
Appeal Decision

Site visit made on 16 December 2021

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th January 2022

Appeal Ref: APP/P1560/W/21/3274492

Land adjacent Batemans Lane, Weeley Road, Little Clacton

- 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 Kandiah of R Eleven Ltd against the decision of Tendring District Council.
 - The application Ref 20/01592/FUL, dated 6 November 2020, was refused by notice dated 10 March 2021.
 - The development proposed is construction of 4 new dwellings and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for construction of 4 new dwelling houses and associated works at Land adjacent Batemans Lane, Little Clacton, CO16 9EP in accordance with the terms of the application, Ref 20/01592/FUL, dated 6 November 2020, and the plans submitted with it, subject to the attached condition schedule.

Preliminary Matters

2. Following the Council's decision, the National Planning Policy Framework (the Framework) was revised on 20 July 2021. The Council and appellant have had an opportunity to comment on the implications of these changes through their submissions.
3. The appellant has submitted a duly executed unilateral undertaking which I have taken into account. It provides for a Public Open Space Contribution to Tendring District Council and for a contribution towards ecological mitigation and I have contemplated this further later in my decision.
4. The address of development in the heading above has been taken from the planning application form. However, the Council's questionnaire included the postcode and I have therefore used this in my formal decision.

Main Issue

5. The main issue is the effect of the development on the character and appearance of the area.

Reasons

Policy Context

6. The development plan comprises the North Essex Authorities Shared Strategic Section 1 Plan (SSS1), adopted on 26 January 2021 and the saved policies of the Tendring District Local Plan 2007 (SLP). Section 2 of the Tendring District

Local Plan 2013-2033 and Beyond (ELP) has been subject to examination and the main modifications have been subject of formal public consultation. The Council expects to adopt the ELP in late January 2022 and having regard to the advanced stage of preparation, I have afforded the policies moderate weight.

7. Policy SP3 of SSS1 sets out the spatial strategy for North Essex and directs growth towards existing settlements with development accommodated within or adjoining settlements according to their scale. Emerging policy SPL1 of the ELP identifies Little Clacton as a Rural Service Centre. The supporting text to this policy identifies that some of these villages will accommodate a modest increase in housing stock, where appropriate, within the plan period.
8. It goes on to state that developments will be of a scale proportionate, achievable and sustainable for each of the settlements concerned having regard to the existing size and character of each settlement and that these developments will make a meaningful contribution toward addressing local housing needs, supporting the village economy and assisting with the overall housing growth proposed for the District.
9. Emerging Policy SPL2 of the ELP states that outside of settlement development boundaries, the Council will consider any planning application in relation to the pattern and scales of growth promoted through the settlement hierarchy.
10. The policies that I have set out of both the adopted and emerging Local Plan are intended to ensure housing is located in areas which are accessible and sustainable. However, these policies do not prevent the development of land outside of settlement boundaries.
11. The site lies outside of the defined settlement boundary for Little Clacton, in both the adopted and emerging plans and therefore the proposed development is required to demonstrate that it would be of a scale proportionate, achievable and sustainable for the settlement.

Character and appearance

12. Weeley Road is characterised by residential development fronting the road, with in depth development accessed off this primary route. The site is currently rough scrub and grass and partially enclosed by existing hedging. The site provides a visual separation between the existing built development and contributes to the open rural nature which is experienced beyond the appeal site. Therefore, there would be a degree of urbanisation and countryside encroachment through additional housing.
13. However, the development of the site would result in the infilling of the existing gap between Batemans Lane and the development under construction and together the proposed development would appear part of the linear development which extends along Weeley Road.
14. The proposal whilst increasing the density of development within the locality, would have a similar plot size to the development under construction adjacent to the appeal site and on the opposite side of the road. The introduction of the proposed dwellings into the site would be appropriate within this rural setting, having regard to the development adjoining the site and the modest scale of the development proposed.

15. The development would be appropriate to the landscape character and quality of the area and result in a small infill between the existing built development which is proportionate to the scale of the existing settlement. Furthermore, it would contribute toward addressing local housing needs, supporting the village economy and assisting with the overall housing growth proposed for the District.
16. In conclusion, the introduction of the proposed development into the appeal site, would accord with the relevant policies relating to housing in rural areas. It would comply with adopted policy SP3 of the SSS1 which seeks to direct development to the most appropriate locations.
17. The development would also accord with policies SPL1 and SPL2 of the ELP which sets out the emerging settlement strategy and can be afforded moderate weight.

