



Appeal Decision

Site Visit made on 16 June 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2021

Appeal Ref: APP/P1560/W/20/3265745

2 & 3 Tendring Road, Thorpe-Le-Soken, Clacton-on-Sea CO16 0AA

- 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 M Berry against the decision of Tendring District Council.
 - The application Ref 20/00516/OUT, dated 17 April 2020, was refused by notice dated 22 June 2020.
 - The development proposed is demolition of two houses and erection of five detached bungalows.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr M Berry against Tendring District Council. This application is the subject of a separate decision.

Preliminary Matters

3. 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 plan as being submitted for indicative purposes.
4. 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. Subsequent to the Council's refusal of the application, Section 1 of the eLP has been adopted (the LPS1)¹ and now forms part of the development plan.
5. The main parties were asked for comments with regards the adoption of the LPS1. The Council confirmed that LP Policies QL11 and QL9, as relied on in its decision, have been replaced (in the case of Policy QL11 the Council has indicated that this policy has been partly replaced) by Policy SP7 of the LPS1 and, therefore, I have had regard to the more recent adopted policy for the purposes of this appeal. 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 appellant has not disputed

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.

the Council's updated position. I have taken account of all these matters in my determination of this appeal.

6. Section 2 of the eLP is currently under examination and is therefore subject to change and thus it attracts only limited weight in my decision.
7. On 20 July 2021 a revised National Planning Policy Framework was issued. The main parties were given the opportunity to comment on the implications of the resulting changes for this appeal and I have had regard to the comments made. Any reference to 'the Framework' made within the decision are to this revised version.

Main Issues

8. The main issues are the effect of the proposed development on (i) designated and non-designated heritage assets; (ii) the character and appearance of the area; (iii) the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance; (iv) highway safety; (v) the integrity of European sites; and (vi) the provision of public open space.

Reasons

Designated heritage asset

9. A grade II listed building, Millington House, is situated approximately 35 metres south east of the appeal site. This building is early 17th century with 20th century alterations. It is timber framed and roofed with handmade red clay tiles.
10. Although some level of consideration has been given to this nearby heritage asset by the appellant, no specific identification or analysis of the significance of the asset and its setting has been provided. The Planning Practice Guidance (PPG) states that heritage assets may be affected by direct physical change or by change in their setting. Being able to properly assess the nature, extent and importance of the significance of a heritage asset, and the contribution of its setting, is very important to understanding the potential impact and acceptability of development proposals³.
11. I am required under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
12. Notwithstanding the limited analysis provided by the appellant, taking into consideration the listing description, the information provided by the Council and my own observations, I understand the significance of the asset to be derived primarily from its physical form and fabric and its position within the landscape.
13. Whilst this listed building would have once been isolated within the landscape, its wider setting has been altered over time, with other housing development taking place along Colchester and Tendring Roads. However, there is still a sense of openness and isolation to the listed building because of the undeveloped land that wraps around its boundaries. It is set well back from the

³ Paragraph: 007 Reference ID: 18a-007-20190723 Revision date: 23 07 2019

road with Thorpe Green to its east. A parcel of maintained grassland separates the building's northern boundary from the appeal site, which for the majority of its western section has the appearance of an overgrown paddock, bounded by post and rail fence with only its northern boundary also being flanked by mature hedgerow. An agricultural landscape lies beyond the appeal site and to the west of the listed building.

