
Appeal Decision

Site visit made on 3 November 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2021

Appeal Ref: APP/P1560/W/20/3252825

Land rear of 1 and 2 The Paddocks, Windmill Road, Bradfield CO11 2QR

- 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 ARC Limited against the decision of Tendring District Council.
 - The application Ref 19/00738/FUL, dated 13 May 2019, was refused by notice dated 22 November 2019.
 - The development proposed is the erection of five detached bungalows.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of five detached bungalows at Land rear of 1 and 2 The Paddocks, Windmill Road, Bradfield CO11 2QR in accordance with the terms of the application, Ref 19/00738/FUL, dated 13 May 2019, subject to the conditions set out in the Schedule to this decision.

Application for costs

2. An application for costs was made by ARC Limited against Tendring District Council. This application is the subject of a separate Decision.

Procedural Matters

3. A signed legal agreement by way of unilateral undertaking (UU) dated 6 August 2019 accompanied the application and has been submitted as part of the appeal. It intends to secure the provision of financial contributions to address the effects of the development on the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar and for the improvement of public open space. I have taken the UU into account in reaching my decision.
4. 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. No comments were received. The references to 'the Framework', including any paragraph numbers, made within the decision are to this revised version.
5. 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). During the course of this appeal, Section 1 of the eLP, which contains several strategic policies, has been adopted (the

LPS1)¹ and now forms part of the development plan. However, there is nothing of substance before me to indicate this change should have a material bearing on the outcome 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.

Main Issues

7. The main issues are the effect of the proposed development on (i) the living conditions of the occupiers of nearby properties with regard to noise and disturbance; and (ii) affordable housing.

Reasons

8. The appeal site is a parcel of land which is bordered by residential development. Access to the site passes between residential properties that front Windmill Road; No 2 The Paddocks (No 2) and West Manston. The evidence suggests that the site is unused amenity land. At the time of my visit, it had the appearance of an overgrown paddock, there was an absence of built form, but pockets of detritus and a large mound of vegetation covered soil were present.

Living conditions

9. The proposal would result in a cul-de-sac form of development, comprised of five single storey properties arranged in a semi-circle, facing a central turning area. It would be a form of backland development, such that it would be behind other dwellings and would not front the highway. However, it would not result in the subdivision of existing gardens or create a "tandem" form of development that LP Policy HG13 seeks to avoid.
10. The proposed dwellings would have adequate separation between both themselves and existing properties. The existing access would be upgraded and used. Whilst it would be approximately 5.3 metres wide and some 55 metres in length, this would not be dissimilar to that serving the development south of the site at Margaret's Place and would comply with local standards² for private accesses to which I have been directed.
11. The number of vehicular movements associated with the proposal would be modest, commensurate with the scale of development proposed. This would be the case even when taking into consideration other associated traffic such as delivery vehicles. Although the access would pass between No 2 and West Manston, these dwellings are both stepped away from their boundaries with the proposed access and would be further separated from it by existing boundary treatments. Taking all these matters into consideration, I find that there would be adequate separation distance between the existing dwellings and the proposed access to ensure that the occupiers would not suffer unacceptable levels of noise and disturbance from its use. The number of vehicular movements generated would also not result in unacceptable noise and disturbance being experienced by the occupiers of No 2 and West Manston when using their private rear garden spaces which the site access would pass.

¹ Tendring District Local Plan 2013-2033 and Beyond: North Essex Authorities' Shared Strategic Section 1 Plan - Adopted 26 January 2021

² The Essex Design Guide

12. An existing single storey dwelling lies directly opposite the access to the site. Although this means that glare from car headlights would point towards that property on exiting the site, I consider that vehicles are unlikely to sit at the junction for other than brief moments. This type of arrangement is not out of the ordinary and given the modest number of dwellings that are proposed to be served by this access, combined with the separation distance between the access and the opposing property's frontage windows, I am satisfied that the proposal would not result in harmful disturbance to the living conditions of the occupiers of that property by virtue of glare from headlights.
13. Consequently, I conclude that the proposal would not cause unacceptable harm to the living conditions of occupiers of neighbouring properties with regard to noise and disturbance. Thus, there would be no conflict, in this respect, with LP Policy HG13 or eLP Policy LP8 which require, amongst other matters, that developments provide means of access that are not likely to cause undue disturbance to neighbouring residents. For the same reasons the proposal would not conflict with Paragraph 130 of the Framework.
14. I do not consider LP Policies QL9 and EN1 or eLP Policy PPL3 to be relevant to this main issue as they are concerned with the protection of local character and the rural landscape.

