



Appeal Decision

Hearing (Virtual) Held on 7 September 2021

Site Visit made on 7 September 2021

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: Wednesday, 22 September 2021

Appeal Ref: APP/P1560/W/20/3253050

Land to the North of Stourview Close, Mistley, Essex CO11 1LZ

- 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 Rose Builders (Properties) Ltd against the decision of Tendring District Council.
 - The application Ref 18/00767/OUT, dated 11 May 2018, was refused by notice dated 25 November 2019.
 - The development proposed is described as 'Proposed new access road and the erection of up to 72 dwellings and associated works'.
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Decision

1. The appeal is allowed, and planning permission is granted for a new access road and the erection of up to 72 dwellings and associated works at Land to the North of Stourview Close, Mistley, Essex CO11 1LZ in accordance with the terms of the application, Ref 18/00767/OUT, dated 11 May 2018, subject to the conditions set out in the attached schedule.

Background and Reasons

2. The planning application was refused by the Council due to concerns regarding the effect on infrastructure (health, education and open space management) and the conservation objectives of European sites. It was also refused in the absence of a mechanism to secure an appropriate level of affordable housing.
3. Through a Statement of Common Ground, the Council and appellant have agreed that the potential effect on the European sites would be mitigated through a financial contribution in line with the Essex RAMS¹. This is a conclusion I share for the reasons set out in my appropriate assessment.
4. Between the Council's decision being issued and the hearing opening, the Council and appellant have been in further discussions. Through this process agreement has been reached regarding appropriate financial contributions towards healthcare, open space management (to be triggered if necessary) and off-site affordable housing provision. The latter is due to agreed viability constraints. These measures would be secured through the submitted planning obligation. For reasons I go into, I share the view of the Council and appellant that the planning obligations meet the relevant tests².

¹ Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy adopted as a Supplementary Planning Document by Tendring District Council on the 13 November 2020

² See Paragraph 57 of the National Planning Policy Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

5. The Council and appellant have also agreed that an education contribution is no longer necessary. This view follows additional evidence provided by Essex County Council as the education authority. As a result, the Council does not wish to pursue this element of the reason for refusal.
6. Thus, it became apparent at the outset of the hearing that all matters in dispute between the Council and appellant have been resolved. Both are of the view that the appeal should be allowed. Substantive evidence to suggest otherwise is not before me and therefore this is the decision I have reached.

Other Matters

Changes to the development plan

7. Since the Council issued its decision it has adopted a new Part 1 Local Plan³ (LP). Policy SP3 therein, which supersedes Policy QL1 of the 2007 Tendring Local Plan, states that development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role. The emerging Part 2 Plan, which is at an advanced stage of preparation, seeks to place the appeal site within the settlement boundary of Mistley, which is one of the larger settlements in the district. Thus, the Council and appellant are supportive of the principle of development and I see no reason to disagree.

The new National Planning Policy Framework (the 'Framework')

8. A revised version of the Framework has recently been published. The Council and appellant were afforded a chance to provide comments in respect of this change. Neither considered the alterations had any significant bearing on the outcome of the appeal. In particular, the evidence relating to landscape impacts demonstrates that the proposal would not harm the setting of the Suffolk Coast and Heaths Area of Outstanding Natural Beauty, which has recently been extended close to the boundary of the appeal site. In addition, both parties were confident that seventy-two homes could be delivered at the site whilst meeting the new requirement for streets to be tree lined.

The effect on biodiversity

9. The results of the biodiversity surveys submitted with the application were time limited. I was advised at the hearing that additional surveys have recently taken place to support another planning application proposing an extensive development of the appeal site. I was advised by both the Council and appellant that these surveys indicate that the situation in respect of biodiversity impacts has not significantly changed. In effect, there would be no net harmful impact and a potential for an overall improvement. In this context, I am content for biodiversity matters to be addressed through a condition.

The other concerns of interested parties

10. The technical and expert evidence before me within the Traffic Impact Statement and Highway Access Statement, alongside the comments from the Local Highway Authority, provide the evidence sufficient for me to conclude that the proposal would not have an adverse impact on highway safety or a severe impact on the highway network, subject to the reserved matters.

³ Tendring District Local Plan 2013-2033 and Beyond Section 1 North Essex Authorities' Shared Strategic Plan

11. Concerns have been raised regarding the impact on views across the site, including the character and appearance of the area more generally. However, planning permission already exists for a similar scheme of seventy homes at the appeal site. In this context, an additional two homes would not have a significantly greater impact in this instance.
12. The appeal site is within walking distance of many facilities, so it need not place any harmful additional pressure on parking in the High Street. A condition has been attached relating to a travel information pack with the aim of reducing travel by private car. I have not been directed to any derelict brownfield sites that are required to be developed before the appeal scheme.

