
Appeal Decision

Site visit made on 10 March 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2021

Appeal Ref: APP/P1560/W/20/3260946

Field House, Parsons Hill, Great Bromley CO7 7JF

- 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 Gordon Bennett against the decision of Tendring District Council.
 - The application Ref 19/00875/OUT, dated 10 June 2019, was refused by notice dated 28 August 2020.
 - The development proposed is Outline planning application with all matters reserved for the erection of three dwellings and associated garages.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with all matters reserved for future consideration. I have assessed the appeal on this basis and treated the site layout and house design plans as being submitted for indicative purposes.
3. The Council's decision notice refers to the Tendring District Local Plan 2007 (LP) and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017 (the eLP). The eLP comprises two sections, with Section 1 containing strategic policies and proposals that relate to the whole of North Essex (including Braintree, Colchester and Tendring). Section 2 contains policies and proposals specific to Tendring. During the course of this appeal, Section 1 of the eLP has been adopted (the LPS1)¹ and now forms part of the development plan.
4. The main parties were asked for comments with regards the adoption of the LPS1. The Council confirmed that the adoption of the LPS1 does not affect the status of any of the policies referred to in its decision notice. The Council also advised that the adoption of the LPS1 results in a change in its supply of deliverable housing land, such that it is now able to demonstrate a 5 year supply². At the time of the refusal of the planning application the deliverable supply was in deficit. The appellants provided evidence which they consider casts doubt on the Council's latest position. I have taken account of all these matters in my determination of this appeal.

¹ Tendring District Local Plan 2013-2033 and Beyond: North Essex Authorities' Shared Strategic Section 1 Plan - Adopted 26 January 2021

² Stated as being 6.5 years.

5. Section 2 of the eLP is currently under examination and is therefore subject to change and thus it attracts limited weight in my decision.
6. A signed legal agreement by way of unilateral undertaking (UU) dated 12 January 2021 has been provided as part of the appeal. It intends to secure the provision of financial contributions to address the effects of the development on the Colne Estuary Special Protection Area and Ramsar site and the Essex Estuaries Special Area of Conservation and for the improvement of public open space. The Council has confirmed that the provisions of the UU are satisfactory and that it no longer wishes to pursue its second and third reasons for refusal. I have taken the UU into account in reaching my decision.

Main Issue

7. The main issue is whether the appeal site is suitable for the development proposed having regard to local and national policies concerned with the location of development.

Reasons

8. LP Policy QL1 sets out the Council's spatial strategy and aims to create sustainable communities. It directs development first to the larger settlements, to towns and then villages, limiting new development outside of them to certain types consistent with countryside policies in the LP. It is common ground that the site is not located within any defined settlement boundaries. The site is within the countryside for the purposes of planning policy and is not specifically supported by other policies of the LP. The proposal is therefore contrary to Policy QL1.
9. The main aims of Policy QL1 are, therefore, to direct growth to those places where a good range of services and facilities are easily accessible by means other than private motorised transport, to reduce the need to travel and to protect the character and appearance of the countryside.
10. It is clear from the Council's evidence and the reasons for refusal of planning permission that the scheme is not considered harmful in terms of its effect on character and appearance and, subject to valid planning obligations, other planning grounds. Although the appeal site is some distance outside of any defined settlement boundary, the proposed dwellings would not be isolated from other dwellings. Nevertheless, the development would be situated on the outskirts of a small hamlet at least 0.5 miles from the nearest settlements of Great Bromley and Frating. These villages are, under Policy QL1, themselves considered to be among the lowest order settlements, suitable for the provision of only a limited amount of additional housing, due to the minimal level of services and facilities they provide. Residents of these villages are considered to be reliant on other larger villages and towns in order to access a full range of services, facilities and employment opportunities.
11. There is a surfaced footpath that passes directly beside the appeal site and leads to the village of Great Bromley to the north and extends south to the junction with Harwich Road. There are bus services available near to this junction, which is approximately a 5 minute walk from the site. The evidence suggests that the service to Colchester and other settlements runs hourly. Whilst regular, I do not consider this to be particularly frequent. However, the footpath is unlit and only runs along the eastern side of the road. There is no

refuge from traffic on the western side of the road nor shelter provided from inclement weather on either side of the road. I consider that these matters, along with the time taken for the journeys to and from larger settlements, would encourage a reliance on the use of private motorised transport. I am therefore not satisfied that the public transport provision offers a reasonable alternative mode in this location.