14. Its historic secluded nature would be appreciated from both within the building and its immediate curtilage, as much of its northern boundary comprises managed hedgerow and shrubbery which allows some clear views to the surrounding landscape, including across the appeal site. This boundary treatment also allows views of the listed building, particularly of its first floor and roofscape, from the public right of way (PRoW) that runs alongside the asset's northern boundary and alongside part of the southern boundary of the appeal site. I consider that the appeal site has an important visual relationship with the heritage asset and forms part of its setting.
15. Although at this outline stage all matters are reserved, taking into consideration the possibility of additional landscape screening and a single storey development, the proposal is, nevertheless, for the erection of five dwellings. This would be a significant urbanisation of the appeal site and would interrupt the open space to the north west of Millington House. I am not satisfied that a successful scheme could be produced through a reserved matters submission which would avoid harm to the setting of the listed building. In this location such development would visually compete with and distract from the listed building and its historic context within the landscape. The proposal would result in harmful loss of seclusion of this heritage asset, negatively affecting its setting which forms a strong part of its significance.
16. I conclude that the appeal scheme would result in less than substantial harm to the setting of Millington House and would fail to preserve its particular significance. It would conflict with LP Policy EN23 which seeks to protect the setting of listed buildings. There would also be conflict with eLP Policies SP6 and PPL9 which similarly seek to protect historic assets and their settings. Further, it would conflict with the Framework in this regard.
17. However, paragraph 202 of the Framework requires that this harm should be weighed against the public benefits of the proposal in such circumstances. I will return to this in the planning balance.

Non-designated heritage asset

18. The proposal would require the demolition Nos 2 and 3 Tendring Road (Nos 2 and 3), a pair of semi-detached cottages, in order to create the access to the site. The Council states that Nos 2 and 3, is considered to be a non-designated heritage asset (NDHA). This does not of itself demonstrate that the building is designated as such. I have no evidence before me of the building being identified as a NDHA on any local list held by the Council nor have I been provided with any evidence to demonstrate that the pair of cottages has been identified in a Neighbourhood Plan as a building to be locally listed. The Council states that Nos 2 and 3 are considered NDHAs because of their age, demonstrated by their presence on an excerpt from the 1897 Ordnance Survey and by being examples of workers cottages, that potentially retain historic roofing, some historic windows and other historic features.

19. The national Planning Practice Guidance (PPG) advises⁴ that a substantial majority of buildings have little or no heritage significance and thus do not constitute heritage assets. Only a minority have enough significance to merit identification as NDHAs. The PPG states that in some cases, local planning authorities may identify NDHAs as part of the decision making process on planning applications, as appears to be the case here. However, the PPG further states that irrespective of how they are identified it is important that the decisions to identify them as NDHAs are based on sound evidence⁵.
20. I note also that the Council acknowledges that the building has undergone a number of alterations, including pebble dashing and flat roof extensions and that permission for its demolition was previously granted, although this particular matter attracts little weight due to the amount of time that has passed since that permission lapsed, and the changes in national planning policy, including the introduction of the PPG that have since occurred.
21. Given the advice set out in the PPG and in the absence of any substantive evidence demonstrating that the building has been suitably judged against published criteria, I do not consider that the age of the building combined with the extent of its identified, or potentially identified, architectural details amount to sufficient justification for the building to qualify as a NDHA. I therefore consider the proposed demolition of Nos 2 and 3 in the context of character and appearance elsewhere in my decision.

Character and appearance

22. The appeal site is an irregular shaped parcel of land situated behind dwellings that front Tendring Road. It is positioned between two other similar sized parcels of land, with agricultural fields to its west. It has the appearance of an overgrown paddock and would be accessed via a strip of land passing between Nos 1 and 4 Tendring Road (Nos 1 and 4) which would be created following the demolition of Nos 2 and 3. This pair of semi-detached cottages have a modest and pleasing appearance, retaining some historic detailing and in this way positively contribute to the street scene with its mix of dwelling types, ages and sizes.
23. Although other properties are set at depth from the road near to the appeal site, this is because of large frontages or their position in relation to the open space of Thorpe Green, which occupies the corner of land between Colchester Road and Tendring Road. Backland development, whereby properties are situated behind other properties, is not a feature in this part of the street. The predominant pattern of development here is of linear form.
24. While all matters are reserved, the size and shape of the appeal site gives a good indication of the likely layout of the dwellings as shown on the indicative drawing.
25. The proposed demolition of Nos 2 and 3 would create a substantive gap in the street frontage between the neighbouring dwellings. Although the proposed group of dwellings would not themselves be overly prominent in the street scene, the access road to serve them would be obvious and would clearly indicate the uncharacteristic presence of development at the rear of the frontage properties. The proposed dwellings would be prominent in views from

