



Appeal Decision

Site visit made on 9 November 2021

by Jonathan Price BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 17th December 2021

Appeal Ref: APP/P1560/W/21/3275198

Land adjacent to 39 Harwich Road, Lawford, Essex CO11 2LS

- 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 and Mrs Chris and Debbie Burton against the decision of Tendring District Council.
 - The application Ref 20/01729/OUT, dated 30 November 2020, was refused by notice dated 5 February 2021.
 - The development proposed is the erection of one dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all detailed matters reserved for later consideration and I have dealt with the appeal on the same basis.
3. The Council's third reason for refusal was over the absence of a proportionate financial contribution towards the emerging Essex Recreational disturbance Avoidance and Mitigation Strategy requirements. The appellant has since provided a Unilateral Undertaking, made under section 106 of the Town and Country Planning Act 1990, to provide this contribution. On this basis, the Council has subsequently confirmed that this third reason for refusal has been satisfactorily addressed.

Main Issues

4. Based upon the Council's two outstanding reasons for refusal, the main issues in the appeal are:
 - Whether this would be an appropriate location for the dwelling proposed, in respect of development plan policy;
 - The effect of the proposal on the character and appearance of the area.

Reasons

Whether appropriate in respect of development plan policy

5. The proposal forms part of a wider undeveloped area that lies between the main A137 and a railway line to the west of 39 Harwich Road. The new dwelling would be adjacent to a plot for a semi-detached pair recently granted planning permission. This further dwelling and the two already approved would all be

served from the existing point of access onto the Harwich Road, currently serving nos. 39 and 40.

6. The appeal site falls within an area of quite widely separated ribbon development along both sides of the Harwich Road. This has its origins in the Foxash land settlement scheme. The dwellings associated with this, originally mostly semi-detached, were provided with smallholdings. Some have since diversified into other uses, although horticulture still features strongly in this location. Some infill housing has been permitted in recent years, either on appeal or by the Council, although this has yet to alter the generally loose arrangement of frontage housing and semi-rural character of the area. The frontage housing along this section of Harwich Road lies between the more consolidated settlements of Ardleigh to the west and Lawford to the east.
7. The Tendring development plan includes saved policies from the 2007 Local Plan (LP) and the District Local Plan 2013-2033 *Section 1* (S1LP). The Council formally adopted the S1LP 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 the more strategic of the LP policies.
8. The emerging Tendring District Local Plan 2013-2033 *Section 2* (S2LP) is reaching a very advanced stage. On the basis of paragraph 48 of the National Planning Policy Framework (the Framework), I attach significant weight to the relevant S2LP policies. Once adopted, these will replace those of the LP policies not already superseded by the strategic ones within the S1LP.
9. The appeal site is outside the settlement development boundary (SDB) as defined in both the adopted LP and emerging S2LP. It is located a significant distance apart from the SDBs defined for Ardleigh and Lawford, Manningtree and Mistley.
10. S1LP Policy SP3 provides the spatial strategy for North Essex, including Tendring, whereby existing settlements will be the principal focus for additional growth within the plan period. It states that development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role and beyond the main settlements the diversification of the rural economy and conservation and enhancement of the natural environment will be supported.
11. Policy SP3 states that the S2LP will identify a hierarchy of settlements where new development will be accommodated, according to the role of the settlement, sustainability, its physical capacity and local needs. Whilst a high-level, strategic policy, SP3 quite clearly directs growth towards existing settlements.
12. Given the appeal site is within a semi-rural and loosely developed area, both without and outside a SDB, Policy SP3 provides no support for further residential development in this location. Although for just a single dwelling, this could be repeated in the numerous undeveloped gaps along this part of Harwich Road. Therefore, this proposal would still serve to harmfully undermine the spatial strategy of Policy SP3, which is to focus most housing within the well-connected network of sustainable settlements in North Essex, where the existing infrastructure and services are best able to support this. The proposal gains no support in relation to either the diversification of the rural economy or conservation and enhancement of the natural environment.

