



Appeal Decision

Hearing held on 29 June 2021

Site visit made on 30 June 2021

by Martin Whitehead LLB BSc(Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 19 July 2021

Appeal Ref: APP/P1560/W/20/3259859

Land east of Halstead Road, Kirby Cross, Essex CO13 0LP

- The appeal is made under section 78 of the Town 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 Land Allocations Limited against Tendring District Council.
 - The application Ref 20/00002/OUT is dated 9 December 2019.
 - The development proposed is a residential development of up to 130 dwellings including means of access with all other matters reserved.
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Decision

1. The appeal is dismissed and outline planning permission for a residential development of up to 130 dwellings including means of access with all other matters reserved on land east of Halstead Road, Kirby Cross, Essex CO13 0LP in accordance with the terms of the application Ref 20/00002/OUT, dated 9 December 2019, is refused.

Preliminary and Procedural Matters

2. The application was submitted in outline form with all matters of detail, except access, reserved for subsequent consideration. Although the description of the proposal given on the application did not specify the number of dwellings, the application did indicate that the maximum would be 130 and this is shown on an indicative layout plan that has been provided. I have therefore determined the appeal on this basis and have amended the description accordingly.
3. Following the submission of this appeal, the Council has indicated that it would have refused the application for the following putative reasons:
 - i. *'the location of the site outside of settlement development boundaries is contrary to the spatial strategy for Tendring;*
 - ii. *the impact on the landscape and a lack of landscape buffer, the local green gap and the emerging strategic green gap;*
 - iii. *glare coming from car headlights exiting the site adversely affecting the residential amenity of the dwellings opposite; and*

- iv. *lack of planning obligations to secure financial contributions towards education, health, public open space, RAMS¹ and Highways, and on-site affordable housing provision.'*

Main Issues

4. Based on the putative reasons for refusal, I consider the main issues are:

- i. *whether the proposal would be on a suitable site for new residential development, having regard to development plan and emerging Local Plan policies;*
- ii. *its effect on the character and appearance of the surrounding countryside, including the Green Gap;*
- iii. *its effect on the living conditions of local residents, with particular regard to matters of light pollution; and*
- iv. *its effect on the provision of affordable housing, public open space, highways infrastructure, primary healthcare and education in the area and on a European designated site.*

Reasons

5. The appeal site lies to the east of Halstead Road between Kirby Cross to the south and Kirby le Soken to the north. It consists of about 5.5 hectares of farmland and includes the agricultural buildings of Willow Farm in the south western corner. I consider the land to generally be open countryside on the edge of the settlement of Kirby Cross.

Development Plan and Emerging Policies

- 6. The development plan for Tendring includes saved policies from the 2007 'adopted' Local Plan, and the Tendring District Local Plan 2013-2033 and Beyond Section 1 (TDLP Section 1). The Council formally adopted TDLP Section 1, in its modified state, at the meeting of Full Council on 26 January 2021, at which point it became part of the development plan and carries full weight in the determination of this appeal, superseding, in part, some of the policies in the 2007 Local Plan.
- 7. The report into the examination of the Tendring District Local Plan 2013-2033 and Beyond Section 2 (TDLP Section 2) has been published and, at its Committee meeting held on 29 June 2021, the Council resolved to publish the main modifications to go out to consultation. As such, the emerging TDLP Section 2 is at an advanced stage in its progress towards adoption. Whilst relevant policies SPL1, SPL2, PPL3 and PPL6 are all the subject of main modifications to which the consultation has not yet been carried out, I am satisfied that none of these modifications would result in any significant change to the thrust or purpose of these policies. Therefore, I have attached significant weight to these emerging policies in accordance with paragraph 48 of the National Planning Policy Framework (Framework).

¹ Recreational disturbance Avoidance and Mitigation Strategy

Housing Land Supply

8. The Council has claimed that it can demonstrate that it has a 6.5-year supply of housing land. This is based on the housing requirement of 550 dwellings per year, given in Policy SP4 of the recently adopted TDLP Section 1, and the deliverable supply provided by the Council's Strategic Housing Land Availability Assessment, May 2020. Whilst the appellant has submitted evidence to demonstrate that this would be 5.93 years, it has accepted that the Council can demonstrate that it has at least a 5-year housing land supply in accordance with the Framework. As the Council's housing land supply position has recently been thoroughly explored at the Local Plan Examination process and found to be sound, I am satisfied that the Council has demonstrated that it has a comfortable 5-year housing land supply and I have determined this appeal on that basis.

