



Appeal Decision

Site Visit made on 10 November 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2022

Appeal Ref: APP/P1560/W/21/3270727

Land to The South of Long Road, Mistley, Essex CO11 2HN

- 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 Tendring Farms Ltd against the decision of Tendring District Council.
 - The application Ref 20/01484/OUT, dated 19 October 2020, was refused by notice dated 1 February 2021.
 - The development proposed is Construction of medical centre and car parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Outline planning permission is sought with the matter of access to be determined at this stage. I have had regard to the access details provided and have determined the appeal on that basis and treated the site layout plans as being submitted for indicative purposes.
3. An amended plan 'site access arrangement drawing number VD20319-110-01 Rev. B' has been submitted to correct an inaccuracy identified in relation to the red line site boundary shown on 'Site Location Plan Drawing Number CC-Y321-LP1250'. I am satisfied that no party would be prejudiced by this matter and I have taken the amended drawing into consideration in my determination of the appeal.
4. 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). The eLP comprised two sections, with Section 1 containing strategic policies and proposals that relate to the whole of North Essex (including Braintree, Colchester and Tendring). Section 2 contains policies and proposals specific to Tendring. Just prior to the Council's refusal of the application, Section 1 of the eLP was adopted (the LPS1)¹ and now forms part of the development plan.
5. During the course of this appeal Section 2 (the LPS2) has also been adopted². This document, along with the LPS1, replaces the policies contained within the LP in full. Accordingly, I shall determine the appeal in accordance with the most up-to-date policies, on which the parties have had the opportunity to comment during the course of the appeal.

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

² Tendring District Local Plan 2013-2033 and Beyond – Adopted 25 January 2022

6. On 20 July 2021 a revised National Planning Policy Framework was issued. The main parties had the opportunity in their appeal submissions to comment on the implications of the resulting changes for this appeal and I have had regard to the comments made. Any reference to 'the Framework' made within the decision are to this revised version.

Main Issues

7. The main issues are (i) whether the appeal site is a suitable location for the development proposed, with regard to the development strategy for the area and the effect of the proposal on the character and appearance of the area; (ii) the effect of the proposal on designated employment land; and (iii) the effect of the proposal on the living conditions of the occupiers of the neighbouring property, with particular regard to outlook, privacy, light pollution and noise and disturbance.

Reasons

Location and character and appearance

8. There is no dispute that the appeal scheme would meet a pressing need for improved primary health care facilities in the area. Although there is limited evidence to support the appellant's argument that there are no suitable sites within the settlement boundary, there is also limited evidence to dispute this matter. Nevertheless, there is policy consideration whether the appeal site is a suitable location for the proposed development in regard to the development strategy for the area and whether it would be compatible with the environment.
9. The appeal site is located outside of the combined settlement boundary for Manningtree, Mistley and Lawford. This settlement boundary has been expanded with the adoption of the LPS2, to include land to the south of the appeal site which, overall, has already been granted planning permission for around 900 dwellings, and includes the provision of employment land. Nevertheless, the appeal site remains outside of the redefined settlement boundary and is, therefore, within the countryside for the purposes of planning policy.
10. LPS1 Policy SP3 sets out that development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role. It further states that 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.
11. Although not allocated for development, the appeal site forms part of the approved open space and landscape buffer provision for both the outline³ and reserved matters permissions⁴, and has been designated as part of a Strategic Green Gap (SGG) under LPS2 Policy PPL6.
12. This designation has extended the previous Local Green Gap on the opposite side of Long Lane, as was designated under LP Policy EN2, to include a wide strip of land, within which the appeal site is situated, on the south side of this road. The designation of SGG is intended to maintain an appropriate degree of

³ APP/P1506/W/19/3220201

⁴ 21/00197/DETAIL -permission granted 23 December 2021

physical separation between nearby settlements or neighbourhoods, in this instance between Lawford and Mistley. This policy is consistent with the aims of LPS1 Policies SP3 and SP7 and those of the Framework which seeks, amongst other matters, developments that are sympathetic to local character and history, including in terms of landscape setting. LPS2 Policy PPL6 does not meet the Framework's requirements for designation as a "Local Green Space" or as "Green Belt" but it does not purport to do so. It is separate and distinct from those designations.

