a deficit for the Ardleigh area. To my mind, the scale and intended house type of the proposed

¹ Tendring District Local Plan 2007

² The National Planning Policy Framework 2019

development, when taken together with the above, would justify a contribution under this policy.

11. I accept the appellant's arguments concerning the distance between the appeal site and existing areas of recreational open space in the context of the definitions for such as a Locally Equipped Area for Play (LEAP). However, it remains that the appeal site is outside of the nearest settlement so there would naturally be some distance to travel to access recreational open space be that via either sustainable means or otherwise. Additionally, I cannot see any part of saved Policy COM6 that limits contributions according to the distance a given development may be from existing areas. Focussing on suitability for the development and it being usable which, if funds were directed towards existing spaces, certainly seems to be the case.
12. As per my findings on the second main issue, the appellant has not provided a planning obligation to secure recreational open space contributions in line with saved Policy COM6. The impacts of the proposed development would not therefore be satisfactorily mitigated in terms of the provision of recreational open space commensurate with its scale. There would therefore be conflict with saved Policy COM6, the aims of which I have set out above.
13. Saved Policy HG4 of the Local Plan sets out the requirements for development to respond to the need to provide for affordable housing. The Council's evidence refers to the Framework and specifically paragraph 63, which they say states that affordable housing should be sought for major developments although what it actually states is that it should not be sought for residential developments that are not major developments.
14. That aside, and focussing on the adopted development plan position for affordable housing, HG4 goes on to state that, in the case of Ardleigh being a village and thus below the 3000 population figure, affordable housing should be provided for housing developments which have the potential for 5 or more dwellings or residential sites of 0.5 hectares or more. I am mindful that the appeal scheme would provide for, potentially, up to eight dwellings. However, HG4 refers to sites in settlements (emphasis added) and the appeal site is not. When considering the fact it is located outside of Ardleigh, in the countryside. Having reviewed HG4, I cannot see that it has provision for sites outside of settlements and consequently I cannot agree that the proposed development would need to provide for affordable housing under its requirements.
15. Returning to the Framework and the inference that major developments (sites over 0.5 hectares in this case) should provide for affordable housing it seems sufficiently clear that the appeal scheme (being in the region of 0.9 hectares) qualifies. The Framework is somewhat ambiguous as to precise levels of affordable housing that should be required from major developments, paragraph 64 suggests a minimum of 10%.
16. I have not seen any information in the appellant's arguments pertaining to what level of affordable housing the development would be able to afford but see that it would more likely than not be somewhere between the aspirations of HG4 and the Framework's minimum. Indeed, the appellant has stated that affordable housing is a matter on which they would have negotiated. Inferring some form of contribution would have been forthcoming.

17. That said, there is no sufficiently robust mechanism before me, a completed planning obligation in this case, to make any provision for affordable housing and, as a consequence, it seems to me that the proposed development would conflict with the requirements of the Framework in that regard.

The Principle of Development

18. In accordance with the development plan's commitment to achieving sustainable patterns of new development and ensuring that residents will be close to services, facilities and a range of transport modes, saved Policy QL1 of the Local Plan sets out a hierarchical approach to its spatial strategy. This directs development first to the largest settlements, to towns and then villages, limiting new development outside of their defined boundaries to certain types consistent with other policies of the plan. Ardleigh is classified as a village by QL1.
19. The appeal site is located outside of the Ardleigh settlement boundary by some degree. By definition and in planning terms therefore, it is in the countryside. As a development of eight open market dwellings, the appeal scheme would not sit squarely with any policy exceptions for development in the countryside. For the above reasons, it would also be contrary to the strategic approach to the siting of new development advocated by saved Policy QL1.
20. There is a predominantly lit and segregated footway directly outside the appeal site, on the side of Harwich Road that links it with the centre of Ardleigh. The route is not short, but the surface is good quality and eminently walkable for most. Defined as a village by the Local Plan, it has services including more than one shop, a takeaway, a post office, doctors' surgery and a number of small businesses. The footway route in and out of Ardleigh also has two bus stops along it, presumably linking the village with Colchester and Lawford, both larger settlements with a much wider range of facilities.
21. The footway and thus sustainable access to both public transport and the services in Ardleigh would give future occupiers of the appeal site a genuine alternative to means of transport other than the private car. Whilst contrary to QL1 insofar as the appeal site is outside of a settlement therefore, the development thereof would go some way to achieving its aims of encouraging sustainable patterns of new development.
22. One could therefore argue in favour of the appeal scheme on this ground and find that, with regard to the location of the appeal site in spatial terms, its development could be acceptable in principle, despite the conflict with saved Policy QL1, albeit purely on the basis of it being outside of a defined settlement boundary.

Other Matters

23. The Council are due to imminently adopt Part 1 of their new Local Plan. This sets out the strategic policies for the spatial spread of development across the three districts of Tendring, Colchester and Braintree Council's. Part 2, which contains the more district specific development management policies, is due for examination later in 2021. For this and other reasons, and at the time of writing this decision, it is unclear whether the Council are able to demonstrate the supply of housing sites required by the Framework. I would not however be taken to the so called tilted balance of paragraph 11 (d) (ii) if it were they

could not, and treat the most important policies accordingly. This is due to the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development as per paragraph 11 (d) (i). In this case, this is section 15 as it relates to habitats sites as per footnote 6 of paragraph 11.

24. In regard to the second and third main issues of the case, I have found that the appellant has not provided a completed planning obligation. Whilst they have expressed a willingness to do so I have not required one to be completed since I have dismissed the appeal on other grounds. Grounds which a completed obligation would be unable to satisfactorily address to make the proposed development acceptable. It would therefore be abortive work of unnecessary cost for the appellant.
25. A number of examples of other planning permissions have been provided. These show developments permitted by both the Council and my colleagues at appeal. Whilst each planning permission in the main is cited to demonstrate consideration of the principle of development (a matter on which I have found for the appellant) each decision has been taken with regard to the particular merits of the case. I had regard to the same and accordingly found harm in regard to the character and appearance of the area, designated habitat sites and developer contributions. The circumstances of the planning permissions put before me do not change these conclusions.
26. The appellant has mentioned that the appeal scheme could deliver footway improvements to Home Farm Lane. This would be beneficial given the narrowness of the lane and the lack of a segregated footway. That said, the improvements would not be sufficient in themselves to outweigh the harms and conflicts with the development plan that I have found.

Conclusion

27. Whilst I have found in the appellant's favour with regard to the matter of the principle of the proposed development and its access to services, this would accordingly amount to a lack of harm which, by definition, cannot be used to weigh against it. Harm that would in this case arise out of the other three main issues and lead to conflict with the development plan and the Framework. It is for these reasons that the appeal is dismissed, and planning permission is refused.

John Morrison

INSEPECTOR