Affordable housing

15. The evidence indicates that the site area was amended during the application, such that part of the south western corner was omitted. This triangular area of land has been physically severed from the appeal site by the erection of a closed boarded timber fence. Some young trees are present behind the fence. This appears to align with evidence that a third party has purchased this piece of land to use as a small meadow and wildlife area.
16. There is no substantive evidence before me that demonstrates that this reduction in the original site size was undertaken in order to intentionally avoid a contribution towards the provision of affordable housing. Although the application form stated that the site was 0.55 hectares there is no evidence to suggest that the provision of affordable housing had initially been required by the Council. The Council allowed the appellant to amend the site's boundary, prior to determination of the application, which reduced its size to approximately 0.49 hectares. Neither of the Council's two Committee reports made reference to any requirement for the provision of affordable housing.
17. I have not been provided with details of any LP policy requirement for the provision of affordable housing nor any other indication of the level of provision that would be required were the site area to be over 0.5 hectares.
18. Taking these matters into account, I conclude that it has not been demonstrated that the reduction in the size of the site would result in the avoidance of an otherwise necessary affordable housing contribution. Consequently, it has also not been demonstrated that the proposal would fail to optimise the full potential of the site. Thus, I find no conflict with paragraphs 64 and 130 of the Framework in this regard.

Other Matters

19. The Highway Authority is satisfied that the proposal would not prejudice highway safety, subject to the imposition of a number of conditions, including to ensure the provision of adequate visibility splays, appropriate surfacing and a minimum width, if the appeal were to be allowed. I have no substantive evidence before me to doubt that these requirements could be met or to justify a departure from this expert view.
20. I note the concern raised in respect of a restrictive covenant. However, covenants are civil matters outside of the control of the planning system. As such, this is not a matter that I have taken into account in the determination of this appeal.
21. I have had regard to the concerns raised by interested parties including in relation to the impact of additional pressure on local infrastructure, refuse collection and the impact of construction work on the living conditions of the occupiers of neighbouring properties. However, there is no detailed evidence before me to suggest that any of these concerns would result in material harm. I note they are not matters that the Council have raised in relation to this appeal and they do not, therefore, override or affect my conclusions on the main issues.
22. Nothing of substance is before me to demonstrate that the proposal would result in harmful levels of air pollution.
23. My attention has been drawn to two dismissed appeals at land north west of the site. Although I note some similarities between those cases and the appeal proposal, it is clear that the case before me is not directly comparable to those dismissed cases. Those schemes involved the subdivision of existing gardens which would have resulted in unacceptable harm to the character and appearance of the area. No such harm has been identified in the appeal scheme before me. Further, the proposed access was narrower in the dismissed appeals than that proposed in this case which is also an existing access. Consequently, these appeal decisions have not been determinative.

Location

24. Although the site lies outside of the defined settlement boundary, it is adjacent to it on two of its sides. Its development would not result in further encroachment into the open countryside, it being contained within limits of existing residential development. The Council's reasons for refusal are not based on conflict with LP Policy QL1 which sets out the Council's spatial strategy and aims to create sustainable communities. However, the site is within the countryside for the purposes of planning policy and is not specifically supported by other policies of the LP. The proposal is therefore contrary to Policy QL1 and would conflict with LP Policy HG13 where it requires "backland" development sites to lie within a defined settlement boundary.
25. Nevertheless, there is no substantive evidence before me that identifies any specific harm related to the location of the site being outside the settlement boundary. The absence of identified harm to landscape character and access to services and facilities leads me to conclude that the proposal would not undermine the overall intention of LP Policy QL1. I return to this in the planning balance.

Planning obligation (UU)

26. As the competent authority, when considering the effect that a proposal may have on European sites³, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage.
27. The Habitats Regulations⁴ require that planning permission may only be granted after having ascertained that the proposed development will not affect the integrity of the site or sites within the national site network. The appeal site falls within the zone of influence of the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar as established in the Essex Recreational Disturbance Avoidance and Mitigation Strategy (RAMS).
28. These sites are designated for their environmental importance, including supporting overwintering hen harrier, migratory overwintering black tailed godwit, dunlin, grey plover, redshank and at least 20,000 waterfowl. The overarching conservation objectives for these sites is to avoid a deterioration of habitats and minimise disturbance, thereby ensuring the integrity of the sites is maintained.
29. 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 identified European sites. It cannot be ruled out that the proposal, when considered alone or in combination with other schemes, would have likely significant effects on the aforementioned qualifying features of the sites due to the increased recreational use. These effects include disturbance of birds, causing a reduction in time spent deeding due to repeated flushing and increased vigilance, increased energetic costs and avoidance of areas of otherwise suitable habitat. It is therefore necessary that I undertake an AA. In doing so I may consider any conditions or other restrictions which could secure mitigation of this harm and which could therefore allow development to proceed in the knowledge that the conservation objectives of the identified sites would be secured.
30. The appellant has confirmed a willingness to provide a financial contribution in line with the methodology in the RAMS, which forms an agreed strategic solution to mitigate the effects of development proposals by the provision of a mix of measures that would be secured by financial contributions from developments, based on a standard tariff. These include a range of habitat-based measures including education, communication and monitoring and have been endorsed by Natural England (NE) as the Statutory Nature Conservation Body. I have had regard to the RAMS and have carefully considered the Council's initial Habitat Regulation Assessment for the proposal, which was undertaken using the NE standard approach. It concludes that provided the agreed mitigation is secured the scheme would not have an adverse effect on the integrity of the aforementioned European sites from recreational disturbance. This adopted approach indicates that NE does not need to be specifically consulted in such cases.
31. The contribution would be secured through the submitted UU and would be directly related to the impacts of the proposal on the European sites. It is

³ 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.