13. The use of 'green gaps' is an established planning policy tool. Although Policy PPL6 has been the subject of modifications during the examination of the LPS2, it has been adopted and the site lies within an identified SGG. The policy does not impose a blanket restriction on development within a designated gap, but any development must be consistent with other policies in the plan and must not individually or cumulatively lead to the coalescence of settlements. The supporting text to this policy makes it clear that SGGs are valued for the role they will play in preventing the coalescence of settlements and in retaining their distinct identities. It is further indicated that only land required to secure the objectives of the SGG has been included. I therefore attribute full weight to this Policy and to the importance of maintaining the gap between these settlements.
14. Whilst the proposal is for outline permission only, the effect of erecting a medical centre on this site, and the associated parking areas and access road that would accompany it, can still be determined. The indicative site plans show three possible options, and matters such as limiting the ridge height, requiring the bulk of floor space to be provided at ground floor level, or restricting the building to be single storey only, could be controlled at reserved matters stage. However, the size and shape of the appeal site and the stated requirements for the health care provider are such that the proposal would necessarily introduce a significant level of built form, including hard surfacing, of urban appearance and character which would be at odds with the scale of the neighbouring domestic properties and the edge of settlement, semi-rural nature of the site and its immediate surroundings. This would not be mitigated by a high-quality design and choice of materials.
15. My attention has been drawn to Mistley Manor, a care home situated east of the appeal site, beyond the linear row of three detached dwellings on Long Road. The care home complex turns the corner, extending into Clacton Road, with its associated grounds wrapping behind the dwellings. Whilst this building is clearly significant in scale and noticeably altered the street scene, its main bulk is situated away from the modest existing dwellings. As such it does not appear out of keeping with the pre-existing pattern of development. It further differs from the appeal proposal in that its location did not impact on a gap between settlements and, despite its size, remains largely residential in character. Its presence does not therefore lend support to the appeal proposal, nor does it provide evidence of any failure by the Council to be consistent in its decision making.
16. I recognise that the two settlements of Lawford and Mistley will effectively merge to the south of the appeal site with the quantum of new development that has already gained permission. However, the approved layout of that development includes the provision of a deep landscape or open space buffer between the approved built form and Long Road. This buffer accords with the

area of land designated as a SGG and indicates that the importance of maintaining this gap was recognised and formed part of the reasons for the approved development being considered acceptable. The area is intended to maintain the visual and physical separation between the two settlements that is experienced when travelling along Long Road and could also provide screening of the existing properties on the south side of the road and the new housing, such that the overall sense of separation is maintained.

