
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: 29 December 2021

Appeal Ref: APP/P1560/W/21/3268225

Land off Trinity Road, Mistley, Manningtree, Essex CO11 2AU

- 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 R Brooks and family against the decision of Tendring District Council.
 - The application Ref 11/00532/OUT, dated 20 March 2018, was refused by notice dated 7 August 2020.
 - The development proposed is erection of 65 dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Tendring District Council against Mr R Brooks and family. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was made in outline with all detailed matters reserved for later consideration, and I have dealt with the appeal accordingly. The scheme was reduced to 65 from an originally proposed 75 dwellings. There is a layout submitted, including the means of access from Trinity Road, which I have considered as indicative of how the development might proceed.
4. The appellants have made Unilateral Undertakings under section 106 of the Town and Country Planning Act 1990. These commit to 30% affordable housing, provision and transfer of public open space, highway improvements (including the upgrading of the nearest bus stops and provision of a foot/cycleway through the site) and a range of financial contributions. The latter are made towards on-site and off-site mitigation measures against the proposal's impact on the Stour and Orwell Estuaries Ramsar and Special Protection Area, on-site provision of an equipped natural play space, local healthcare and primary education. The Council's reasons for refusal 4 – 9 are thus addressed and now fall away.
5. The development plan for Tendring includes the saved policies of the 2007 Local Plan (LP). Paragraph 219 of the National Planning Policy Framework (the Framework) allows due weight to be given to policies adopted prior to its publication according to their degree of consistency with its own.

6. Section 1 of the 2013-2033 Local Plan (S1LP) was adopted on 26 January 2021 and now also forms part of the development plan for Tendring, superseding some of the more strategic policies in the LP.
7. Paragraph 74 of the Framework requires that Councils identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their requirement set out in adopted strategic policies. Based upon that established through the adopted S1LP, Tendring has a housing requirement of 550 dwellings per annum. The Council is able to demonstrate in excess of the five-year housing land supply required to meet this, which is not contested by the appellants.
8. Paragraph 48 of the Framework allows weight to be given to policies in emerging plans, according to their stage of preparation, the extent to which there are unresolved objections to relevant policies, and the degree of consistency with the policies of the Framework. In this regard, Proposed Modifications to the emerging Section 2 of the 2013-33 Local Plan (S2LP), which contains more specific policies and proposals for Tendring, have been examined and hearing sessions have now closed.
9. The main modifications recommended to make the S2LP compliant legally as well as sound were considered by the Council on 29 June 2021. It then held a six-week public consultation on the Main Modifications and associated documents which began on 16 July 2021. The consultation closed at 5pm on 31 August 2021 and adoption is expected at some point after this. However, at the date of this decision, the S2LP has yet to be formally adopted. Therefore, those LP policies not already replaced by the S1LP remain extant. Nevertheless, the S2LP has reached a very advanced stage of preparation and, accordingly, significant weight can be given to its policies.

Main Issues

10. The main issues in the appeal are:

- Whether this would be an appropriate site for the housing proposed, having regard to current and emerging development plan policy;
- The effect of the proposal on the character and appearance of the area, with particular regard to its location within both a designated Green Gap and the Manningtree and Mistley Conservation Area (MMCA), and to the impact upon trees within the site.

Site and surroundings

11. The proposal relates to a large part of an area of undeveloped land on the south side of the Manningtree, Lawford and Mistley conurbation. The land lies to the north of Long Road and is bound by development to the other three sides. Housing has been permitted on the currently open fields to the south, on the other side of Long Road.
12. The appeal site comprises approximately 7.67 hectares in total. The housing is proposed within a northern section of around 2.4 hectares, which has an eastern frontage onto Trinity Road which would likely provide the point of access. This area was once used to rear cattle but, since that ceased, has reverted to scrub. Whilst level towards the south east, the remainder of the

site is uneven and slopes down to a stream that runs along the north-western boundary.

