

Appeal Decision

Site visit made on 28 July 2021

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2021

Appeal Ref: APP/P1560/W/20/3260500

Lane at Golden Lane, Thorpe-le-Soken, Essex CO16 0LD

- 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 Mick and Bill Stobbs against the decision of Tendring District Council.
 - The application Ref 20/00900/OUT, dated 1 July 2020, was refused by notice dated 16 September 2020.
 - The development proposed is the erection of two dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is for outline planning permission with all matters reserved for subsequent consideration.
3. The Council refers to the Tendring District Local Plan 2013-2033 and Beyond Publication Draft, and indicates that the Section 1 Local Plan was adopted in January 2021, which is after the appeal was made. Policy QL9 from the Tendring District Local Plan 2007, relied on by the Council in making its decision in this case, has been replaced by Policy SP7 of the Section 1 Local Plan and, therefore, I have had regard to the more recent adopted policy for the purposes of this appeal.
4. Reference is also made in the decision notice to Policy PPL3 from the Section 2 Plan, which is subject to independent examination. The National Planning Policy Framework (the Framework) indicates that weight may be given to relevant policies in emerging plans depending on a number of factors¹. I accept that the Section 2 Plan is at a relatively advanced stage in its preparation, but it is not fully clear whether there are unresolved objections to the relevant policy and, if so, how significant these are. For this reason, I find that only limited weight can be given to this emerging policy for the purposes of this appeal. Consequently, I have relied on the policies referred to from the adopted development plan.

¹ Paragraph 48.

5. I note that the appellants submitted a unilateral undertaking at application stage to address the required mitigation by the Council of the effect of the proposal on protected European sites.
6. A revised version of the Framework was issued in July 2021. The parties were given the opportunity to comment on any implications with regard to the current appeal and I have had regard to the comments made.

Main Issue

7. The main issue is the effect of the proposal on the character and appearance of the appeal site and surrounding area.

Reasons

8. The appeal site is located in the corner of an open field with a frontage on Golden Lane, a minor road running off the B1033. The surrounding area is rural in character and appearance with sporadic housing development to the north-west of the more densely developed settlement of Thorpe-le-Soken.
9. Policy EN1 of the Tendring District Local Plan 2007 concerns landscape character. It says that the quality of the district's landscape and its distinctive local character will be protected and, where possible, enhanced. Any development which would significantly harm landscape character or quality will not be permitted. Policy SP7 of the Section 1 Local Plan concerns place-shaping principles, including the requirement that development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs.
10. There is no established pattern of development within the area surrounding the appeal site. However, there is more concentrated and less linear development in the small hamlet immediately north-west of Golden Lane, known as Thorpe Green. In contrast, development along Golden Lane itself is linear in nature with greater gaps between properties. It is also the case that the majority of development lies to the south of the lane, while the north-western side, which includes the appeal site, is largely undeveloped. Indeed, aside from properties fronting onto the B1033 road next to its junction with Golden Lane, there is apparently only one established property on this side of the road from the road junction to Valley Farm, well to the north-east of the site.
11. Consequently, Golden Lane retains a good degree of openness to the north-west in contrast to the greater amount of development along its southern side, reflecting its character and appearance as a minor rural road outside defined settlement boundaries. The appeal site as a clearly delineated field along the lane makes a contribution to this open setting. This is particularly the case as one of the greatest concentrations of development along the lane is directly opposite the appeal site in the form of a row of two storey semi-detached dwellings. The introduction of two new dwellings directly opposite this established development would materially reduce the characteristic openness of this part of the lane and have a harmful urbanising effect through the greater concentration of development in one location. As such, the proposed houses would erode the rural character and appearance of the site and its surroundings.

