
Appeal Decision

Site visit made on 1 December 2020

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2012

Appeal Ref: APP/P1560/W/20/3256288

Land to the rear of Hollyoak, Pork Lane, Great Holland, Essex,

- 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 Perry Hubble against the decision of Tendring District Council.
 - The application Ref 20/00337/OUT, dated 4 March 2020, was refused by notice dated 9 June 2020.
 - The development proposed is the construction of 7 dwellings.
-

Decision

1. The appeal is allowed and outline planning permission is granted for the construction of 7 dwellings at land to the rear of Hollyoak, Pork Lane, Great Holland, Essex in accordance with the terms of the application, Ref 20/00337/OUT, dated 4 March 2020, and the plans submitted with it, subject to the conditions included in the schedule attached to this decision letter.

Procedural Matters

2. The appeal seeks outline planning permission with all matters reserved. I regard the layout drawings submitted with the appeal as for illustrative purposes only.
3. A completed Unilateral Undertaking has been submitted with the appeal. This addresses each of the 4 reasons for refusal. The appellant has indicated that they do not consider that the Council's requirement for affordable housing should be met nor financial contributions for public open space.
4. The adopted plan is the Tendring Local Plan 2007 and work is currently underway on the emerging Tendring 'Local Plan 2013-2033 and Beyond'. This is being jointly prepared with Braintree District Council and Colchester Borough Council and the Inspector's report, following consultation on Modifications for the Part 1 policies has recently been published and it is understood will shortly be formally adopted by the Council. This confirms that the Council has over 5 years housing land supply. It is understood that the part 2 policies will be the subject of an Examination in Public later in the year.
5. The Council does not have an objection in principle to the use of the whole appeal site for residential use. However, there is a dispute between the parties on the inclusion of planning obligations sought by the Council.

Main Issue

6. Whether or not the obligations included in the completed Unilateral Undertaking are required for the development.

Reasons

7. The appeal site comprises 0.45ha and lies to the north of 2 recently completed bungalows, with existing housing to its east and south. Planning permission was recently granted on appeal for 5 dwellings on part of the appeal site¹. The Council has no objection to the principle of housing development on the appeal site subject to the obligations included in the Unilateral Undertaking.
8. The National Planning Policy Framework (the Framework) confirms that planning obligations should only be sought to mitigate the effects of unacceptable development therefore making it acceptable. The Framework in paragraph 56 and CIL regulation 122(2) set out three tests for when obligations should be sought. They must be necessary to make the development acceptable in planning terms, be directly related to the development and be fairly and reasonably related in scale and kind to the development.
9. The appeal site is one of a series on which planning permissions have been granted for residential development in the locality. Some of the extant permissions overlap with the appeal site.
10. I address each of the obligations included in the Undertaking below.

Affordable housing

11. At the heart of this matter is whether the Council's policy for affordable housing applies to this appeal scheme. Although Policy HG4 of the adopted plan requires the provision of 40% of housing on sites to be affordable, the Council has referred to Policy LP5 included in Part 2 of the emerging plan in its decision as this is based on up to date viability evidence. This policy requires that 30% of housing is made available for affordable or Council housing. However, given the state of progress in the preparation of the Part 2 policies I accord this policy only limited weight.
12. The appeal site has an area of 0.45ha. and the scheme is for 7 dwellings. The Framework advises that for a site and scheme of this size affordable housing should not be sought.
13. The Council has submitted evidence in respect of the recent planning history and land ownership of the appeal site and adjoining sites which allege that the policy requirement for affordable housing has been by-passed by a deliberate attempt to sub-divide and sell on land. The Council refers to recent case law on this point².
14. This is a complex matter, and if the case is to be proved, requires the submission of detailed information which could include copies of all the applications, certificates and plans referred to. These have not been provided by the Council in support of its contention. In contrast, I consider that the

¹ APP/P1560/W/18/3202946

² New Dawn Homes Ltd v SoSCLG and Tewkesbury BC [2016] EWHC 3314 (Admin), and R(Westminster City Council v First Secretary of State and Brandlord Limited [2003]JPL 1066)

balance of evidence identifies more closely with the appellant's argument that the site area and thresholds for affordable housing originally introduced in the Framework in 2018 could not have influenced decisions as 2 of the applications were submitted in advance of publication of the Framework. These permissions have subsequently set a benchmark which have influenced the site's development potential.

