



Appeal Decision

Site visit made on 21 December 2021

by Jonathan Price BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 11th January 2022

Appeal Ref: APP/P1560/W/21/3276761

The Fat Goose, Heath Road, Tendring, Essex CO16 0BX

- 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 Fat Goose Property Developments Limited against the decision of Tendring District Council.
 - The application Ref 20/01027/FUL, dated 28 July 2020, was refused by notice dated 30 April 2021.
 - The development proposed is the erection of two detached four-bed properties with associated parking and amenity area.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two detached four-bed properties with associated parking and amenity area at The Fat Goose, Tendring, Essex CO16 0BX in accordance with the terms of the application, Ref 20/01027/FUL, dated 31 July 2020, subject to the conditions set out in the annex to this decision.

Preliminary Matters

2. The appellant has made an obligation pursuant to section 106 of the Town and Country Planning Act 1990, which has been executed as a deed. This secures two financial contributions required by the Council. The first is made under the Recreational Disturbance, Avoidance and Mitigation Contribution Strategy. This is to mitigate the harm caused by the development to the Special Area of Conservation and Ramsar sites at Stour and Orwell Estuaries. This area is designated to protect wading birds and wildfowl. The second contribution is towards Public Open Space, to help provide new equipment or upgrading at the play area in Heath Road, Tendring.
3. The obligation is necessary to make the development acceptable in planning terms, directly related to it and fairly and reasonably related in scale and kind. Therefore, it meets the tests of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and as set out in paragraph 57 of the National Planning Policy Framework (the Framework).

Main Issues

4. Whether this proposal is acceptable with regard to
 - the spatial strategy for new housing provided in adopted and emerging development plan policy,
 - the character and appearance of the area, and

- the current consent on this site for a micropub.

Reasons

Spatial strategy in adopted and emerging development plan policy

5. The Tendring development plan includes policies saved from the 2007 Local Plan (LP) and those of 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.
6. 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 Framework, I attach significant weight to the relevant S2LP policies. Once adopted, these will replace those of the LP not already superseded by the strategic policies within the S1LP.
7. The appeal site is outside the settlement development boundaries (SDB) defined in both the adopted LP and emerging S2LP. The settlement in this parish is mainly one of dispersed clusters of housing and the appeal site lies within that at Tendring Heath. The land is part of a site formerly occupied by The Fat Goose public house. In June 2018, planning permission had been granted on appeal¹ to redevelop the Fat Goose site with two dwellings and a replacement micropub with flat. This proposal is for two further houses in place of the consented micropub and flat.
8. The Council's decision notice refers to the location outside of any defined SDB as being contrary to saved LP Policy QL1 and emerging Policy SP1. With the adoption of the S1LP, the spatial strategy for Tendring in LP Policy QL1 is replaced by that for North Essex in Policy SP3. The parts of superseded LP Policy QL1 now relevant to this main issue, and which establish the Tendring settlement hierarchy and policy for development outside of SDBs, are provided through emerging S2LP policies SPL1 and SPL2. I am taking the reference in the decision notice to emerging Policy SP1 to mean emerging Policy SPL1. This is because Policy SP1 is, firstly, not emerging but now part of the adopted S1LP and, secondly, just commits to a positive approach to this proposal, based on the Framework's presumption in favour of sustainable development, and so provides no criteria over assessing it as being outside the SDB.
9. S1LP Policy SP3 establishes existing settlements to be the principal focus for additional growth across North Essex, where development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role. S2LP Policy SPL1 identifies a settlement hierarchy for Tendring. To encourage sustainable patterns of growth and carefully control urban sprawl, emerging S2LP Policy SPL2 states that each settlement identified in Policy SPL1 is defined within a SDB. As this proposal is outside the Tendring or any other SDB, Policy SPL2 as recently modified requires that this proposal be considered in relation to the pattern and scales of growth promoted through the settlement hierarchy in Policy SPL1, and any other relevant policies.

¹ Appeal Ref: APP/P1560/W/17/3189713 – demolition of existing pub/restaurant and the erection of two 4-bed detached properties and one micropub with flat at first floor level allowed on 6 June 2018 at The Fat Goose, Heath Road, Tendring CO16 0BX

10. In terms of the location of new housing, S1LP Policy SP3 and S2LP policies SPL1 and SPL2 seek to focus this mainly into defined SDBs in amounts commensurate with the role of the settlement, sustainability, its physical capacity and local needs. Although Tendring Heath is without a SDB, it is nonetheless a small hamlet where this proposal will be the infilling of a short length of developed frontage, near to where other new housing has recently been allowed. As such, this would not be a sporadic development in the countryside and, as very obvious infill, be clearly centred within an existing focus of housing. Therefore, the extent to which this proposal conflicts with the spatial strategy, results in a negligible degree of harm in this particular case.

Character and appearance

11. The proposal would clearly infill a quite small undeveloped gap between the two dwellings on the Fat Goose site and the three dwellings allowed in another appeal² to the other side. The Council considers the proposed dwellings to be large and bulky in character so as to create a cramped appearance, in particular due to the close proximity to the existing dwellings along Heath Road. However, the two houses proposed would mirror the existing two dwellings on the Fat Goose site and relate acceptably to the three to the other side. This proposal would neither appear out of character nor fail to make a positive contribution to the street scene. In relating acceptably to the character and appearance of the area, this scheme satisfies S1LP Policy SP7 and emerging S2LP policies SPL3 and LP4. This is insofar as these seek high standards of design which respond positively to local character and context.