17. The site and its wider field would no longer, as a result of the approved major development, fit an identified characteristic of the Bromley Heaths landscape character area, of large scale productive arable fields, as set out in the Council's Landscape Character Assessment 2001. This does not mean that the appeal proposal would not result in harm to local character. The open views across arable land south of Long Road will be lost and the immediate landscape setting will therefore undergo significant, irreversible change. However, the provision of the landscape buffer, in combination with the rest of this SGG, which extends to land on the opposite side of the road, means that a significant visual break will be preserved between the settlements in order to protect local character. Whilst the proposal would not result in actual coalescence it would encroach, not only on the approved open space landscape buffer, but also on the SGG, which would reduce its overall effectiveness.
18. This would harmfully affect the character and appearance of the area by introducing significant non-residential built form beyond the current settlement edge. This incursion would harmfully erode this important open space and would fail to conserve the settlements' setting. This would be to the detriment of local character.
19. The location of the proposal would be in close proximity to significant new housing development, within a 10–15 minute walk of Mannington High Street and on a bus route, albeit that the evidence is not clear as to the locations served by that bus route. However, even if I were to accept that the site is highly accessible for both existing and future users of the health service that would be relocated to the appeal site, there would still be conflict with LPS1 Policies SP3 and SP7, and LPS2 Policies PPL3 and PPL6 in respect of its impact on the character and amenities of the area as set out above.
20. I acknowledge that the loss of the appeal site from the amount of open space approved to be delivered with the housing and employment land permission would be small in the context of the overall provision, which would remain at a level greater than required by the policies of the development plan. Nonetheless, its loss would be significant in terms of its position and the recognised importance given to maintaining the gap as referred to by the Inspector in that case.
21. In combination, these matters lead me to conclude that the appeal site would not be a suitable location for the proposed development, having regard to the development strategy for the area and the proposed development would have an unacceptably harmful effect on the character and appearance of the area. Consequently, it would conflict with LPS1 Policies SP3 and SP7, LPS2 Policies SPL1, SPL2, SPL3, PPL3 and PPL6 which together and amongst other matters seek to direct future growth and to protect local character. It would also conflict with the Framework in regard to these matters.

Employment land

22. The Council considers that the appeal proposal to develop unallocated, greenfield land, would undermine the recently approved⁵ provision of up to 2 hectares of employment land situated to the south of the appeal site. It is suggested that the approved employment land would be a more suitable location for the appeal proposal and therefore the proposal would be economically unsustainable and contrary to LPS2 Policy PP6.
23. However, the task of the local planning authority is to consider the planning merits of the particular application for planning permission. Generally, land may be developed in any way which is acceptable for planning purposes and so planning law does not require the local planning authority to consider whether the proposed development would be more appropriately located at an alternative site. There may be occasion when circumstances are such that a potential alternative site is a material consideration which the local planning authority should have regard to in the exercise of its planning judgment. There is no evidence before me that indicates this is such an occasion.
24. Policy PP6 of the LPS2 seeks to protect designated employment sites from uses that would be better located in other areas of the district. Whilst the policy does not prevent employment uses falling outside of use Classes B2, B8 or other established activities from being permitted on employment sites, it does not require specific developments, such as a new medical centre, to be provided within those areas. Further, I have not been directed to any requirement under the planning permission for the employment land in question for a new medical centre or health care services to be provided on that site. I do not, therefore, consider that LPS2 Policy PP6 offers support to the Council's argument that the appeal proposal would undermine the delivery of the approved employment land.
25. Consequently, it has not been demonstrated that the proposal would have an unacceptable harmful effect on designated employment land. It would not conflict with LPS2 Policy PP6.
26. I do not consider LPS1 Policy SP7 and LPS2 Policy SPL3 to be relevant to this main issue as they are largely concerned with standards of design.

Living conditions

27. The indicative site plans show three possible options in terms of layout of the proposed development. Whilst layout, scale, landscaping and appearance are reserved matters, the proposal seeks permission for the access as proposed. This, in combination with the shape of the site and the stated requirements of the health care provider, would suggest there are limited overall opportunities for positioning of the building and the associated parking areas within the site.
28. The Council are concerned about the impact of the proposed development on the living conditions of the occupiers of the neighbouring property, No 10 Long Road (No 10). It would be possible to site the proposed building sufficiently far away from the common boundary with No 10 to avoid overbearing impacts resulting from its likely scale. The scale of the building could to some degree be controlled by the imposition of conditions, for example to limit its height, were the appeal to be allowed. It is likely that whatever layout was proposed, the

⁵ APP/P1506/W/19/3220201 & 21/00197/DETAIL

development would be visible from the gardens of No 10. It is possible that the development would also be visible to some degree from within the dwelling. However, because the main outlook from No 10 is towards its rear, with only one high level window facing the appeal site, I do not consider that the proposal would result in a development of such a scale, bulk or proximity to No 10, so as to unacceptably impact on living conditions by being over dominant and intrusive to normal day to day living.

