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## Appeal Decision

Site visit made on 15 October 2021

**by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 03 November 2021**

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**Appeal Ref: APP/P1560/W/21/3269945**

**Land adjacent Timberlea Mere, Shair Lane, Great Bentley, Colchester CO7 8QT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr P Brown against the decision of Tendring District Council
  - The application Ref 20/01438/OUT, dated 11 October 2020, was refused by notice dated 08 January 2021.
  - The development proposed is 'Erection of 2 No. detached dwellings and alterations to existing vehicular access'.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The latest iteration of the National Planning Policy Framework (the Framework) was published on 20 July 2021, after the application was determined.

### Application for Costs

3. An application for costs was made by Tendring District Council against Mr P Brown. This application is the subject of a separate Decision.

### Main Issues

4. The main issues are:
  - (i) Whether the principle of residential development is acceptable in this location,
  - (ii) Whether the proposal would have an unacceptable adverse impact on the character and appearance of the surrounding area; and,
  - (iii) Whether the proposal would have an adverse impact on highway safety.

### Reasons

#### *Principle of development*

5. The development plan comprises of the saved policies of the Tendring District Local Plan (LP), adopted 2007, and Section 1 of the Local Plan for Tendring (LPT S1), adopted on 26 January 2021, shortly after the planning application subject to this appeal was determined.

6. At the time the planning application was determined, the Council could not demonstrate a five-year supply of deliverable housing land, and as such, the policies for the supply of housing were considered out-of-date and the 'tilted balance'<sup>1</sup> applied. A different housing target applies following the adoption of LPT S1 2021.
7. The Council maintains it can demonstrate an excess of five year's supply and the 'tilted balance' no longer applies<sup>2</sup>. The Appellant challenges this and has drawn my attention to a previous appeal decision relating to a site within Tendring District<sup>3</sup>. The Inspector for that appeal did not conclude that the policies for the supply of housing were out-of-date by reason of housing land supply, but alternatively, that a saved policy which was most relevant to the appeal was out-of-date by way of inconsistency with the Framework. This inconsistency was that it sought to avoid all new homes outside of settlement boundaries, omitting the excepted circumstances within the National Planning Policy Framework (the Framework)<sup>4</sup>. The saved policy in question has been superseded by the policies below.
8. Policies SP1, SP3 and SP4 of the LPT S1 set out a spatial strategy of planned growth which aims, amongst other things, to direct growth to settlements in accordance with a settlement hierarchy and, beyond settlements, to diversify the rural economy and meet local needs, whilst ensuring the conservation and enhancement of the natural environment. These policies are up to date and their broad aims are consistent with the Framework's aims to enhance or maintain the vitality of rural communities and to avoid isolated new homes in the countryside, except in a range of circumstances relating to need and site context.
9. The appeal site is a parcel of garden land to the south-west of a dwelling known as 'Timberlea Mere' and to the north-east of a dwelling known as Mayfield. The site is surrounded on all other sides by open countryside and is situated amongst sporadic development between the settlements of Great Bentley and Weeley. The main parties to the appeal agree that the site is physically separate and remote from settlements and their services, and it is outside of any defined settlement envelope<sup>5</sup>.
10. It is suggested that the proposal might meet the local needs of particular groups of people, such as older or disabled people. The proposal is for general housing, there is no evidence as part of the appeal in respect of such needs, nor the ways in which the proposal might meet them. As such, the proposal would not fall within one of the circumstances where isolated new homes in the countryside would be permissible.
11. Therefore, the proposed new dwelling would be isolated from settlements and their services and is not one of the circumstances where avoidance of isolated new homes in the countryside is to be excepted. For this reason, the proposal conflicts with the policies of the development plan, as well as the Framework.

### *Character and appearance*

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<sup>1</sup> Paragraph 11 (d) National Planning Policy Framework.

<sup>2</sup> Paragraph 11 (c) National Planning Policy Framework.

<sup>3</sup> APP/P1560/W/20/3257853.

<sup>4</sup> Paragraph 80 National Planning Policy Framework.

<sup>5</sup> Braintree DC v SSCLG, Greysread Ltd & Granville Developments Ltd [2018] EWCA Civ 610.

12. As outlined above, the appeal site and its surroundings have a strong rural character of larger dwellings within large plots, sporadically sited on a loose and irregular pattern, surrounded by the open countryside between two settlements. The proposal would introduce two new dwellings resulting in the loss of a spacious gap and would encroach beyond the built envelope of any settlement into the countryside. This would adversely affect the rural setting and character of the surroundings, as well as the intrinsic beauty of the countryside. This would be exacerbated by the siting and layout of the proposal which would create an incongruous tighter grain and regular pattern.
13. Whilst visibility of the site within the wider landscape may be limited to longer views and the site could be enclosed by planting, the proposal would nonetheless erode the characteristic rural pattern which contributes to the intrinsic beauty of the countryside.
14. The Appellant has referred to several examples of other development within the area, however; the type, scale, siting, location, and policy context of these schemes are notably different from that of the proposal.
15. For these reasons, the proposal would have an adverse effect on the character and appearance of the site and its surroundings, contrary to saved policy EN1 of the LP and policies SP1, SP3 and SP7 of the LPT S1. These policies seek, amongst other things, to protect and enhance landscape character and to recognise the intrinsic beauty of the countryside; which is consistent with the aims of the Framework.

#### *Highway safety*

16. The proposal would include the creation of a new access to the road, Shair Lane, in place of an existing field gate. Shair Lane is a 60mph national speed limit road. There are turns in the road to both the north-east and south-west of the site.
17. The appeal is supported by a Transport Statement (TS), which includes a traffic survey and collision data. The TS concludes that the creation of a new access would not create an unacceptable adverse impact on highway safety on the basis of the low level of traffic and low speed of traffic during the survey, as well as the achievable visibility splay relative to the speed limit of the road. I have noted that the traffic survey took place during the first two weeks of January 2021, during which time national travel restrictions applied to prevent the spread of Covid-19. Therefore, there is potential that the traffic survey data was skewed by external events. The TS also reports no collisions in the vicinity since 2010; however, third parties have anecdotally reported two collisions nearby.
18. The TS states that the visibility splay for the new access would be 215 metres to the north-east and 120 metres to the south-west, which would be in excess of that required in the Design Manual for Roads and Bridges. I note that the TS refers to required splays for 60kph (approximately 38kph) roads; which is just over the average speed recorded during the survey. The TS also refers to the fact that Shair Lane is subject to the national speed limit of 60mph (approximately 96kph).
19. For these reasons, I conclude that the proposal fails to demonstrate that the scheme would not have an unacceptable adverse impact on highway safety

contrary to saved policies TR1a and TR7. These policies seek, amongst other things, safe and convenient access and to avoid creation of hazards.

*Other considerations*

20. The proposal would provide the public benefit of two homes towards local housing needs. Whilst housing targets are not limits, the weight to be given to this public benefit is limited by its small contribution and the lack of unmet need, as well as the poor accessibility of the site, which detracts from the social role of sustainable development. For the reasons outlined above, I do not consider any additional public benefit would arise from meeting the needs of particular groups of people and I attribute little weight in favour of the proposal in this respect.

**Conclusions**

21. For the reasons stated above, I find that the appeal proposal is contrary to the relevant policies of the Development Plan and no material considerations indicate that the appeal should be determined other than in accordance with the development plan. The appeal is accordingly dismissed.

*Kim Langford Tejrar*

INSPECTOR