15. For the above reasons I do not consider that the requirement for affordable housing is required as there is no supporting policy basis.

Public Open Space

16. Policy COM6, requires that for sites of under 1.5ha, the provision of play facilities is required to meet the projected recreational needs of future occupiers of the new development. The Policy is supported by guidance³. In this case the provision of 7 dwellings would generate demand for recreation space. Without a commitment the appeal scheme would not comply with the development plan and would fail to provide suitable open space for future users.
17. Although this is an outline scheme with all matters reserved, the structure of the obligation allows for a proportionate level of payment linked to the detail of the scheme once this is resolved. Through detailed design, the obligation would allow a contribution to be secured which is fairly related in scale and kind to the development.
18. For these reasons the requirement for a financial contribution is supported.

Highway Matters

19. Saved Policies QL10 and TR1a require safe and suitable vehicular access. The appeal scheme would involve a new vehicular access point. This would be designed to accommodate sight lines requiring the removal of an existing gateway speed limit and its replacement in a different location.
20. The obligation requiring payment for the works to the highway involving the removal and replacement of the gateway structure are directly related to the proposed scheme. Furthermore, the works would be fair and reasonable and related in scale and kind to the proposals in the appeal scheme.
21. For these reasons the obligation is required.

Essex Coast Recreation Disturbance Avoidance Mitigation Strategy

22. In 2018, the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage⁴. This responsibility now falls to me within this appeal.
23. Policy PPL4 of the adopted plan seeks to avoid significant effects arising from development proposals and through agreement ensure that any effects can be mitigated for. A draft Supplementary Planning Document amplifies how the strategy would be delivered. The Habitats Regulations require that permission

³ Provision of Recreational Open Space for New Development 2008

⁴ People Over Wind and Peter Sweetman v Collite Teoranta ECJ (2018) C-323/17

- may only be granted after having ascertained that it will not affect the integrity of European sites either alone or in combination with other plans or projects.
24. The site falls within the 13 kilometre 'Zone of Influence' for the Essex Coast Recreational Avoidance and Mitigation Strategy (RAMS). This site qualifies as being internationally important for wintering birds, wildfowl and wading birds including little terns, bitterns and brent geese. The Essex Coast includes the Essex Coast Natura 2000 and includes several Special Protection Areas which include the Colne, Blackwater, Stour and Orwell estuaries. The latter of these is a designated Ramsar site. There is a further Denge SPA and Ramsar and the Essex estuaries Special Area of Conservation.
 25. These sites are used for public recreation and there is no dispute between the parties that it cannot be ruled out that the proposal, when considered alone or in combination with other schemes, would have likely significant effects on the aforementioned qualifying features of the SPAs due to the increased recreational use.
 26. After carefully reviewing the evidence, I agree that this would be the case and therefore it is incumbent upon me to undertake an Appropriate Assessment. As part of this process, I may consider any conditions or other restrictions which could secure mitigation of this harm, and which would therefore allow development to proceed in the knowledge that the conservation objectives of this site would not be compromised.
 27. Natural England and the Council have indicated that there is an agreed strategic solution to mitigate the effects of the proposal, in the form of the RAMS. This strategy requires financial contributions from developments and allocates detailed and costed infrastructure and non-infrastructure projects to proposals dependent on their scale and location.
 28. Mitigation can be delivered via the appellant submitting the Undertaking with the appeal which addresses payment. The completed Undertaking, would therefore serve to mitigate the recreational impacts arising from the proposal.
 29. On this basis, I am able to conclude that the required mitigation would be properly secured and that the proposals would not have an adverse effect on the identified SAC either alone or in combination with other projects.
 30. The contributions would be necessary to make the development acceptable in planning terms and would be directly related to the development and would be fairly and reasonably related in scale and kind to the development.

