
Appeal Decision

Site visit made on 5 January 2021

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2021

Appeal Ref: APP/P1560/W/20/3253985

Land to East of Stagecoach Stud, Wix Road, Ramsey CO12 5HP

- 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 Arbora Homes against the decision of Tendring District Council.
 - The application Ref 19/01538/OUT, dated 4 October 2019, was refused by notice dated 10 December 2019.
 - The development proposed is described as 'development of site with four dwellings'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is for outline planning permission with only access to be considered at this stage. The other matters – appearance, landscaping, layout and scale – are reserved for subsequent consideration. A drawing showing the layout and some landscaping has been provided, but this is marked as illustrative and I have treated it as such.
3. The Council refers in its decision notice to policies from the Tendring District Local Plan 2013-2033 and Beyond Publication Draft. The Council indicates that the Section 1 Local Plan was adopted recently. However, this contains strategic policies and apparently not those referred to in this case, which are from the Section 2 Plan, which is subject to independent examination. The National Planning Policy Framework (the Framework) indicates that weight may be given to relevant policies in emerging plans depending on a number of factors¹. In this case, I accept that the Section 2 Plan is at a relatively advanced stage in its preparation, but it is not fully clear whether there are unresolved objections to any of the policies and, if so, how significant these are. For this reason, I find that only limited weight can be given to these emerging policies for the purposes of this appeal. Consequently, I have relied on the policies referred to from the adopted development plan.

Main Issues

4. The main issues are:

¹ Paragraph 48.

- the effect of the proposal on the character and appearance of the appeal site and surrounding area;
- the effect of the proposal with regard to flood risk; and
- whether the proposal makes adequate provision towards the mitigation of likely significant effects on a protected European site and towards off-site play facilities within Ramsey.

Reasons

Character and Appearance

5. The appeal site is a largely open area of paddock located between Wix Road and the A120 road. It includes a number of single storey buildings and temporary structures to the site frontage associated with the current use. There is a row of semi-detached dwellings opposite the site with frontages along Wix Road as well as a former school building, which is to be redeveloped with eight dwellings on the site.
6. My attention is drawn to a recent appeal decision involving an application for the development of nine dwellings on the appeal site². Given the relevance of that decision to the current appeal I have had regard to it and refer to it where appropriate.
7. Policies QL9 and EN1 of the Tendring District Local Plan 2007 (the Local Plan) require development to protect and enhance local character, including landscape character. Despite the age of the Local Plan these policies are consistent with more recent national policy in the Framework³.
8. In the previous appeal the Inspector found that while the site is not within a designated landscape area and despite its current use and screening to the site frontage, given its open, undeveloped nature it reads as part of the wider countryside, which provides an attractive setting for the village⁴. Based on my own site inspection, I agree with this finding and consider that despite the presence of the A120 the site has a stronger association with the open countryside to the south beyond the main road than with the developed part of the village to the north.
9. I accept that the current proposal would have a reduced effect on the site compared to the previous proposal for nine dwellings. Nonetheless, the illustrative drawings show that four detached dwellings and related access, hardstanding and outbuildings would materially alter the character and appearance of the site. While landscaping is a reserved matter, I accept that the proposed dwellings could largely be screened from passing views along the A120 and further to the east and west. However, from public views on Wix Road closer to the site, the harmful urbanising effect and extension of residential development into the countryside setting would be readily apparent. While the proposed dwellings could be sited in a similar position to the existing buildings on site, the effects of four dwellings and related development would not be comparable to those of the relatively small equine-related buildings and temporary structures currently on the site.

² APP/P1560/W/18/3204692, dated 26 March 2019.

³ In accordance with paragraph 213.

⁴ Paragraph 7.

10. The appellant refers by way of comparison to a number of residential developments that have been given consent in Ramsey outside the settlement boundary. However, it is not possible to make a direct comparison between the character and appearance of these sites and that of the appeal site. Moreover, the nearest approved development, on the old School site opposite, is within the established development pattern on the same side of Wix Road. As such, these other developments cannot be considered as precedents for the development proposed here. The fact that the site might meet the definition of previously-developed land in the Framework does not alter or outweigh these findings with regard to the effect on its character and appearance.
11. While I agree that each case should be considered on its merits, I also share the Council's concerns that the proposed development could lead to additional pressures for further residential development on this side of Wix Road.
12. Accordingly, for these reasons, I conclude that the proposed development would have an unacceptably harmful effect on the character and appearance of the appeal site and surrounding area. It is, therefore, contrary to Policies QL9 and EN1 of the Local Plan, as described.

Flood Risk

13. I note that in the Planning Statement accompanying the application, it is stated that the site is entirely within Flood Zone 1. However, the main parties now agree that the site falls within Flood Zone 2, which has a medium probability of flooding. Policy QL3 of the Local Plan concerns flood risk. It says that within Flood Zones 2 and 3 the sequential test must be applied to demonstrate that there are no reasonably available sites in a lower flood risk area. It also requires a flood risk assessment (FRA) to be submitted with all planning applications for new development on land with Flood Zones 2 and 3.
14. Despite the Local Plan pre-dating the Framework, Policy QL3 is broadly consistent with it. In particular, the Framework also requires that a site-specific FRA should be provided for all development in Flood Zones 2 and 3⁵.
15. The Council indicates that a district-wide approach should be taken to the sequential test and provides some examples of alternative sites. The appellant in response contends that there are insufficient housing sites due to the current shortfall in land supply and that additional ones are some way off being allocated through the emerging Local Plan. Furthermore, the appellant contends that the site is not within Zone 3, and so not at highest flood risk, but nearby land in Zone 3 is defined as defended. While I have had regard to these issues, I note also that, despite the site's location in Flood Zone 2, an FRA appears not to have been provided by the appellant.
16. The Planning Practice Guidance provides more detailed information on the objectives of a site-specific FRA, including whether a proposed development is likely to be affected by current or future flooding from any source; whether it will increase flood risk elsewhere; whether the measures proposed to deal with these effects and risks are appropriate; the evidence for the local planning

⁵ Footnote 50.

authority to apply (if necessary) the Sequential Test, and; whether the development will be safe and pass the Exception Test, if applicable⁶.