Whether a Suitable Site

9. The appeal site is located outside the settlement boundary of Kirby Cross, as indicated on the Proposals Map in the adopted Local Plan. Whilst the settlement boundaries of Kirby Cross have been expanded on the Policies Map in the emerging TDLP Section 2 to include additional land that is to be developed or is allocated to be developed, the appeal site falls outside of these redefined settlement boundaries. The appeal site is not allocated for development in either the adopted or emerging Local Plans and it is in open countryside.
10. Local Plan Policy QL1, which set out the spatial strategy and defined a hierarchy of settlements, has been superseded by TDLP Section 1 Policy SP3 and therefore carries no weight. Policy SP3 states that new development will be accommodated within or adjoining settlements according to their scale, sustainability, and existing role both within each individual district and, where relevant, across the wider strategic area. Policy SPL2 of the emerging TDLP Section 2 advises that outside the 'Settlement Development Boundaries' new development will be subject to strict control in relation to the Settlement Hierarchy and any other relevant policies in the plan.
11. It has not been disputed that the appeal site is close enough, and sufficiently accessible, to the wide range of services within the built-up area of Kirby Cross to be in a sustainable location. In Policy SPL1 of the emerging TDLP Section 2, Kirby Cross is defined as a 'smaller urban settlement', which accompanying paragraph 3.2.1.2.1 describes as having large populations relative to rural settlements and benefiting from a range of existing infrastructure and facilities. In paragraph 3.2.1.2.3 it suggests that in applying a sustainable, fair and proportionate approach to the distribution of housing growth, such settlements will accommodate the second largest proportion of the District's increase in housing stock over the plan period. However, in paragraph 3.2.3.1, it identifies that new development outside of defined Settlement Development Boundaries will be the subject of strict control to protect and enhance the character and openness of the countryside.
12. I find that the adopted TDLP Section 1 and the emerging TDLP Section 2 have allowed for sufficient new homes through sites that have planning permission or are specifically allocated for housing or mixed-use development, or are other suitable sites within the 'Settlement Development Boundaries', to provide the necessary housing land supply to meet the District's requirements in the plan

period. This has resulted in the expansion of the settlement boundaries of Kirby Cross in the emerging TDLP Section 2 to cater for such development sites. As the appeal proposal would be outside of the settlement boundaries identified in the development plan and the emerging Local Plan, it would be contrary to this spatial strategy for new housing development in the District.

13. Taking account of the above, I conclude on this main issue that the proposed development would be in a sustainable location, but it would fail to meet the criteria of being a suitable site for new residential development given in Policy SP3 of TDLP Section 1 and emerging Policy SPL2 of TDLP Section 2.

Character and Appearance

14. The site is situated in the Clacton and the Sokens Clay Plateau Landscape Character Area (LCA) as referred to in the Tendring District Landscape Character Assessment. The landscape is described as a gently undulating plateau with low, gappy hedgerows dividing arable fields. It has an urban fringe character and the plateau edges form a skyline and setting for the lower lying areas to the north.
15. To the north of the site lies the 'Hamford Coastal Slopes' and the 'Hamford Drained Marshes and Islands' LCAs. In terms of the impact of the development on the Hamford Coastal Slopes LCA, any changes in the landscape on the coastal slopes have the potential to be highly visible from Hamford Water. Additionally, the Hamford Drained Marshes and Islands LCA has a strong sense of remoteness that the Council has indicated is desirable to retain.
16. Appendix A to TDLP Section 1 indicates that Policy QL9 of the Local Plan has been superseded in part by Policy SP7, which requires new development to meet high standards of urban and architectural design. However, I consider Local Plan Policy EN1 to be more relevant to this issue in that it seeks to ensure that the quality of the District's landscape and its distinctive local character will be protected and, where possible, enhanced, and resists any new development that would significantly harm landscape character or quality.
17. The appellant's Landscape and Visual Appraisal (LVA) assessed the landscape and visual effects of the proposed development in comparison with a baseline. It identified the visual effects from 8 viewpoints. The LVA found that the development would have a 'low magnitude of change' and that in the residual phase (post development) the significance of the development would be 'negligible'. It sets out specific mitigation measures to be applied and concludes that the overall integrity of the landscape area would not be significantly affected by the proposed development. However, the Council considers the magnitude of change to be 'high' and the residual phase to be 'major to moderate' from LVA viewpoints 1, from Halstead Road, and 8, from the Public Right of Way (PRoW) to the east.
18. I have used my own judgement based on the evidence and my observations at my site visit. In this respect, I have taken account of the time that the proposed planting would take to be sufficiently established to mitigate the harm to the landscape. At my site visit I observed that the houses in the partly completed Finches Park (Linden) development abutting the southern boundary of the appeal site are clearly visible from the PRoW to the north and east. Although that development includes a wide band of open space to the north,

there are currently very few trees. Therefore, the buildings are very prominent in these views.