13. To the south of the housing is an area of allotments, which will remain as such and be transferred to an allotment association. The remainder of the southern section of the appeal site, which is mainly farmland and in part runs beside Long Road, is not proposed for residential development and would provide public open space.

Reasons

Current and emerging development plan policy

14. 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. Whilst a high-level, strategic policy, SP3 quite clearly directs growth towards existing settlements in amounts relative to their scale and service capacity.
15. The supporting text preceding Policy SP3 states that, in Tendring District, the spatial hierarchy promotes growth in settlements that are the most accessible to the strategic road network, public transport and offer a range of services. This refers to a number of smaller urban settlements, including Manningtree, Lawford and Mistley, accommodating between 1,500 and 2,500 new homes.
16. With regard to the adopted LP, the spatial strategy provided in Policy QL1 has been replaced by S1LP Policy SP3. This relies on the emerging S2LP to identify a hierarchy of Tendring settlements. New development will be accommodated according to the role of the settlement, sustainability, its physical capacity and local needs. Emerging S2LP policies SPL1 and SPL2 provide for this and replace the parts of LP Policy QL1 which establish the Tendring settlement hierarchy and address development outside of settlement development boundaries.
17. S2LP Policy SPL1 defines Manningtree, Lawford and Mistley as one of Tendring's smaller urban settlements, where the supporting text indicates the possibility to deliver sustainable housing growth on a large scale. This is reflected in the S2LP settlement development boundary for this conurbation, which has expanded beyond the 2007 LP version to include substantial greenfield parcels and assist in providing the S1LP housing requirement of 550 dwellings per annum.
18. Nevertheless, whilst adjacent to these settlement development boundaries, the appeal site falls outside of both those of the adopted LP and the emerging S2LP. Therefore, although S1LP Policy SP3 provides for Manningtree, Lawford and Mistley to be a principal focus for additional growth, this does not determine the amount and location for this. The policy is clear that this will be defined in the S2LP.
19. As provided for in emerging S2LP Policy SPL2, in Manningtree, Lawford and Mistley, the settlement development boundary is to encourage sustainable patterns of growth and carefully control urban sprawl. Within it there will be a general presumption in favour of new development subject to detailed policy

considerations. Outside, considerations will relate to the Settlement Hierarchy and any other relevant development plan policies.

20. The settlement development boundary for Manningtree, Lawford and Mistley provides for housing growth of an amount commensurate with its level in the hierarchy. Therefore, this would not be an appropriate site for the housing proposed, because under current and emerging development plan policy it would extend beyond the area planned to provide for this growth. The proposal therefore gives rise to harm through failing to comply with a statutory plan-led approach to the location of future housing. This plan-led approach is endorsed through the Framework as the means to bring sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development. In view of this, and the quite large amount of housing involved, the proposal's conflict with policy gives rise to a significant degree of harm.

The character and appearance of the area

21. The appeal site is within a Local Green Gap identified in the LP to maintain separation between the main urban areas of the District, which in this case relates to that between suburban parts of Manningtree, Lawford and Mistley. The proposal therefore conflicts with LP Policy EN2, which states that Local Green Gaps will be kept open, and essentially free of development, to prevent the coalescence of settlements, and to protect their rural settings. This then gains support from S1LP Policy SP3, whereby future growth will be planned to ensure existing settlements maintain their distinctive character and role, to avoid coalescence between them and to conserve their setting.
22. The same designation is carried forward in the P2LP and re-termed a Strategic Green Gap which, under emerging Policy PPL6, will be protected in order to retain the separate identity and prevent coalescence of settlements. In this particular conurbation, this proposal would compromise the open setting that currently exists between the Colchester and Trinity Road neighbourhoods, leading to a degree of coalescence that conflicts with Policy PPL6 and undermines its objectives.
23. In respect of the harm arising from the conflict with S1LP Policy SP3, S2LP Policy PPL6 and LP Policy EN2, I have considered the Landscape and Visual Impact Assessment (LVIA) provided by the appellants. This demonstrates that, from the publicly accessible viewpoints assessed, there are limited views into the site and in many instances natural vegetation, as well as site topography, would completely obscure the housing proposed. Otherwise, the provision of open space and landscaping, including boundary planting, would in the appellants' view, mitigate any residual adverse visual impacts.
24. It is accepted by the appellants that there are other local viewpoints referred to by the Council from which the housing would be visible, but that generally such impacts would not be far reaching. The case is made that any development causes visual impact but that within an area otherwise surrounded by existing or future housing, with opportunities for the proposed public open space allowing for longer distance views of the Suffolk Coast and Heaths Area of Outstanding Natural Beauty, the harm would on balance be quite limited.
25. I do not entirely disagree with the findings of the LVIA and the appellants' case over limited visual impact. However, the value of the Green Gap is not entirely