Planning Obligations

18. The appellants have provided a unilateral undertaking under section 106 of the Town and Country Planning Act 1990, which includes a number of obligations which would come into effect if planning permission were to be granted. I have considered the obligations in light of the Framework, Planning Practice Guidance (PPG) and the Community Infrastructure Levy Regulations (the CIL Regulations).
19. The unilateral undertaking facilitates a financial contribution towards public open space provision. I am satisfied that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related to it in scale and kind. On this basis, I consider the agreement accords with the criteria of Regulation 122 if the CIL and with paragraph 57 of the Framework. I can therefore reasonably take it into account.

Essex Estuaries Special Area of Conservation and the Colne Estuary Special Area of Conservation

20. The appeal scheme proposes dwellings on a site that lies within the Zone of Influence of the Essex Estuaries Special Area of Conservation and the Colne Estuary Special Area of Conservation (SACs).
21. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SACs. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
22. Since the development is for only four new dwellings, the number of additional recreational visitors would be limited and the likely effects on the SACs from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.

23. The site is within the zone of influence where new residential development is likely to result in recreational pressure, which would, both alone and in combination with other development within the zone of influence, have a likely significant effect on the interest features of the aforementioned site. Therefore, I consider that the development would have an adverse effect on the integrity of the site, but regard can be had to whether these adverse effects can be mitigated.
24. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SACs.
25. The appellants have submitted a Unilateral Undertaking for the per dwelling contribution of £125.58 to fund the Essex Coast RAMS. Given the evidence before me I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.
26. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.

Other Matters

27. I have also taken into account the matters raised in the representations received including issues such as highway safety, education, flood risk and whether the dwellings could be extended into the roof space. Concern has also been raised relating to the impact on wildlife, local fauna and flora. However there is no evidence before me that there would be harm in respect of these matters, and no objection has been raised by the Council.
28. In respect of the concerns regarding noise and disturbance and anti social behaviour. The development would not cause a material increase in noise and disturbance or lead to an increase in anti-social behaviour in comparison to the existing situation. Furthermore, a condition requiring the submission of a construction management plan can ensure appropriate mitigation in terms of construction hours are agreed prior to work commencing on site.
29. Therefore, none of the matters raised provide a compelling reason why planning permission should not be granted.

Conditions

30. I have not been provided with a list of suggested conditions, but I have taken into account those requested by consultees which are those which the appellant would be aware of. I have considered these in light of the Planning Practice Guide and the tests of the Framework and where necessary amended them for clarity. In addition to the standard implementation condition it is necessary, for the avoidance of doubt, to define the plans with which the scheme should accord.

31. In the interests of the character and appearance of the area I consider that a condition to agree a scheme of soft landscaping, including the implementation of the agreed measures for the protection of existing trees would also be necessary in this case.
32. I have imposed a condition to ensure that any unexpected contaminants are correctly identified and remediated to ensure that the future users of the site are protected from risks associated with contaminants.
33. Given the proximity to other residential properties, I have imposed a condition requiring the submission of a construction management plan, including the need to agree the hours of construction, in order to protect existing occupiers from noise and disturbance at times when they may expect to enjoy respite from such activities.
34. In order to ensure an appropriate level of on-site parking provision for vehicles, I have imposed a condition requiring space to be provided prior to occupation of the dwelling and retained for the life of the development. In order to maintain highway safety I have also found it necessary to impose conditions relating to vehicle and pedestrian visibility, and for details of the standards of construction of the access to be submitted.
35. I have not found it necessary to impose a condition requiring the submission of a travel pack as I have not been provided with any detailed justification for this requirement. I have also not imposed a condition requiring the submission of details of cycle parking as the plots are adequately sized for this to be provided.

Conclusion

36. For the reasons given I conclude that the appeal should be allowed.

G Pannell

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: 927/04C; 927/10; 927/11; 927/12; 927/13; 927/14; 927/15.
- 3) No dwelling shall be occupied until a means of access for vehicles shall have been constructed in accordance with the approved plans. Each road junction/private access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4m x 60m in both directions as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the private accesses are first used. The access shall be retained free of any obstruction thereafter.
- 4) No dwelling shall be occupied until a 1.5m x 1.5m pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of each vehicular access. Such visibility splays shall be provided before the private accesses are first used. The visibility splay shall be retained free of any obstruction thereafter.
- 5) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 927/10 for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for the parking of vehicles.
- 6) No development above slab level shall take place until details of the standards to which the roads serving the development are to be constructed, including the means to prevent surface water discharging onto the highway, shall have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the roads have been constructed in accordance with the approved details.
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - the parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials;
 - measures to control the emission of dust and dirt during construction;
 - a scheme for recycling/disposing of waste resulting from construction works;
 - measures to control noise from the construction works;
 - delivery and construction working hours;
 - storage of plant and materials used in constructing the development; and
 - wheel washing facilities.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 8) No development shall commence above slab level until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 9) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 10) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 21 days of the report being completed and approved in writing by the local planning authority.

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