12. In addition, although it would be possible to walk to Great Bromley, and other settlements may technically be within walking distance of the site, the service provision within these settlements is limited and would not meet every day needs of future occupiers of the proposed development. I therefore consider that it would be highly likely that, rather than walking or cycling to the nearby villages, future occupiers would regularly use private motorised transport to access a full range of services, facilities and employment opportunities.
13. I acknowledge the forthcoming provision of a village shop within a 5 minute walk of the site. However, by its nature it would likely provide a limited range of goods. Nevertheless, this would allow for the reduction in some journeys, particularly for 'top up' items. This attracts modest weight in favour of the proposal.
14. The appellants consider that the bus service is in part dependent on demand and that recently approved residential development to the south of the site would provide increased funding and demand, such that service provision could increase. This may be the case, but I have no substantive evidence in this regard and therefore give this matter limited weight in my considerations.
15. I note that hard surfaced footpath provision to the north of the site leads to the Hare Green Recreation Ground. Having walked this route, I do not consider it to be a particularly desirable journey, with the first section being narrow, unlit and enclosed by fencing, albeit post and rail or chain link with intermittent vegetation behind. It would nevertheless offer an alternative to motorised transport on occasion.
16. However, I do not consider that the existence of the unlit footways, the bus services and the forthcoming village shop, along with other limited facilities in proximity to the site, including the varied offerings of The Court House Public House, are sufficient to reach a finding that the location of the development would be acceptable in relation to accessibility to services and facilities. I appreciate that opportunities to maximise alternative transport solutions will vary between urban and rural areas, but even taking this into account, I consider that the proposal runs contrary to the objectives of Policy QL1. I further consider that the addition of three dwellings would add significantly to the journeys that already occur from this location.
17. My attention has been drawn to a number of appeal decisions that the appellants consider offer support to the acceptability of the appeal scheme. While I do not have the full details of those appeals before me, they relate to proposals for development outside of settlement boundaries. However, I do not feel bound to reach the same conclusion as the Inspectors in those cases. This is because there is little evidence to indicate that any of the schemes referred to are directly comparable to the appeal scheme, which differs in the number of dwellings proposed and its precise location.

18. Where harm was found in relation to location, it was either considered to be insignificant or was outweighed by the specific benefits of the particular proposal following the engagement of paragraph 11.d) of the National Planning Policy Framework (the Framework). One of the cases, for a single dwelling, was indicated to be on the fringes of Colchester, and another near to Brightlingsea, both inevitably closer to a greater range of services and facilities than the scheme before me. Another of the cases related to an area outside of the Council's district. In a further example, the Inspector found that travel on foot and by cycle would be reasonably practicable such that no harm was found in relation to the location of the development. I have not found that to be the case in this appeal. Therefore, I do not consider that the appeal cases, to which I have been referred, establish the suitability of the appeal site location or provide a justification for the appeal proposal. In any event, I have assessed it on its own merits.
19. I therefore conclude that the site would not be in a suitable location for the proposed development having regard to local and national policies concerned with the location of development. The proposal would conflict with LP Policy QL1. I have given limited weight to the eLP Policy SPL1 and find that the proposal would conflict with the aims of the settlement hierarchy it sets out.

Planning Balance

20. Paragraph 213 of the Framework makes clear that development plan policies should not be considered out of date just because of their age. Further, there is nothing in the Framework to indicate that the definition of settlement boundaries is no longer a suitable policy response. Policy QL1 seeks to focus housing in the most sustainable settlements. This is broadly consistent with the aims of the Framework, which indicates that the purpose of the planning system is to contribute to the achievement of sustainable development. I therefore attribute significant weight to Policy QL1 and the proposal's conflict with it in determining this appeal.
21. The parties are in dispute over whether the Council can demonstrate a five-year supply of deliverable housing sites. Despite the recent adoption of LPS1 and the confirmation of a 6.5 year deliverable supply, the appellants suggest that the housing figures are flawed due to the use of 'trend based' delivery projections and because the impact of continued lockdowns resulting from the Covid-19 pandemic have not been factored into the figures. The appellants do not state what they consider the shortfall to be in terms of number of years of supply. However, if I were to agree with the appellants' assessment, then because of the provisions of footnote 7, paragraph 11.d) ii. of the Framework should be applied.
22. The proposal would make a small contribution to the supply of housing by the delivery of three dwellings. Thereby boosting the supply of housing as required by the Framework. The Framework recognises the important contribution that small and medium sized sites can contribute to meeting the housing requirement of an area and the proposed development would likely be able to be delivered quickly. The proposal would have economic benefits by way of the support for construction jobs during the build and demand for supplies and materials. These benefits would together be modest commensurate with the scale of development proposed. There would be the support for services by future occupiers. The weight I afford this factor is modest.

23. The scheme would deliver, by way of the UU, policy compliant financial contributions for the delivery of public open or play space provision. However, this is a requirement to make the development acceptable and is not a benefit that weighs in the balance. Similarly, other matters where no material harm has been identified, are neutral in the planning balance. Overall, the proposal's benefits are modest.
24. The Framework places emphasis on managing patterns of growth to support objectives which include opportunities to promote walking, cycling and public transport use, and mitigating any adverse environmental impacts of traffic. Development in rural areas is not precluded but the Framework indicates that great weight should be given to the benefits of using suitable sites within settlements for homes and therefore supports the general thrust of the LP in terms of location of housing.
25. Consequently, the adverse impacts on the housing strategy and of increasing travel by private motorised transport would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. I find this to be the case, even if there were to be an appreciable shortfall in the five year supply of deliverable housing sites. As a result, the presumption in favour of sustainable development does not apply.
26. The proposal would conflict with the development plan as a whole, and there are no other considerations including the provisions of the Framework which outweigh this finding.
27. It is, therefore, not necessary that I consider the effect of the proposal on European sites, as such an assessment would have no bearing on my decision. Although the parties consider this matter to have been addressed, should I have found the proposed development acceptable, it would have been necessary for me to give further consideration to the impact upon European sites in accordance with the Habitats Regulations.

Conclusion

28. For the above reasons the appeal is dismissed.

S Tudhope

Inspector