19. I am concerned that the appeal proposal would have an adverse effect on the landscape character. It would replace open farmland that is clearly visible through gaps in the hedgerow to the east of Halstead Road with relatively dense built development. Whilst the LVA indicates that the mitigation would be sufficient to prevent significant harm to the integrity of the landscape, the indicative plan does not demonstrate that the site would be capable of accommodating the number of dwellings proposed and the level of landscaping that would be necessary to fully mitigate the harm that the development would cause to the landscape.
20. The settlement of Kirby Cross has already expanded beyond the adopted Local Plan settlement boundaries due to recently permitted development, such as the one at Finches Park. This appeal proposal would represent a further intrusion into the open countryside along the exposed edge of the settlement. Whilst an area of open public space is illustrated to the east of the site, some of this is shown to be used for drainage and so would have little scope for the level of tree planting that would be necessary to screen the proposed buildings.
21. The Council has shown that the Finches Park development proposals have been approved based on a Parameters Plan that controls the height of development near the boundaries as well as the landscape areas. The current appeal proposal does not have such a plan and the appellant resisted planning conditions to control the scale and siting of the buildings. I have therefore based my decision on the indicative plan provided. As such, the appellant has failed to provide evidence that the proposal would not have a harmful impact on the rural character and appearance of the area adjacent to the settlement boundary.
22. In terms of the effect on the 'Green Gap', paragraph 6.11 of the Local Plan identifies its function at this location as including safeguarding the identity, character and rural setting of Kirby-le-Soken and Great Holland as free standing villages in the countryside and protecting the remaining village character of Kirby Cross and its rural setting. The principle of preventing coalescence between Kirby Cross and Kirby Le Soken is supported by Local Plan Policy EN2, which requires land within Local Green Gaps to be kept open and essentially free of development.
23. The protection of Green Gaps is continued in emerging TDLP Section 2 Policy PPL6, which seeks to protect Strategic Green Gaps (SGGs) that are shown on the Policies Maps and Local Maps, in order to retain the separate identity and prevent coalescence of settlements. The Local Plan Examination Topic Paper 5: Strategic Green Gaps found that the area of the Green Gap designation in the 2007 Local Plan has been significantly reduced so that the land designated as an SGG between Kirby Cross and Kirby-le-Soken, where there is a genuine short to medium-term risk of coalescence, is prioritised for protection.
24. The appeal proposal would fail to protect the Green Gap or SGG in the emerging TDLP Section 2. The development of the site would increase the extent of urban development and encroach into the countryside, permanently changing the rural character of the locality. It would erode the SGG and reduce the sense of openness and separation that emerging TDLP Section 2 Policy PPL6 is seeking to maintain.

25. I conclude on this main issue that the proposal would have an adverse effect on the character and appearance of the surrounding countryside and would cause unacceptable harm to the Green Gap. As such, it would fail to accord with Local Plan Policy EN1, as it would significantly harm the landscape character and quality in the area; and Policy EN2, as it would not keep a Local Green Gap open and essentially free of development. It would also fail to accord with emerging TDLP Section 2 Policy SPL3, as it would not make a positive contribution to the quality of the local environment or protect local character; and Policy PPL6, with regard to its effect on the SGG.

Living Conditions

26. Access for vehicles to the appeal site would be taken via a new priority junction with Halstead Road. As there are no streetlights in this section of Kirby Cross, the area generally benefits from a 'dark sky' at night. The Council has expressed concern about the levels of light pollution from cars exiting the site in the evening and the associated disturbance that would harm the residential amenity of the existing dwellings opposite.
27. Whilst the vehicular access would direct vehicles exiting the site to face onto the frontage of two bungalows that are on the opposite side of Halstead Road, these dwellings are set well back from the road. This type of arrangement would not be significantly different from that at many other junctions. I am satisfied that the width of the verge and footway, and the depth of the driveway and front garden, would be sufficient to ensure that any glare from vehicle headlights would not significantly harm the residential amenity at these dwellings.
28. Based on the above and my observations on site, I find on this main issue that the proposal would not cause any unacceptable harm to the living conditions of local residents and would accord with Local Plan policies QL11 and COM21 with respect to the effect of light pollution on residential amenity.