Interested parties

31. I have considered the representations from interested parties objecting to the application. The principle of development on the majority of this site has already been accepted by the grant of planning permission. The current proposal includes measures designed to overcome concern over highways safety. Rainwater will be disposed through the submission of applications for Building Regulations. In the interests of highway safety I have included in this decision a condition on sight lines for the proposed access.

Conclusions

32. For the above reasons I consider that obligations requiring financial contributions towards public open space, highway works and the Essex Coast RAMS included in the Unilateral Undertaking submitted with this appeal are necessary to make the development acceptable in planning terms, and are directly related to the proposed development and are fairly and reasonably related to scale and kind to the development.

Conditions

33. I have imposed a condition specifying the timeframes for the commencement of development and for the submission of outstanding reserved matters as required by Sections 91 and 92 of the Town and Country Planning Act 1990, as amended. A condition is required to ensure that the development is carried out in accordance with the plans submitted with the application to ensure adherence to the principle of the proposed development.
34. Given the location of the vehicular access I have included a condition ensuring sight lines to ensure highway safety. For the same reason I have included a condition requiring details of the internal road serving the dwellings. Other conditions require a Construction Method Statement and Plan to ensure that the operational works to complete the scheme do not adversely impact on the living conditions of surrounding residential occupiers.
35. To protect local ecology and biodiversity a condition restricting the times when construction works can be carried out has been included in this decision.
36. The Planning Practice Guidance advises against the inclusion of conditions which restrict permitted development rights. Although the Council states that conditions requiring these measures are necessary in order to control landscape harm I do not consider these are necessary given that the principle of residential development is acceptable in this location and the site does not lie close to or within an area of valued landscape.
37. I have included a condition requiring that the dwellings hereby permitted are single storey. I consider this necessary given the location of the site on the edge of the settlement and lying close to 2 existing bungalows fronting Pork Lane. The conditions would ensure that the living conditions of occupiers of these properties would be protected.
38. I have also included a condition requiring the protection of footpath No. 40 which runs around the edge of part of the site to allow free movement of the public. Finally, a condition requiring materials to be used for surface materials is required to reduce the possibility of surface water flooding.

Stephen Wilkinson

INSPECTOR

Schedule of Conditions

- 1) Details of the access, 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 the following submitted plans: Site Location Plan 1:1250, drawing reference 190 01, insofar as that plan concerns matters that are not reserved for later consideration.
- 5) The access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4m by 55m to the North and 2.4m by 120m to the South, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction at all times.
- 6) The public's rights and ease of passage of a public footpath No. 40 (Frinton and Walton-164) to the rear of the plot shall be maintained free and unobstructed at all times.
- 7) Prior to the commencement of development a Construction Method Statement shall be submitted to and approved in writing by the local planning authority. The construction method statement shall provide for:
 - safe access to and from the site
 - the parking of vehicles of site operatives and visitors
 - the loading and unloading of plant and materials
 - the storage of plant and materials used in constructing the development
 - wheel washing facilities
 - measures to control the emission of dust and dirt during demolition construction
 - a scheme for recycling/disposing of waste resulting from demolition and construction works
 - details of hours of deliveries relating to the demolition and construction of the development
 - details of hours of site clearance and construction
 - a scheme to control noise and vibration during the demolition and construction phase, including details of any piling operation

The approved construction method statement shall be adhered to throughout the construction for the development

- 8) Prior to the occupation of any of the proposed dwellings, the proposed private drive shall be constructed to a width of 5.5 metres for at least the first 6m from the back of the carriageway and provided with an appropriate drop kerb crossing of the verge. A combined pedestrian and vehicular surface of 6m width shall be provided throughout.
- 9) The removal of all vegetation shall only be carried outside of the bird nesting season (March to August).
- 10) All new parking areas and areas of hard standing shall be made of porous materials or provision shall be made to direct run off water from the hard surface to a permeable or porous area within the site.
- 11) The dwellings hereby approved shall be single storey only.