12. All details of the proposed dwellings are reserved for subsequent consideration. However, it is clear from the extent of the site's openness and prominence that any form of residential development in this location would undermine the open rural character and appearance of the site. The frontage hedge referred to in the appeal submissions appears to have been removed and replaced with a post and rail fence. While it would be possible to introduce more landscaping to the site frontage, this would not overcome the harmful urbanising effect of new dwellings in this location.
13. The appellants draw attention to a successful appeal for a single dwelling close to the appeal site to the north-east on the same side of the lane². This is the other side of the boundary that separates the appeal site as part of a rural field from the residential curtilage of the property, Springfield. As such, the permitted dwelling is either within or closely associated with an established residential curtilage, which is not the case with the appeal site, and I note that the effect on character and appearance was not an issue in the earlier appeal. Moreover, while each case must be determined on its merits, the establishment of two dwellings on the appeal site could result in further residential development being sought along the frontage within the same field boundary.
14. I note also the other developments permitted within the surrounding area as highlighted by the appellants. However, these are either located on the opposite side of Golden Lane to the appeal site where the majority of development is already established, or are associated with the more concentrated and greater levels of development at Thorpe Green. While all these sites are also outside settlement boundaries, for the reasons given they do not bear direct comparison with the appeal site. I have considered the appeal proposal on its individual merits and have found that it would result in material harm. As such, the existence of these other developments which are not directly comparable do not overcome that harm.
15. The appellants also contend that the Council's comments concerning the nature of Golden Lane as a highway are incorrect. While I note this matter, it does not have a direct bearing on the above findings. Similarly, the Council's reason for refusal does not relate to the sustainability of the appeal site in terms of its location, particularly as the adjacent site was found not to be harmful in this regard in the earlier appeal referred to above, as acknowledged by the Council.
16. Accordingly, for the reasons given above, I conclude that the proposed development would have an unacceptably harmful effect on the character and appearance of the appeal site and surrounding area. Therefore, it is contrary to Policy EN1 of the Tendring District Local Plan 2007 and to Policy SP7 of the Section 1 Local Plan, as described above.

Other Matters

17. I have had regard to the representations made by interested parties. These do not, however, raise any additional matters in relation to the main issue that would lead me to reach a different overall conclusion. Moreover, a number of the concerns raised relate to reserved matters.

² APP/P1560/W/18/3194253 dated 20 August 2018.

18. The Framework requires that plans and decisions should apply a presumption in favour of sustainable development³. At the time the appeal was made the Council accepted that it could not demonstrate a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing, as required by the Framework⁴. Consequently, the view taken was that the appeal proposal should be considered in the context of paragraph 11d) of the Framework.
19. As a result of the recent adoption of the Section 1 Local Plan, the Council now indicates that its overall housing requirement is reduced to the extent that a minimum of five years' worth of housing can be demonstrated. While I note the appellants' contention that the supply has reduced over recent months, there is no dispute that the supply is still more than the requisite five years' worth. Consequently, the presumption is not engaged as a result of housing under-supply in accordance with footnote 8 to paragraph 11.
20. In the circumstances of this appeal where there are relevant development plan policies, paragraph 11 of the Framework requires an assessment of whether the policies which are most important for determining the application are out-of-date. The most important policies are included in the Tendring Local Plan 2007 and the more recent Section 1 Local Plan, both of which pre-date the current Framework. However, the Framework is clear that existing policies should not be considered out-of-date simply because they were adopted prior to the Framework's publication. Due weight should be given to them according to their degree of consistency with the Framework⁵.
21. The appellants contend that the policies of restraint are out of date, although which policies this contention refers to is not clear. Policy EN1 concerns landscape character and includes a number of criteria concerning the effects of development on the natural environment, while Policy SP7 takes the same approach with regard to place-shaping principles. These policies reflect, respectively, the Framework's requirement for policies to conserve and enhance the natural environment, and its advocacy of good design and so are consistent with it and not out of date. Consequently, the presumption in favour of sustainable development is not engaged.
22. The Framework's requirement to provide a five year housing supply is a minimum requirement and should not be viewed as a ceiling, and in this respect the proposal would provide two additional homes. I acknowledge also that these would be accessible to local services and facilities, and would provide some short-term local economic benefit from their construction.
23. The appellants draw attention to a recent appeal decision where the Inspector found in favour of the residential scheme⁶, although the presumption in favour of sustainable development applied in that case, unlike in this appeal. However, for the avoidance of doubt, even were the presumption to be engaged in this case, I have found that the proposal would result in unacceptable harm to the character and appearance of the appeal site and surrounding area. As such, as well as it being contrary to the development plan, the proposal is

³ Paragraph 11.

⁴ Paragraph 74.

⁵ Paragraph 219.

⁶ APP/P1560/W/20/3246370 dated 7 August 2020.

contrary to the Framework, which requires that development should be sympathetic to local character in contributing to well-designed places⁷. I give significant weight to the conflict with the Framework's objectives and requirements in this regard.

24. The benefits set out by the appellants are not of sufficient weight, either individually or as a whole, to overcome the extent of the conflict with the Framework's objective to promote good design that respects local character. Therefore, I conclude that the adverse impacts of granting permission significantly and demonstrably outweigh the benefits.

Conclusion

25. I have found that the proposed development would have a materially harmful effect on the character and appearance of the appeal site and surrounding area. As such, the proposal is contrary to the development plan and to the Framework. The presumption in favour of sustainable development does not apply and there are no other material considerations that outweigh the conflict with the development plan. Accordingly, it is concluded that the appeal should be dismissed.

J Bell-Williamson

INSPECTOR

⁷ Paragraph 130(c).