Planning Obligations

29. Prior to the hearing, the appellant submitted an engrossed Section 106 Unilateral Undertaking (UU). At the hearing, the Council commented on the details of the UU. However, I am satisfied that the UU would secure 40% affordable housing, as required by Local Plan Policy HG4; public open space that would exceed the requirements of Local Plan Policy COM6; a provision for highways infrastructure improvements; and contributions towards primary healthcare and education.
30. Regarding the RAMS contribution, the appellant's Habitat Regulations Assessment notes that the appeal site is about 1.3 km from Hamford Water Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site, which is a European designated site. Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'. In this respect, the mitigation measures proposed in the RAMS are to increase the resilience of the SPA and SAC to increased recreational pressure from new residential development.

31. Under the planning obligation the appellant would pay £16,354 or £125.80 per residential unit, prior to commencement of development. The Council indicated at the hearing that, even allowing for it being Index linked, this amount would be less than the proportionate financial contribution of £127.30 per residential unit required by the adopted Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD). In these circumstances, as the Competent Authority, and in accordance with the Conservation of Habitats and Species Regulations 2017, I am obliged to undertake an Appropriate Assessment should I allow the appeal.
32. I find that the above contributions are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. I am satisfied that they accord with Section 56 of the Town and Country Planning Act 1990 (as amended) and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended), albeit that there are some discrepancies in the detail of the wording and the RAMS contribution is less than required by the SPD. Therefore, I have taken the contributions into account in my determination of this appeal.
33. Taking account of the above, I conclude on the fourth main issue that the proposal would not have an unacceptable harmful effect on the provision of affordable housing, public open space, highways infrastructure, primary healthcare, and education in the area. However, it would fail to accord with Policy SP2 of TDLP Section 1 in that it would not secure the required contributions towards RAMS in relation to protecting a European designated site.

Other Matters

34. In support of this appeal, the appellant has referred to recent appeal decisions that have allowed other residential development in the area. However, I find that the circumstances behind these decisions are materially different from those of the current appeal, particularly regarding the relative location and/or the scale of the development. At my site visit I observed that most of the adjacent Finches Park development² is located behind a row of existing dwellings along Halstead Road, whereas the current appeal proposal would abut Halstead Road. Furthermore, that development was allowed at a time when the Inspector found that the Council was unable to demonstrate a 5-year housing land supply. Therefore, whilst I have noted the points raised, no direct comparisons can be made with the current appeal, which I have determined on its own individual planning merits in the light of prevailing policies and guidance.

Planning Balance

35. The benefits that the appellant has referred to in support of this appeal are given in the Benefits Statement which accompanied the application. These include the generation of 403 jobs, based on the House Builders Federation publication 'The Economic Footprint of House Building in England and Wales' (July 2018), which indicates that for every home built, 3.1 jobs are created. The appellant has broken this down into 139 direct jobs, 105 indirect jobs and 110 induced jobs, which are defined as those '*supported by additional spending*

² Appeal Ref: APP/P1560/W/15/3140113

effects in an area as contractors/suppliers and workers directly benefiting from an intervention purchase goods and services from local providers.' However, some of these jobs would be for the construction period and there are no specific measures proposed to ensure that the forecast jobs would be secured. I have therefore given this moderate weight as a benefit.

36. The appellant has referred to resident expenditure benefits generated by what it considers to be 312 new residents of the proposed development, as well as the support that these residents would provide to existing local services and the local economy, with increased spending power to Kirby Cross that it has estimated as £3,424,096. In addition, the appellant has suggested that, on completion, there would be local authority revenue benefits, such as the benefits that house building development brings in terms of local authority financial receipts from the New Homes Bonus and Council Tax. These would be applicable to all new housing developments of a similar scale to that proposed. I have therefore attached moderate weight to these benefits.
37. The proposal would result in the delivery of up to 130 dwellings that would contribute towards the housing requirement for the District. However, I have found that the Council is able to demonstrate that it has a 5-year supply of deliverable housing sites and is able to meet its housing need over the plan period of 2013 to 2033. Therefore, although the 5-year supply is not a 'ceiling' and the proposal would help to meet the Government's objective of significantly boosting the supply of homes, the weight that I attach to this benefit is reduced below substantial due to the Council already demonstrating that it has sufficient sites for future housing to meet its identified needs.
38. The appellant has stated that the proposal would deliver up to 52 affordable dwellings, which would be 40% of the number of dwellings proposed. The Council has identified that there is a high demand for affordable housing in the area. There is therefore a need for affordable housing to be delivered on site and the proposal would make a significant contribution to the Council meeting its objectively assessed need for affordable housing in the District.
39. Policy HG4 of the Local Plan requires up to 40% of new dwellings on residential schemes of 5 or more units to be provided in the form of affordable housing to meet the needs of people that are unable to access property on the open market. Whilst emerging TDLP Section 2 Policy LP5 would seek at least 30% affordable housing on the site, this Policy has not yet been adopted and so the 40% requirement in the adopted Local Plan still stands. Therefore, I have given this benefit moderate weight as the affordable housing provision would be no more than would be required by the Policy.
40. I accept that the proposal would be capable of providing high-quality homes in an accessible location which has good access to shops, services and facilities. The site's relative proximity to local services and its reasonable access to public transport would be likely to result in minimising the need to travel by car, particularly as the proposal would be accompanied by a Travel Plan that would be secured by a planning condition. It is also within Flood Zone 1, which is not an area at risk of flooding. As such, it would be an appropriate location for residential development in terms of its likely effect on climate change. However, the provision of high-quality buildings would be a requirement for any new development, in accordance with paragraph 124 of the Framework,