Current consent on this site for a micropub

12. In the previous appeal, the Inspector recognised the Fat Goose site lay outside the SDB. Nonetheless, he reached a balanced decision to allow two houses and a micropub with flat. In respect of any adverse impacts, he concluded that the proposed development would not result in material harm to the character of the area and be reasonably located in terms of access to services and facilities. In respect of social and economic benefits, he found these to derive from a modest contribution to the housing stock as well as from the construction and occupation of the development, including the retention of the micropub as a valuable local service.
13. The recently adopted S1LP Policy SP5 seeks the provision of sufficient employment land across North Essex. This is a strategic policy and not one this proposal conflicts with to any material degree. The saved 2007 LP Policy ER3 addresses the protection of employment land. This ensures that that in or allocated for employment use will normally be retained for that purpose. Redevelopment for non-employment purposes will only be permitted if, in summary, evidence is provided of unviability through unsuccessful marketing at a realistic price.
14. In the previous appeal, when the original public house still stood and was proposed to be demolished, the Inspector considered that the Policy ER3 criterion regarding marketing would not be necessary given that there would in effect be no loss of a public house use as proposed. In the case of this appeal, the Council is not satisfied with the viability evidence the appellant has

² Appeal Ref: APP/P1560/W/15/3133238 3 detached dwellings with associated garaging and parking allowed on 2 February 2016 at land adjacent to the Fat Goose PH, Tendring Heath

provided in respect of marketing the site at a suitable price so as to attempt to secure a micropub developer. However, as the appeal site is neither land in nor allocated for employment use, these LP Policy ER3 requirements no longer apply.

15. The Council refers to the previous Inspector imposing a condition to ensure the provision and retention of the micropub as a local facility. However, a binding condition to achieve this, such as one that might have required the micropub to be provided in advance of the houses, was evidently not imposed.
16. In the previous appeal the provision of the micropub was recognised as a benefit that weighed in the overall balance. I fully appreciate the concerns raised by interested parties over the existing two houses gaining support through the earlier scheme including a micropub. However, this proposal for two houses still has to be assessed on its merits, only without the micropub providing the benefit of a valuable local service to weigh in the planning balance.
17. The proposal, if implemented, would remove any future likelihood of this site providing a replacement public house. Although I can find no policy requirement for further marketing of the site for this purpose, this is nonetheless a harm to factor into an overall planning balance. Because there is ultimately no sanction for a micropub to be provided in this location, this harm is limited.

Planning balance

18. The Council can currently demonstrate in excess of the five-year housing land supply required by the Framework, which otherwise might have provided a route through which to apply the presumption in favour of sustainable development. However, this is not a ceiling on provision. The two dwellings would still offer some small social benefits towards boosting overall housing supply, even if tempered slightly by the favourable five-year housing land supply position. There would similarly be small economic benefits through the construction works and the future household expenditure in the locality.
19. I have found negligible harm from the policy conflict in respect of development outside the SDB, as this would be an infill within an existing residential cluster, where there would be no adverse effects on character and appearance and, as concluded by the Inspector in the previous appeal, occupiers would have reasonable access to services and facilities. Such facilities no longer include a public house in this location. Although this proposal would result in the loss of land that might provide a community facility, there appears no requirement that the land be preserved and further marketed for this purpose. On this basis, the small benefits of the two houses would still outweigh any demonstrable harm from the loss of the option of using this site to provide the previously approved micropub.

Conditions and conclusion

20. The Council has suggested conditions which the appellant has agreed. I have considered these against the tests set out in paragraph 56 of the Framework. This states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the

development to be permitted, enforceable, precise and reasonable in all other respects.

21. In addition to the standard three-year time period for commencement, a condition is also necessary, in the interests of certainty, specifying the plans approved. Further conditions are necessary in the interests of highway safety. These address adequate visibility onto the main road, provision for sufficient car parking and turning space, suitable private drive width, surfacing and drainage and the prevention of gating to the accesses.
22. A condition requiring the provision of electric vehicle charging facilities is necessary given the increasing take up in these more sustainable types of motorcar. In the interests of preserving the semi-rural character of the surroundings, conditions are needed which remove residential permitted development rights. Subject to these conditions, and for the reasons set out above, I conclude that the appeal should succeed.

Jonathan Price

Inspector

Annex: Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: drawing nos. 01, 05, 06, 07 and 08.
- 3) There should be no obstruction above ground level within a 2.4-metre-wide parallel band visibility splay as measured from and along the nearside edge of the carriageway across the entire site frontage. Such vehicular visibility splays shall be provided before the road junction/access is first used by vehicular traffic and retained free of obstruction above 600mm at all times.
- 4) Prior to occupation of the development the vehicular parking and turning facility, as shown on the submitted plan shall be constructed, surfaced, and maintained free from obstruction within the site at all times for that sole purpose.
- 5) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 6) Prior to the occupation of any of the proposed dwellings, the existing private drive shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back of highway boundary and provided with an appropriate dropped kerb crossing of the footway/verge.
- 7) At no point shall gates be provided at either vehicular access. The accesses shall remain open and free for use in perpetuity.
- 8) Any new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

- 9) Notwithstanding the provisions of Article 3, Schedule 2 Part 1 Classes A, B, C and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), there shall be no additions or alterations to the dwelling or its roof, nor shall any buildings, enclosures, swimming or other pool be erected except in accordance with drawings showing the design and siting of such additions and/or building(s) which shall previously have been submitted to and approved, in writing, by the local planning authority.
- 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.
- 11) Prior to first occupation of the dwelling hereby approved, a scheme for the provision of electric vehicle charging facilities shall have first been submitted to and approved in writing by the local planning authority. Thereafter the charging facilities as may be approved shall be installed in a working order, prior to first occupation.
- 12) Notwithstanding the provisions of Article 3, Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) England Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no provision of fences, walls, gates or other means of enclosures, shall be erected along the southern side boundary of the site or forward of the front elevation of the dwelling hereby approved except in accordance with details that shall previously be approved in writing by the local planning authority.