⁴ Paragraph: 039 Reference ID: 18a-039-20190723

⁵ Paragraph: 040 Reference ID: 18a-040-20190723

the PRoW which runs past the southern boundary of the site, and from neighbouring dwellings, where they would be viewed as out of character with the prevailing rhythm and pattern of nearby residential development. Furthermore, it would be apparent that development of the site would harmfully undermine the sense of openness to the rear of established properties.

26. The suggested layout would not be dissimilar to other nearby developments to which I have been referred, including opposite the appeal site and at The Elms and at One Oak. I have taken these developments into account. Nevertheless, the site specific circumstances and details that led to the approval of those developments does not persuade me to alter my opinion as to the effect of the proposed development on the immediate area.
27. I conclude that the proposed development would have an unacceptably harmful effect on the character and appearance of the area. Therefore, it would be contrary to LP Policy EN1 and Policy SP7 of the LPS1 which, amongst other matters, seek to protect local character. The proposal would also conflict with eLP Policies SPL3 and PPL3 and the Framework in this regard.

Living conditions

28. The proposal would result in the creation of an access road to serve 5 dwellings passing between Nos 1 and 4. Currently this space is occupied by Nos 2 and 3. This would be a clear change to current circumstances, and there would be a degree of noise created from the associated vehicular movements. However, the access could be positioned such that there would be a separation of some 13 meters from No 1 and some 9 metres from No 4. There would be sufficient space to provide a landscape buffer either side of the proposed access, the details of which could be agreed at reserved matters stage. Taking all of these matters into consideration, I am satisfied that there would be sufficient separation between the proposed access and Nos 1 and 4, to ensure that the living conditions of the occupiers of those properties would not be harmfully compromised with regard to noise and disturbance.
29. I therefore conclude that the proposal would not conflict with those parts of LP Policy HG13 and LPS1 Policy SP7 which seek to protect the amenity of existing residents with particular regard to noise and disturbance. Similarly, I find no conflict with eLP Policy LP8 in relation to this matter.

Highway safety

30. I have not been provided with evidence from either party regarding the dimensions that would be required for the provision of acceptable visibility splays from the site. Whilst I acknowledge that the appellant considers that the Council has not taken into account a reduction in the speed limit along this stretch of Tendring Road, from the national speed limit to 40 mph, no substantive evidence has been provided by the appellant that demonstrates the size of splays required within a 40 mph zone. The appellant does, however, indicate that the northern splay remains deficient to the required standard.
31. I cannot therefore be satisfied that the proposal would not result in associated highway safety risks. Further, it has not been satisfactorily demonstrated that the appellant controls sufficient land to provide adequate visibility in both directions.

32. I acknowledge that the proposed development would result in an access that has greater visibility than the existing access arrangements at the site for Nos 2 and 3. However, this attracts limited weight and does not indicate that the appeal proposal would be acceptable in relation to highway safety. The presence of other substandard visibility arrangements in the locality also neither leads me to a different conclusion nor indicates that the highway safety issues arising from the appeal proposal would be acceptable.
33. I therefore conclude that it has not been satisfactorily demonstrated that the proposal would be acceptable in respect to impact on highway safety. Thus, it would conflict with LP Policy TR1a and Policy SP7 of the LPS1 which amongst other matters seek to ensure highway safety. The proposal would also conflict with eLP Policy CP2 and paragraph 110 of the Framework in this regard.