13. I acknowledge that the Council has in very recent years approved a number of dwellings along this stretch of the Harwich Road, as detailed in evidence. These include the two dwellings already allowed adjacent to this appeal site. Some of these Council approvals followed the 5 July 2019 appeal decision¹ to allow a dwelling at nearby No 43. The Inspector in that case had found LP Policy QL1 several years beyond its defined period of implementation and out-of-date, giving the proposal's conflict with it very little weight. However, since this appeal decision, the S1LP has been adopted. In a recent appeal² in Tendring for up to 130 dwellings in Kirby Cross, submitted in evidence over housing land supply, the Inspector had found LP Policy QL1, setting out the spatial strategy and settlement hierarchy, to have been superseded by S1LP Policy SP3 and to no longer carry any weight.
14. In place of LP Policy QL1, I turn instead to the S2LP counterpart policies SPL1 and SPL2 which, whilst still emerging, have reached an advanced main modifications stage. These set out the settlements in the Tendring hierarchy and focus development to within the SDBs defined for these.
15. Outside of SDBs, Policy SPL2, as modified, is to consider any proposals in relation to the pattern and scales of growth promoted through the Settlement Hierarchy in Policy SPL1 and any other relevant plan policies. The appeal site is not within any of the settlements defined in the S2LP hierarchy and falls well beyond any of the SDBs defined for these. In this location, a further dwelling would simply serve to further consolidate a rather sporadic arrangement of housing. This would neither relate well to the pattern and scales of growth promoted in Policy SPL1 nor gain support from any other policy relevant to the need for a further dwelling here.
16. Despite the relatively good accessibility by bus to essential facilities within the nearest larger settlements, this location has not been identified as a settlement within the hierarchy established by the adopted S1LP and advanced S2LP. It remains a loosely settled, semi-rural area that is between and set apart from what are clearly identifiable main settlements.
17. The proposal would conflict with adopted and emerging development plan policies which establish a spatial strategy for the location of development growth. As such, this would not be an appropriate location for this scheme. Although just a single dwelling, I nonetheless find significant harm to arise from the conflict with adopted S1LP Policy SP3 and emerging S2LP policies SPL1 and SPL2.

Character and appearance of the area

18. The additional dwelling proposed would further consolidate the loosely arranged ribbon of housing along this section of the Harwich Road. This would serve to further erode the semi-rural character of the area, preserved by the gaps within the frontage development. This would result in further conflict with S1LP Policy SP3. Part of this spatial strategy is for future growth to be planned to ensure existing settlements maintain their distinctive character and role, to avoid coalescence between them and to conserve their setting. Beyond the

¹ Appeal Ref: APP/P1560/W/18/3218683 - 43 Harwich Road, Lawford CO11 2LS. New detached dormer type bungalow allowed 5 July 2019.

² Appeal Ref: APP/P1560/W/20/3259859 - land east of Halstead Road, Kirby Cross, Essex CO13 0LP. Dismissed 19 July 2021

main settlements, this policy aims for the conservation and enhancement of the natural environment.

19. The proposal would also conflict with the place shaping principles in S1LP Policy SP7, which seek that all new development responds positively to local character and context, so as to preserve and enhance the quality of existing places and their environs. The erosion of the semi-rural character of the area would further bring the proposal into conflict with LP Policy EN1 and emerging S2LP policies SPL3 and PPL3. The dwelling proposed would occupy a prominent and open green gap within the Harwich Road. However, as it would be next to the two dwellings already permitted, the scheme would result in only moderate further harm in respect of its effects on the character and appearance of the area.

Planning balance and conclusion

20. The sustainability merits of the location, in terms of the regular bus service and the accessibility this provides to the facilities in the quite near larger settlements, is a relatively low degree of harm, rather than a factor providing any material benefits. There are clearly few essential services in this particular area and, quite evidently, sites within identified SDBs would generally be preferable in terms of proximity to these.
21. The proposal would provide only very small social benefits towards general housing supply. The local economic benefits through the construction and future servicing of an additional dwelling, and the expenditure of a further household, would also be very small. Were there the means to secure this proposal as a self-build scheme, this would provide a further quite small benefit in contributing to such opportunities.
22. As the Inspector found in the aforementioned Kirby Cross appeal, through the S1LP examination the Council is now able to demonstrate a comfortable five-year housing land supply. Therefore, the development plan is not deemed to be out of date under footnote 8 of Framework paragraph 11 d). The S1LP is a recently adopted plan, and its policies SP3 and SP7 are considered to be those most important for determining this appeal and are afforded full weight. Taking into account the extant LP policies, I find the proposal to conflict with the adopted development plan when considered as a whole.
23. The S2LP has also been examined and is at an advanced stage in its progress towards adoption. Like in the Kirby Cross decision, I attach significant weight to emerging policies SPL1, SPL2, SPL3 and PPL3 and the conflict with these.
24. Because the S2LP has yet to be adopted, development plan policies rely to an extent on the SDBs defined in the 2007 LP, which are not up to date in meeting the current S1LP housing requirements. Should this still mean that the most important policies for determining the appeal remain out-of-date, this would engage the Framework's presumption in favour of sustainable development and, in this case, the application of the so-called 'tilted balance' in paragraph 11 d) ii. However, the adverse impacts that arise from the clear conflict with the newly adopted spatial strategy and place making objectives, would significantly and demonstrably outweigh the small benefits identified, when assessed against the Framework.

25. Therefore, the proposal would not benefit from the Framework's presumption in favour of sustainable development. This would not be a material consideration to indicate the appeal be determined otherwise than in accordance with the development plan, with which I find conflict as a whole. For the reasons given, I conclude that the appeal should be dismissed.

Jonathan Price

Inspector