17. The comments provided in the appeal statement do not in my view address this matter in the systematic and methodical way expected by local and national policy and guidance through the provision of an FRA. The fact that the Environment Agency has not commented or objected in this instance does not alter this finding. I can make no direct comparison with the three dwellings permitted in Flood Zone 3 in Jaywick, referred to by the appellant, particularly because I have no details of whether an FRA was submitted or any mitigation measures associated with the development. As such, it cannot be seen as a form of precedent for this case.
18. Both local and national policy require a site-specific FRA to be submitted in the circumstances of this case; such an assessment has not been provided with the appeal submissions. Consequently, it is not possible in the absence of an FRA and based on the information currently available, to assess properly the effect of the proposal with regard to flood risk. I must conclude, therefore, that this weighs against the proposal and that it is in conflict with Local Plan Policy QL3 and section 14 of the Framework, as described.

Whether Adequate Provision would be made towards the Agreed Mitigation Measures and off-site Facilities

19. The main parties agree that financial contributions should be made towards the funding of improvements to off-site play facilities in Ramsey; and towards mitigation measures for the effects of recreational disturbance arising from new residential development on the Stour and Orwell Ramsar and Special Protection Area (SPA).
20. The site is within the Essex Coast Recreational Avoidance and Mitigation Strategy (RAMS) zone of influence. The Essex Coast RAMS sets out the detailed mitigation measures that are to be delivered from the RAMS tariff. The relevant regulations require that if likely significant effects on a protected site cannot be excluded, then the competent authority must undertake an appropriate assessment of the implications for that site⁷.
21. The Council undertook an appropriate assessment using the Natural England standard approach. The proposal is assessed as having likely effects on the Stour and Orwell Ramsar and SPA resulting from increased recreational disturbance, in combination with other schemes. As such, a tariff contribution per dwelling is required to mitigate the effects.
22. In these circumstances, I have relied on the appropriate assessment already undertaken by the Council and agree that a contribution is necessary to mitigate the likely effects in accordance with the Essex Coast RAMS. Similarly, I agree that a contribution is required to fund the improvements to named off-site play facilities in accordance with Local Plan Policy COM6, concerning provision of recreational space in new residential development. In both

⁶ Paragraph: 030 Reference ID: 7-030-20140306

⁷ The Conservation of Habitats and Species Regulations 2017, Regulation 63.

instances, therefore, the contributions meet the requisite tests set out in the Framework⁸.

23. The appellant refers in the appeal statement to a Unilateral Undertaking being completed as a means of securing the agreed contributions. However, no such Undertaking has been provided to me by the time of making this decision. Therefore, given that there is no means of securing the agreed and necessary contributions, I must conclude that the proposal fails to ensure that adequate provision would be secured for the mitigation of the likely significant effects on a protected European site and towards off-site play facilities within Ramsey. Consequently, it is contrary to Local Plan Policies COM6, as described; EN6 concerning the effects of development on biodiversity; and EN11a concerning protection of international sites. It is also contrary to section 15 of the Framework.

Other Matters

24. At the time of making its decision the Council accepted that it could not demonstrate a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing, as required by the Framework⁹. Consequently, the view taken was that the appeal proposal should be considered in the context of paragraph 11d) of the Framework.

25. As a result of the recent adoption of the Section 1 Local Plan, the Council now indicates that its overall housing requirement is reduced to the extent that a minimum of five years' worth of housing can be demonstrated. In these changed circumstances, in the interests of natural justice normally it would be appropriate to consult the appellant and other interested parties. However, I have found above that the proposal would not make adequate provision to mitigate the likely significant effects on a protected European site. In these circumstances, the Framework says that the presumption in favour of sustainable development does not apply¹⁰. Therefore, even if the Council could not demonstrate the requisite housing supply, the presumption in favour would not be applicable in this case. Consequently, I have not considered this matter further.

26. The appellant contends that the proposal should be considered against the three objectives within the definition of sustainable development in the Framework. However, the Council has not raised any concerns about the accessibility of the site to facilities or services, and any economic benefits from construction and support for services would not outweigh the adverse findings with regard to the main issues. Moreover, the Framework says that the three objectives of sustainable development are not criteria against which every decision can or should be judged¹¹.

27. I have had regard to all the representations made by interested parties. These do not, however, raise any additional matters in relation to the main issues in this appeal that would lead me to reach a different overall conclusion.

⁸ Paragraph 56.

⁹ Paragraph 73.

¹⁰ Paragraph 177.

¹¹ Paragraph 9.

Conclusion

28. For the reasons given above and having regard to all other matters raised, it is concluded that the appeal should be dismissed.

J Bell-Williamson

INSPECTOR