European sites

34. The evidence indicates that the appeal site is located within the recognised zone of influence of one or more European sites⁶ and within the area covered by the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). The Council's decision notice refers to the Colne Estuary Ramsar Site. However, its officer report identifies that the appeal site is located within 2.1km of the Hamford Water Ramsar Site. This introduces some uncertainty in understanding any potential effects of the proposal and whether they could be mitigated. However, the Council considers that any likely significant effects could be managed via mitigation measures set out in the RAMS and secured by a proportionate financial contribution as required by the RAMS. There is no evidence before me to suggest that the appeal proposal is not situated within a zone of influence of one or more European sites.
35. The appellant has agreed in principle to making the financial contributions sought by the Council. However, no legally binding mechanism to secure such payment has been received during the appeal process. The means to undertake an assessment of the proposal's effects on the nearest European sites, required under the Conservation of Habitats and Species Regulations 2017 is, therefore, lacking. I acknowledge the frustration of the appellant in not seemingly have been fully advised by the Council of the precise details of the arrangements that would be required. However, this is a matter to be taken up with the Council and is not within the remit of this appeal.
36. The proposal is contrary to LP Policies EN6 and EN11a which do not permit proposals for development where it cannot be ascertained that the integrity of European sites would not be adversely affected without appropriate compensatory, or mitigation measures being provided. The proposal would also conflict with Policy PPL4 of the eLP in this regard.

Local Infrastructure

37. The Council has advised that a financial contribution is required towards the provision of public open or play space. Although the appellant initially confirmed a willingness to provide this contribution, I have not been provided with a planning obligation and the appellant has subsequently contested the necessity of such a contribution.

⁶ Now the 'national site network' when referring to the network of European sites in the UK, following the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

38. LP Policy COM6 requires that new residential developments on sites below 1.5 hectares in size, where existing open space facilities are inadequate to meet the projected needs of the future occupiers of the development, make a financial contribution to the provision of new or improved off-site facilities in scale and kind to meet those needs. The Council's evidence indicates that there is an identified current deficit of 2.3 hectares of play and formal open space in Thorpe Le Soken, and, therefore, a financial contribution towards the provision of additional facilities at a recently developed area of open space known as Lockyers Wood to be relevant and justified.
39. However, I have not been provided with any detailed evidence of the level of contribution sought or the effect that the appeal proposal might have on the extent of local deficiencies in play and formal open space. Reference has been made to the financial contribution being used to provide additional facilities at Lockyers Wood. However, in the absence of specific details, including where this space is in relation to the proposed development, the level of contribution required and how it would be spent, I cannot be certain that contribution would be necessary to make the development acceptable or that it would be directly related to the development and fairly and reasonably related in scale and kind. As I dismiss the appeal for other reasons, I have not pursued this matter further with the main parties.
40. Consequently, and notwithstanding the aims of development plan policy, I am unable to conclude that a planning obligation seeking to provide a contribution would comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010. In these circumstances, the absence of a planning obligation does not weigh against the development.

Other Matters

41. I note other concerns raised by third parties, including in relation to biodiversity and drainage. However, given my findings in relation to the main issues I have not considered these matters further.

Planning Balance

42. The Framework indicates that great weight should be given to the conservation of designated heritage assets. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
43. The proposal would provide a net increase of 3 dwellings, and improved quality of living space with reference to the 2 dwellings that would be replaced, thereby making a small but meaningful contribution to the supply of housing. However, the limited social and economic benefits to the area resulting from the appeal proposal would be modest and attracts modest weight.
44. Taking the above points together I do not consider that there would be public benefit sufficient to outweigh the significant weight to be attached to the harm I have identified in relation to the designated heritage asset.
45. It is not disputed that the Council can demonstrate a 6.5 year supply of deliverable housing sites. However, even if this were a case that turned on the housing land supply position, the conflicts with the Framework in terms of the designated heritage asset and with habitats sites, provide clear reasons for refusal.

46. 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.

Conclusion

47. For the reasons given above the appeal is dismissed.

S Tudhope

INSPECTOR