related to visual prominence. This quite scenic area of undulating greenspace is of some local landscape value, particularly within the aspects from surrounding homes. The Green Gap designation is long-standing, to be carried through in the emerging plan, and preserves a valuable degree of openness, greenery and spatial relief within an otherwise extensive and expanding built-up part of Manningtree, Lawford and Mistley. The proposal would substantially erode this openness causing significant harm.

26. The appeal site falls within the MMCA as part of one of the extensions to it, to include the allotments on Trinity Road and the 'green wedge' between them extending south to Long Road, identified in the Conservation Area Management Plan¹ of July 2010. The significance of this part of the MMCA relates to its historic edge of settlement character which the open valley side, and the earlier dwellings that fringe this, help to preserve and which a further spread of suburban housing would then fail to.
27. Saved LP Policy EN17 and emerging S2LP Policy PPL8 are relevant to developments within the MMCA, although neither are referenced in the Council's reason for refusal. The further spread of housing development would, as a consequence of this proposal, detract from the traditionally spacious character of this historic edge of settlement location, creating a dense, unsympathetic suburb in its place. This would fail to preserve or enhance the character or appearance of the MMCA and be in conflict with LP Policy EN17, S2LP Policy PPL8 and the Framework.
28. Paragraph 199 of the Framework requires that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. In this case, the harm to the significance of the MMCA would be less than substantial, which Framework paragraph 202 requires be weighed against the public benefits of the proposal.
29. With regard to the impact upon trees within the site, I am satisfied any harm could be addressed through approved landscaping as a reserved matter. However, to conclude on this issue, this proposal would have a harmful effect on the character and appearance of the area, including through the erosion of the designated Green Gap and by failing to preserve or enhance the character or appearance of the MMCA.
30. The proposal thus gives rise to conflict with S1LP Policy SP7, the place shaping principles of which seek that all new developments respond positively to local character and context to preserve and enhance the quality of existing places and their environs, as well as assets of historical or natural value. In addition, this scheme would conflict with LP Policy EN1 and S2LP policies SPL3 and PPL3, insofar as these seek to ensure that development is appropriate in its locality and does not harm the appearance of the landscape.

Other Matters

31. The proposal provides a number of benefits. The scheme incorporates a large area of public open space. This amounts to 69% of the proposed site area which is currently in private ownership with virtually no public access rights.

¹ Manningtree and Mistley Conservation Area Management Plan July 2010

This will provide a natural children's play space, currently lacking in the area, and recreation space for surrounding and future residents. The existing allotments are secured. The open space will enable the creation of new habitats designed to increase and support biodiversity, including the provision of additional trees and areas of wildflower meadow. Left as under used farmland the area could deteriorate and be a focus to anti-social activity. Therefore, this all provides public benefits to which quite significant weight is given.