Appropriate Assessment

13. As the competent authority, I have carefully considered the Council's initial Habitat Regulations Assessment⁴. The appeal site is located within a zone of influence placed around relevant European sites⁵ as established in the Essex Recreational Disturbance Avoidance and Mitigation Strategy (Essex RAMS).
14. There is no dispute that the population growth resulting from new housing within this zone would likely result in an increase in harmful recreational disturbance at the European sites. Accordingly, the proposal in combination with other plans and projects would be likely to have a significant adverse effect on the relevant European sites when following a precautionary approach. Hence, an appropriate assessment, in accordance with the Habitat Regulations⁶, is required to consider the implications of the proposal on the European sites in view of their conservation objectives.
15. The European sites have been designated because they include habitats that support rare bird species. The overarching conservation objectives for the relevant European sites is to avoid a deterioration of habitats and minimise disturbance, thereby ensuring the integrity of the sites is maintained.
16. The appellant has confirmed a willingness to provide a financial contribution in line with the methodology in the Essex RAMS, which is a document and approach supported by Natural England as the Statutory Nature Conservation Body. The contribution would be pooled with others and used for access management and monitoring at the European sites in line with that set out in the Essex RAMS.
17. I was advised at the hearing that the payment of the financial contribution at the commencement of development would allow time for it to be spent before the first dwelling is occupied. This is because it would feed into an ongoing strategic project. I have no reason to doubt this.
18. The contribution would be secured through the submitted planning obligation and would be directly related to the impacts of the proposal on the European sites. It is necessary to make the development acceptable and the contribution would be fairly and reasonably related in scale and kind to the development because it follows the methodology in the Essex RAMS.

⁴ Dated 12 September 2019

⁵ Essex Coast sites listed in Natural England's consultation response dated 16 August 2018, including the Stour and Orwell Estuaries Special Protection Area and Ramsar site

⁶ See Regulation 63 Conservation of Habitats and Species Regulations 2017 (as amended).

19. The planning obligation does not include any requirement that the Council spend the contribution in the way envisaged. However, there is no reason to doubt that the Council, as a responsible public body, will spend the money in the way it is intended. There are also published mechanisms in place to ensure the money is diverted to the strategic mitigation project.
20. Thus, the contribution is an obligation that can be taken into account. As a result, the proposal would not adversely affect the integrity of the European sites, the conditions of which need not deteriorate as a result of the proposal.

Planning Obligation

21. In addition to the obligations relating to the habitat contribution discussed above, the planning obligation includes clauses relating to healthcare, public open space and affordable housing. This has been informed in part by a CIL Regulation Compliance Statement submitted by the Council in response to a prehearing note I issued.

Healthcare

22. Policy SP6 of the LP seeks to ensure the provision of appropriate healthcare infrastructure. As a material consideration, emerging Policy HP1 of the Part 2 Local Plan has similar aims. Comments provided by the NHS under the cover of a previous application demonstrated a need to provide a financial contribution of £21,723.84 towards healthcare infrastructure at local GP surgeries. This advice was not restated in respect of the appeal scheme, but the Council and appellant are content for it to be rolled over. I have no reason to disagree and therefore the healthcare contribution would be necessary to mitigate the impacts of the proposal.

Public open space

23. Policy COM6 of the Tendring Local Plan 2007 requires 10% of a development site to be Public Open Space due to local deficits in provision and to ensure additional homes do not make matters worse. The Council and appellant agree that the detail of the public open space would be worked up for the reserved matters submission. If the Council ultimately adopt the public open space then it would be necessary for provision to be made for its ongoing management. The planning obligation therefore includes a formula for doing this.

Affordable housing

24. The evidence before me set out by both the Council and appellant demonstrates that there is a pressing need for affordable housing in the district. This need is growing because targets are not been achieved. Policy HG4 of the Tendring Local Plan 2007 states that the Council will expect 40% of homes within relevant developments to be affordable housing provided on site. The phrase 'expects' indicates some flexibility and the supporting text to the policy does state that financial contributions for offsite provision may be appropriate in certain circumstances.
25. As a material consideration, Policy LP5 of the emerging LP sets the affordable housing level at between 10% and 30% given up to date viability evidence. In this context, the 40% threshold in Policy HG4 is of limited weight. Moreover, emerging Policy LP5 explains that the level of affordable housing will be subject to case-by-case negotiation. This is in line with current national guidance.

