



Appeal Decision

Site visit made on 21 June 2021

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 July 2021.

Appeal Ref: APP/P1560/W/20/3257853

Land South of Bypass Road and North of Colchester Road, St Osyth, Clacton-on-Sea, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Messrs R.A, T.R, D.R & A.I Sargeant against the decision of Tendring District Council.
 - The application Ref 20/00035/FUL, dated 19 December 2019, was refused by notice dated 3 April 2020.
 - The development proposed is the erection of 6 self-build and custom-built dwellings together with associated hard and soft landscaping and vehicular access to Clacton Road.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the address from the application form and appeal form. The description of the development given on the application form refers to vehicular access to Clacton Road, which is the road adjoining the south of the site.
3. A plan (Ref 548.02c) has been submitted with the appeal, which shows a footpath link between plots 3 and 4 which would connect to Bypass Road. This plan was not before the Council when it made its decision and was not subject to consultation. I shall not base my decision on this plan, as to do so may be prejudicial to interested parties who have not had an opportunity to comment on it.

Main Issues

4. The main issues in the appeal are:
 - i) the effect of the development on the character and appearance of the area;
 - ii) the accessibility of the development to services and facilities by sustainable means;
 - iii) public open space provision; and
 - iv) the effect of the development on European designated habitats.

Reasons

Character and Appearance

5. The appeal site is a roughly triangular shaped area which lies at the junction of Bypass Road and Clacton Road and to the east of St Osyth. The area immediately adjoining the road junction is open and grassed but most of the site is enclosed by hedgerows. To the west of the site there are allotments which separate the site from the built up area of the village. The site lies outside the settlement development boundary as defined in the development plan. With the exception of housing on the other side of the allotments, the surrounding area is open countryside.
6. The proposed development is intended to have the appearance of a farmstead. Two of the dwellings would be within linked buildings that would resemble converted agricultural buildings, however the other dwellings would be clearly residential in appearance. A section of hedge of about 20 metres in length would be removed to facilitate the provision of the proposed means of access and visibility splays. New planting would be provided along the inside of the splays. The remainder of the hedges would be retained.
7. While the hedges would screen the development from view to some extent, the upper parts of the dwellings would be visible from both roads above the hedges and the development would be seen from Clacton Road through the new opening. Notwithstanding the design of the development, in the context of its rural surroundings it would be visually intrusive and out of character. Because the site is separated from the built up area of the village by the allotments, and because of its prominent location at the junction of two main roads, the impact on the character and appearance of the area would be very significant.
8. The emerging Local Plan¹ (eLP) has not yet been subject to examination and on this basis limited weight can be given to its draft policies. Draft Policy HP4 designates the site as a safeguarded local greenspace but I understand that the appellants have objected to that policy. Because this is some way from adoption and there is remaining uncertainty, I do not give this policy material weight in my decision.
9. Because of the prominent location of the site to the east of St Osyth the development would not protect the setting of the settlement as required by Policy EN1 of the Local Plan² (LP) which also requires protection of landscape and local character. Policy QL9 has similar requirements and requires development to positively contribute to the quality of the local environment. For the reasons given the development would not accord with those policies. It would unacceptably harm the character and appearance of the area and I give significant weight to this harm.
10. Policy QL1 of the LP only allows development outside settlement development boundaries which is consistent with countryside policies. The development would not accord with that policy. The blanket restriction on housing outside settlement development boundaries is not, however, consistent with the National Planning Policy Framework (the Framework) which allows for rural housing in a wider range of circumstances. For this reason, Policy QL1 is out-of-date and this limits the weight that I give to the conflict with that policy.

¹ Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017)

² Tendring District Local Plan (2007)