32. The proposal would result in the delivery of 65 dwellings that would contribute towards the District housing requirement. However, the Council can comfortably demonstrate the required five-year housing land supply. Whilst not a ceiling amount, this factor tempers the degree of weight given to this benefit. There is a high demand for affordable housing in Tendring and LP Policy HG4 currently requires up to 40% affordable housing to meet the needs of people that are unable to access property on the open market. Emerging S2LP Policy LP5 would seek at least 30% affordable housing on this site, which this scheme would provide. Overall, the 65 further dwellings, with only the emerging policy compliant 30% as affordable, provides social benefits to which I attach moderate weight.
33. The proposal would provide local economic benefits, including through the construction work and additional future household expenditure supporting businesses in the area, to which moderate weight is given. The appellants refer to this being a highly sustainable location, in walking distance of the town centre and with easy access to Manningtree train station, with its direct connections between London and Norwich. This would reduce a reliance on private car travel to meet residents' day-to-day needs. However, this is an absence of harm, rather than a benefit.

Overall planning balance and conclusion

34. Framework paragraph 11 d) applies a presumption in favour of sustainable development, which in this case means assessing whether the development plan policies most important for determining the appeal are out-of-date. These are not deemed out-of-date through the housing land supply route provided by footnote 8. However, it is necessary to assess whether these most important policies are otherwise out-of-date and whether this then applies to the development plan as a whole².
35. The S2LP has not been adopted and so its emerging policies have yet to become in-date. Of the adopted policies, SP3 and SP7 of the S1LP and EN1, EN2 and EN17 of the LP are those most important for determining the appeal. As part of a recently adopted plan, that had been found sound, S1LP policies SP3 and SP7 are considered up-to-date. The spatial strategy of Policy SP3 and place shaping principles of Policy SP7 reflect the Framework's sustainable development objectives and the proposal's conflict with both is given full weight.
36. LP policies EN1 and EN2, insofar as these provide protection to a Green Gap landscape so as to prevents settlement coalescence and protect its existing rural setting, remain broadly consistent with the Framework. This is in respect of the objectives for achieving well-designed places through the conservation of

² Wavendon Properties Limited v SSHCLG and Milton Keynes Council [2019] EWHC 1524 (Admin) [55-58]

landscapes and green infrastructure. The conflict with these policies is given significant weight.

37. LP Policy EN17 is not consistent with the Framework over conserving and enhancing the historic environment. It requires that the proposal must preserve or enhance the character or appearance of the MMCA or be refused were there to be harm in this regard. This does not reflect the Framework which, when considering the proposal's impact on the significance of a heritage asset, seeks that great weight should be given to its conservation. Where there would be less than substantial harm to the significance of a designated heritage asset, as in this case, the Framework requires this then be weighed against the public benefits of the proposal.
38. The 65 dwellings, including the 30% affordable, along with the large amount of public open space to be provided, amount to quite significant public benefits. These benefits would outweigh the less than substantial harm to the significance of the MMCA, which I judge to be at the lower end of such a spectrum. However, reflecting the legal duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, considerable importance and weight must still be given to the desirability of preserving or enhancing the character or appearance of the MMCA in carrying out the balancing exercise in this appeal planning decision.
39. Although I attach limited weight to the conflict with LP Policy EN17, looking at this basket of most important policies as a whole, I consider them to be up-to-date for the purpose of this appeal decision. Therefore, the presumption in favour of sustainable development, as set out in Framework paragraph 11, would not apply in this case. In the following paragraph 12, the Framework advises that where a planning application conflicts with an up-to-date Local Plan permission should not usually be granted.
40. It is appreciated that the appeal site is no longer practical or financially viable to farm, and this proposal provides a suitable alternative long-term use. However, under Section 38(6) of the Planning and Compulsory Purchase Act 2004, any such alternative use needs to accord with the development plan, unless material considerations indicate otherwise.
41. The proposal would, for the reasons set out above, be contrary to the adopted development plan as a whole. In addition, significant weight is given to the conflict with the emerging S2LP policies, given their advanced stage towards adoption. In an even balance, the benefits of the proposal would not outweigh the harm found from the conflict with current and emerging development plan policy. Material considerations would therefore not indicate my decision be made otherwise than in accordance with the development plan. Therefore, the appeal is dismissed.

Jonathan Price

Inspector