and I have found the location to be unsuitable in terms of the spatial strategy and the environmental impact of the proposed residential development.

41. The indicative layout demonstrates that the site could provide a useable public open space and the UU would secure a greater level than required by Policy. As such, it would offer a benefit to the local area and I give this moderate weight.
42. The appellant has suggested that the proposal would provide biodiversity and landscape gains. Whilst a planning condition has been suggested to ensure that ecological and environmental mitigation and enhancement measures and/or works would be carried out in accordance with the details contained in the Preliminary Ecological Appraisal and Bat Roost Potential Survey, the Bat Transect Report, the Tree and Hedgerow Survey, the Great Crested Newt District Level Licencing Impact Assessment and Conservation Payment Certificate and the Ecology Rebuttal, much of this is mitigation and there is nothing to secure any biodiversity or landscape gains. The proposal would result in the replacement of pastureland with built development, it may not be able to retain all the mature hedgerow, and any new planting would take a significant period before it would be of any material benefit to the landscape, ecology and biodiversity of the area. As such, I have given this limited weight as a benefit.
43. Turning to the harm, whilst I have found that there would be no unacceptable harm to the living conditions of local residents, I have attached substantial weight to the harm that the proposal would cause to the character and appearance of the countryside, together with the harm to the Green Gap and the conflict with development plan policies. In terms of the overall planning balance, I therefore find that the benefits of the proposal are insufficient to outweigh the identified harm. Under these circumstances, it is not necessary for me to carry out an Appropriate Assessment in accordance with the Conservation of Habitats and Species Regulations 2017 because I shall not be allowing the development.

Overall Conclusions

44. I have found that the proposal would not accord with the development plan as a whole, and other material considerations do not outweigh this conflict with development plan policy. Therefore, for the reasons given, and having regard to all relevant matters raised, I conclude that the appeal should fail.

Martin Whitehead

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Joe O'Sullivan BSc(Hons) PGDIP URP MRTPI	Head of Planning, AAH Planning Consultants
Wendy Wright BA (Hons) DIP LA CML	Principal Landscape Architect, AAH Planning Consultants
Stephen Moss BEng (Hons) CEng MICE MCIHT	Highway Consultant, AECOM

FOR THE LOCAL PLANNING AUTHORITY:

Nick Westlake BSc(Hons)	Planning Officer, Tendring District Council
Gary Guiver	Assistant Director, Strategic Planning and Place, Tendring District Council
Leslie Roberts	Solicitor, Tendring District Council

INTERESTED PERSONS:

Steve Brown	Local Resident
Councillor Paul Clifton	Ward Councillor

DOCUMENTS SUBMITTED AFTER OPENING THE HEARING

- 1 Statement read from by Steve Brown at the hearing, submitted by Steve Brown on 29 June
- 2 Tendring District Local Plan 2013-2033 and Beyond Section 1, submitted by the Council on 29 June
- 3 Notice of the adoption of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document, submitted by the Council on 29 June
- 4 Copy of Appeal Decision Ref: APP/P1560/W/15/3140113 and Parameters Plan: Indicative Heights for that development, submitted by the Council on 29 June
- 5 Plan of suggested viewpoints and the suggested walking/driving route for the Site Visit, submitted by the appellant on 29 June
- 6 Suggestions as to positions to view at the Site Visit, submitted by Steve Brown on 29 June
- 7 Plan of additional viewpoint 9 to consider at the Site Visit, submitted by the Council on 30 June
- 8 E-mail, dated 30 June from the Council regarding the Committee meeting of 29 June, submitted by the Council on 30 June
- 9 E-mail, dated 30 June from the appellant regarding the Committee meeting of 29 June and attached report to the meeting and Appendix 2 to the report: Main Modifications, submitted by the appellant on 30 June
- 10 E-mail, dated 1 July from the Council regarding the Committee meeting of 29 June and attached minutes of the meeting, submitted by the Council on 1 July