26. The appeal scheme would be subject to several abnormal engineering costs. The Council and appellant agree that these costs would have an acute impact on viability if a level of affordable housing compliant with Policy LP5 is required. This conclusion follows viability testing. As a result, the Council and appellant have agreed a necessary financial contribution towards off site affordable housing provision of £595,850. The contribution follows a formula produced by the Council. Although not compliant with extant development plan policy, the evidence before me, as a material consideration, indicates that this would be a reasonable level of provision in the circumstances. There is nothing of substance before me to suggest circumstances will change in the future and therefore a review mechanism does not appear to be necessary.

Conclusions on the planning obligation

27. The contribution would be secured through the submitted planning obligation which the Council has checked. For the reasons set out above, the obligations are necessary and directly related to the impacts of the proposal. In addition, the obligations would be fairly and reasonably related in scale and kind to the development because it follows the methodology.

Conditions

28. I have had regard to the advice in the Planning Practice Guide and the conditions suggested by the parties. In addition to standard commencement conditions, it is necessary to define the reserved matters and require their approval. I have included 'access' as a reserved matter as insufficient information has been submitted for this to be approved at this stage. For this reason, it is unnecessary to secure details of a priority junction off Stourview Road as this will be considered at the reserved matters stage.
29. To protect the living conditions of neighbours or the visual amenity of the area it is necessary to secure a construction management plan and details of levels, acoustic mitigation, lighting, bin storage and foul drainage. In the interests of highway safety and the promotion of sustainable transport, it is necessary to secure a residential travel plan, and a scheme of bus stop upgrades and footpath provision. To protect as yet unknown archaeology, it is necessary for a scheme of investigation and recording to be secured. To protect and enhance biodiversity it is necessary to secure further details and mitigation and enhancement measures to be provided. To adequately manage surface water drainage, it is necessary to secure a suitable surface water drainage scheme, including maintenance.
30. In the interests of the character and appearance of the area, wildlife and adapting to climate change it is necessary to secure details of retained trees and their protection. It is unnecessary to secure general details of landscaping and external finishing materials as these would be assessed at the reserved matters stage.

Conclusion

31. For the reasons given I conclude that the appeal should succeed.

Graham Chamberlain
INSPECTOR

APPEARANCES

FOR THE APPELLANT

Tom Hill QC	39 Essex Street
Kevin Coleman BSc (Hons) DIP TP MRTPI	Phase 2 Planning
Nicolas Bignall BSc (Hons) MRICS	Turner Morum
Tom Newcombe BSc (Hons) Solicitor	Birketts LLP
Steven Rose	Rose Builders
Will Vote	Rose Builders

FOR THE LOCAL PLANNING AUTHORITY

Alison Hutchinson BA(Hons) MRTPI	Hutchinson Planning
Trevor Faulkner BSc(HONS MRTPI	Tendring District Council

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Revised list of agreed planning conditions
2. Engrossed Planning Obligation
3. The documents listed in Paragraphs 19 and 20 of my Pre-Hearing Note.

Schedule of Planning Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall be begun not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Prior to commencement of the development a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include but not be limited to the following:
 - Safe access to/from the site;
 - The parking of vehicles of site operatives and visitors;
 - The loading and unloading of plant and materials;
 - The storage of plant and materials used in constructing the development;
 - The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - Wheel washing facilities;
 - Measures to control the emission of dust and dirt during construction;
 - A scheme for recycling/disposing of waste resulting from construction works.
 - Details of hours of site clearance or construction
 - A scheme to control noise and vibration during the construction phase, including details of any piling operations
 - Provision of a dedicated telephone number(s) for members of the public to raise concerns/complaints, and a strategy for pre-warning residents of noisy activities/sensitive working hours.
 - A scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works and prevent pollution.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 5) No development shall commence until a scheme showing the following has been submitted to and approved in writing by the local planning authority:

- Upgrading of the two bus stops in Harwich Road in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority
- A minimum 2 metre wide footway along the eastern side of the Stourview Avenue carriageway between the proposal site access and Harwich Road with dropped kerbs/tactile paving crossing points in Stourview Avenue immediately north of its junction with Harwich Road as shown in principle on planning application drawing number 10831/HW1 and in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority.

The approved scheme shall be completed prior to the occupation of any dwelling.