⁴ Conservation of Habitats and Species Regulations 2017.

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 RAMS methodology. The contribution would be pooled with others and used for access management and monitoring at the European sites in line with the RAMS.

32. Moreover, based on the evidence provided, there is no reason to doubt that the Council, as a responsible public body, will spend the money in the way it is intended. I am satisfied that the level of further recreational disturbance resulting from the proposed dwelling would be effectively offset by the contribution made to the strategic mitigation measures.
33. Accordingly, the contribution is an obligation that can be taken into account and therefore 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.
34. The planning obligation also includes clauses relating to the provision of a public open space contribution. This is necessary in order to adhere to the development plan and the contribution would be fairly and reasonably related in scale and kind to the development because it would follow a set methodology. I can therefore take the obligation into account. As a result, there would be no harm in relation to the provision of open space.

Planning Balance

35. The proposed development would be at odds with LP Policies QL1 and HG13 because it would be located outside of the settlement boundary. However, for reasons already stated, the proposal overall would not be harmful in terms of landscape character or access to services and facilities. It would therefore accord with the underlying aims of the LP as well as the aims of the Framework. As a result, the conflict with the development plan carries only limited weight against the appeal scheme in this instance.
36. Even if the Council can now demonstrate a deliverable five year housing land supply, following its adoption of the LPS1, and the so called 'tilted balance' does not apply, this is not a cap on housing development. The proposal would make a modest contribution of five dwellings, boosting supply and choice in an accessible location. In accordance with the Framework, I attribute great weight to these matters. Together, this leads me to conclude that the conflict with the development plan is outweighed by other material considerations in this case.

Conditions

37. I have considered the advice in the Planning Practice Guidance and the conditions suggested by the Council. In addition to the standard time limit for commencement, I have imposed a condition specifying the relevant drawings as this provides certainty. In the interests of ensuring a satisfactory standard of external appearance I have included a condition requiring the approval of materials to be used on the exterior surfaces of the development.
38. For reasons of highway safety, it is necessary to ensure the appropriate construction and finish of the access, the provision and maintenance of the visibility splays and turning facility. I have also included conditions requiring the approval of details of hard and soft landscaping and the provision and

maintenance of the agreed landscaping in the interests of the character and appearance of the area.

39. The proposal would require the relocation of a telegraph pole from the access to the site. This would be a matter between the relevant statutory undertaker and the developer and would in any case be required to be carried out in order to comply with conditions imposed in respect of highway safety.
40. I do not consider it necessary to include a condition which specifies the minimum internal size of the garages as the Council has advised that the approved plans comfortably adhere to these requirements.
41. In addition to the above, a number of informative notes have been suggested. I have not imposed them as they do not carry any legal weight. Nonetheless, through the Council's evidence the appellant is aware.

Conclusion

42. For the above reasons the appeal is allowed.

S Tudhope
Inspector

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: untitled red lined Site Location Plan; Block Plan as Proposed - Drawing Number CCWR-01 Revision C; Planning Drawing Plot 1 & 5 - Drawing Number CCWR-02 Revision B; Planning Drawing Plot 2 & 4 - Drawing Number CCWR-03 Revision A; and Planning Drawing Plot 3 - Drawing Number CCWR-04.
- 3) No above ground works shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) Prior to the commencement of any above ground works, a scheme of hard and soft landscaping works for the site shall be submitted to and approved, in writing, by the Local Planning Authority. The scheme shall include any proposed changes in ground levels and also accurately identify 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.
- 5) All changes in ground levels, hard landscaping, planting, seeding or turfing shown as approved under condition 4 above, 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 set out in the approved scheme. 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.

- 6) Prior to occupation of the development a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of the vehicular access. Such visibility splays shall be retained free of obstruction above 900mm at all times. These visibility splays must not form part of the vehicular surface of the access.
- 7) Prior to occupation of the development a vehicular turning facility, as shown on the approved plan Block Plan as Proposed - Drawing Number CCWR-01 Revision C shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.
- 8) Prior to the occupation of any of the approved dwellings, the approved private drive shall be constructed to a width of 5.3 metres for at least the first 6 metres from the back of the footway and provided with an appropriate dropped kerb crossing of the footway.
- 9) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 10) All new hardstanding and parking areas shall be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the site.

End of Schedule