29. It would also be possible to control at reserved matters stage the number and placement of windows, such as to ensure there would be no material harm to the living conditions of the occupiers of No 10 in respect of loss of privacy.
30. Further, conditions could be imposed to address concerns relating to light pollution by controlling the type of external lighting, its position on the building and within the site, and the level and hours of illumination. This would be the case even when taking into consideration the darker months of the year, given the context of the site in relation to existing street lighting along Long Road and the change in light levels in the vicinity of the site that will result from the nearby approved development. Although the Council has raised concern about the effects of glare, as described in the Planning Practice Guidance, no substantive evidence is before me that indicates this to be a likely consequence of the proposal.
31. Nevertheless, to achieve adequate separation between the proposed building and No 10, in order to avoid overbearing impacts, it is likely that the bulk of the associated parking and turning areas would necessarily be situated close to that neighbour, as shown on the indicative plans. I have concerns that there would be consequent harmful disturbance arising from what would be significant numbers of vehicle movements generated by visitors to the site, as is evidenced in the appellant's Transport Assessment. The noise and disturbance generated from vehicle movements, engines and the opening and closing of car doors, would be particularly noticeable during the summer months when the occupiers of No 10 are likely to have doors and windows open and be spending time in their garden. Consequently, I am not satisfied that a successful scheme could be produced through a reserved matters submission which would avoid harm to the living conditions of the occupiers of No 10.
32. I therefore conclude that the proposed development would cause material harm to the living conditions of the occupiers of the neighbouring property, with regard to outlook or noise and disturbance. It would be contrary to LPS1 Policy SP7 and LPS2 Policy SPL3 which seek development which does not materially harm the amenities of neighbouring occupiers. It would also conflict with paragraphs 126 and 130 of the Framework which seek good design that provides a high standard of amenity for existing users.

Other Matters

33. I note the Council's refusal of planning application reference 19/00336/OUT and its subsequent dismissal at appeal. However, the circumstances and details of those decisions has not altered my conclusions on the appeal scheme before me.
34. Whilst recognising the increased pressure that has been placed on public health services since the start of the Covid19 pandemic, there is no substantive

evidence before me that this has led to, or will lead to, a greater need for improved facilities than is already considered necessary. The pandemic has seen alternative methods of provision of services by way of greater use of telephone and online appointments. This use of digital technology is likely to continue and has the potential to lead to less general reliance on physical space for the provision of some services. This matter does not add weight to the benefits of the proposal.

35. I do not consider that LPS2 Policy HP2 lends sufficient support to the appeal proposal such that would alter my conclusions on the main issues. This is because it is largely concerned with new development support for and enhancement of existing community facilities, or its contribution towards new community facilities to meet needs arising from it, rather than independent proposals for the delivery of new or enhanced community facilities. Albeit that the need for the appeal proposal is in part to cater for the demands of new development. In any case, this policy is not concerned with the effect of such development on local character which is dealt with under other policies against which I have found unacceptable harm.
36. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that the determination of applications should be made in accordance with the development plan unless material considerations indicate otherwise.
37. I have found in the appellant's favour with regard to one main issue, concerning the effect of the proposal on designated employment land. I have taken into account that the proposal would provide improved medical facilities for the community and in doing so would address a pressing need for such facilities. I accept that the proposal could, after approval of reserved matters, be delivered quickly. These are public benefits that attract substantial weight.
38. However, I have also found that the proposed development would be contrary to policies of an up-to-date development plan as cited above, and to the plan when read as a whole. I attribute significant weight to the conflict and to the harm identified. I therefore consider that there are no material considerations that indicate that the decision should be taken other than in accordance with the development plan.

Conclusion

39. For the reasons given the appeal is dismissed.

S Tudhope

INSPECTOR