Accessibility to services and facilities

11. St Osyth has a range of services, facilities and employment opportunities, including a primary school, medical facilities, shops, pubs, restaurants and leisure facilities. There are bus services to larger towns and rail services to London from nearby Clacton-on-Sea. The village centre is within walking distance of the site.
12. There is a continuous footpath from the northern boundary of the site along Bypass Road to the village. On the part of Clacton Road which adjoins the southern boundary there is no footpath. That road is subject to a speed limit of 30 mph which changes to 40 mph adjacent to the site. I saw on my visit that there is insufficient width for pedestrians to be safely accommodated together with vehicular traffic on this road.
13. No provision is made in the scheme for pedestrian access from the development to the footpath on Bypass Road. The plan submitted with the appeal³ shows such a footpath which would be between plots 3 and 4. This would adjoin the dwelling on plot 3 and a bedroom window in that dwelling. This change to the plan would have implications for the living conditions of occupiers of that dwelling and for this reason would not be a minor change. If I were to impose a condition requiring the provision of a footpath link to Bypass Road such as that shown on the plan, it would not meet the test of reasonableness.
14. Draft Policy LP7 of the eLP makes provision for self-build and custom-built housing outside settlement development boundaries. This draft policy can only be given limited weight, but nevertheless it requires safe pedestrian accessibility, which would not be provided for the reasons given above.
15. For these reasons the occupiers of the proposed dwellings would not be able to safely walk to use public transport or the services and facilities in the village and would be reliant on the private vehicle for transport. This would not accord with the Framework which seeks to limit the need to travel and offer a genuine choice of transport modes. The development would not be accessible to services and facilities by sustainable means and I give significant weight to this harm.

Public Open Space

16. Policy COM6 of the LP requires developer contributions towards open space facilities where existing facilities are inadequate to meet the needs of the future occupiers of the development. The Council advises that there is currently a deficit of 6.44 hectares of equipped play and formal open space in St Osyth and Point Clear.
17. A planning obligation has been submitted with the appeal which secures financial contributions in accordance with the Council's Supplementary Planning Document.⁴ The contributions would be used to improve public open space at Priory Meadow. This provision would adequately address the need for public open space facilities in connection with the development. It addresses the Council's third reason for refusal and for these reasons the development would accord with Policy COM6.

³ Ref 548.02c

⁴ Provision of Recreational Open Space for New Development (May 2008)

Effect on European Designated Habitats

18. The site is within a zone of influence for the Colne Estuary Special Protection Area and Ramsar and the Essex Estuaries Special Area of Conservation, as identified in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). As advised by Natural England, residential development in this zone is likely to have a significant effect on the European sites as a result of recreational pressure.
19. The RAMS requires financial contributions from residential development which are used to fund mitigation measures. The planning obligation secures payment of the requisite contribution. For these reasons the development would not adversely affect the integrity of the European sites. The obligation overcomes the Council's fourth reason. The development would accord with Policies EN6 and EN11a of the LP which require protection of European sites and securing mitigation measures through planning obligations where appropriate.

Other Considerations

20. The planning obligation secures the provision of the dwellings as self-build and custom-built dwellings. The Council has a custom and self-build register and states that it has granted planning permission for a sufficient number of plots to meet the demand in each base period covered by the register. The appellants question the assumptions made by the Council in reaching this conclusion, but no firm evidence has been provided to show that there is any shortfall in plots for self-build and custom dwellings. Because the proposal addresses a specific need, however, this weighs in favour of the development.
21. The development would result in the loss of flora in the verge which is designated a Local Wildlife Site, and this would be compensated for by planting suitable species within the site. In this context it is unlikely that the measures proposed to secure net gains in biodiversity would amount to a benefit to which material weight could be attached.

Planning Balance

22. At the time of the Council's decision, the Council could not demonstrate a five-year supply of deliverable housing sites. The Council advises that it can now demonstrate a five-year supply.
23. However, I have found that Policy QL1 of the LP is out-of-date. This is a policy that is most important for determining the application. Paragraph 11(d) of the Framework states that permission should be granted in these circumstances, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the Framework as a whole.
24. The proposal would be of benefit in terms of boosting the supply of housing, but this would be on a limited scale. It would also help to meet a specific identified need for self-build and custom-built homes. I give moderate weight to the social benefits of the proposal in these respects.
25. The scheme would provide employment during construction and its occupiers would contribute through their spending to the local economy. There would be additional economic benefits including through payment of New Homes Bonus

and through taxation. I give limited weight to the economic benefits having regard to the limited scale of the proposal.

26. The proposal would not accord with the development plan as a whole. The two significant weights that I have given to the harms in terms of character and appearance and accessibility would significantly and demonstrably outweigh the moderate and limited weights that I have given to the identified benefits.

Conclusion

27. For these reasons I conclude that the appeal should be dismissed.

Nick Palmer

INSPECTOR