- 6) A. No development including preliminary ground-works shall commence until a programme of archaeological trial trenching has been secured and undertaken in accordance with a Written Scheme of Investigation, which has been submitted by the applicant, and approved in writing by the Local Planning Authority. Following the completion of this initial phase of archaeological work, a summary report shall be prepared and a mitigation strategy detailing the approach to further archaeological excavation and/or preservation in situ through re-design of the development, shall be submitted to and approved in writing by the Local Planning Authority.

B. No development or preliminary groundwork shall commence on those areas of the development site containing archaeological deposits, until the satisfactory completion of archaeological fieldwork, as detailed in the mitigation strategy as approved.

C. Following completion of the archaeological fieldwork, the applicant shall submit to the Local Planning Authority a post-excavation assessment (within six months of the completion date, unless otherwise agreed in advance with the Local Planning Authority), which will result in the completion of post-excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

- 7) No development shall commence until an Ecological Mitigation Scheme and Management/Enhancement Plan has been submitted to and approved, in writing, by the Local Planning Authority. The Scheme shall include:
- i) the results of an updated habitat survey and protected species surveys undertaken within 12 months prior to the submission of the Scheme to the Council;
 - ii) details of how the recommendations for avoidance, mitigation, compensation and enhancement of biodiversity within the site, as set out within sections 5.3 and 5.4 of the Ecological Assessment (Geosphere Environmental Ltd dated 26th March 2018), or any equivalent recommendations in any later Ecological Assessment, will be delivered and maintained as part of the development.

The development shall thereafter proceed and be maintained in accordance with the approved Ecological Mitigation Scheme and Management/Enhancement Plan.

- 8) No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved.
- 9) No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The surface water drainage scheme shall subsequently be implemented prior to occupation of any dwelling and should include but not be limited to:
 - i) Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753.
 - ii) Limiting discharge rates to 2.1l/s for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change.
 - iii) Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.
 - iv) Demonstrate that all storage features can half empty within 24 hours for the 1:100 plus 40% climate change critical storm event.
 - v) Final modelling and calculations for all areas of the drainage system.
 - vi) The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
 - vii) Detailed engineering drawings of each component of the drainage scheme.
 - viii) A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
 - ix) A written report summarising the final strategy and highlighting any minor changes to the approved strategy.
- 10) Prior to occupation of any dwelling a maintenance plan detailing the maintenance arrangements for the surface water drainage system, including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, shall be submitted to and approved, in writing, by the Local Planning Authority.
Should any part be maintainable by a maintenance company, details of long-term funding arrangements should be provided.

The approved maintenance plan shall be adhered to for the lifetime of the development.

- 11) The applicant or any successor in title must maintain yearly logs of the maintenance of any Sustainable Urban Drainage System which should be carried out in accordance with the approved Maintenance Plan required by Condition 10. These must be available for inspection upon a request by the Local Planning Authority.
- 12) No development shall commence until details have been submitted to and approved, in writing, by the Local Planning Authority that accurately identify the spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS 5837: 2012 Trees in relation to design, demolition and construction." The approved protection measures shall be put in place prior to the commencement of development and kept in place for the duration of the construction period.
- 13) Details of the proposed changes in ground levels including the proposed finished ground floor levels of the proposed dwellings shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The approved details shall be adhered to throughout the development.
- 14) No construction of any dwelling shall commence until precise details of lighting of communal areas and refuse storage/collection points have been submitted to and approved, in writing, by the Local Planning Authority. Such lighting and refuse points shall be those used in the development.
- 15) Prior to the occupation of any dwelling, a scheme for facilitating the provision of superfast broadband to all the dwellings shall be submitted to and approved in writing by the local planning authority. The scheme shall thereafter be implemented as approved.
- 16) All changes in ground levels in relation to the soft landscaping, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.
- 17) On first occupation of any dwelling, a Residential Travel Information Pack shall be provided to the occupants which promotes sustainable transport. The pack shall accord with the Essex County Council Travel Plan Guidance and shall contain the following details:

Guidance and promotional material on the use of sustainable modes of travel

Details on walking, cycling, trains, buses, park & ride, taxis, car sharing, car clubs, electric vehicles, school transport, and personalised journey planning services

Reference to travel websites, resources and support services for each mode of travel, information provided by county, district and/or borough councils

Details of local travel campaigns and networking/support groups

- 18) Alongside the submission of any Reserved Matters application that contains residential accommodation, a scheme of acoustic mitigation relating the noise from the rail line shall be submitted to the Local Planning Authority for approval in writing. The scheme of mitigation shall be completed in accordance with the approved details prior to the occupation of any effected dwelling and shall thereafter be maintained in accordance with the approved details.