
Appeal Decision

Hearing held on 15 December 2021

Site visit made on 16 December 2021

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th February 2022

Appeal Ref: APP/P1560/W/20/3260443

Land North of Wick Lane, Ardleigh, CO7 7NS

- 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 David Salmon and Land Allocation Ltd against the decision of Tendring District Council.
 - The application Ref 20/00592/OUT, dated 11 May 2020, was refused by notice dated 24 August 2020.
 - The development proposed is Outline application including access, with all other matters reserved, for up to 50 residential dwellings.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by David Salmon and Land Allocation Ltd against Tendring District Council. This application is the subject of a separate decision.
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Preliminary Matters

4. The appeal is made in outline form only, with all matters reserved for future consideration with the exception of access. I have dealt with the appeal on this basis and I have treated any details on the submitted drawings relating to landscaping, layout, scale and appearance as being illustrative only.
5. Since the Council issued its decision it has adopted the North Essex Authorities Shared Strategic Section 1 Plan. (SSS1) The policies in the SSS1 supersede some of those referred to in the Council's delegated report. It is incumbent upon me to base my decision upon the most up to date planning policy and this is what I have done. The appellant had an opportunity to address the change in policy through their appeal submissions.
6. Following the closure of the hearing Section 2 of the 2013-33 and Beyond Local Plan was adopted by the Council at its meeting of 25 January 2022. Therefore, the 'development plan' for Tendring District Council now comprises the adopted Section 1 and Section 2 of the Tendring District Council 2013-33 and Beyond Local Plan. The appellant and any interested parties who took part in the hearing have had the opportunity to comment on this change.

7. The proposal before me follows the dismissal of a related appeal on the same site, APP/P1560/W/16/3159703. Whilst each case must be determined on its own merits, I have had regard to this decision in the determination of the appeal.

Main Issues

8. A unilateral undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) was submitted as part of the appeal documents. The statement of common ground confirms that this secures adequate provision for affordable housing, health and open space infrastructure. However, the parties have not reached agreement on the matters relating to education.
9. In light of the above, the main issues in this appeal are:
- whether the site represents an appropriate location for the proposed dwellings, having regard to access to services and facilities; and
 - whether the proposal would make adequate provision for education.

Reasons

Policy Context

10. The development plan comprises SSS1, adopted on 26 January 2021 and Section 2 of the Tendring District Local Plan 2013-2033 and Beyond (ELP) which was adopted on 25 January 2022.
11. 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. Policy SPL1 of ELP identifies Ardleigh as a smaller rural settlement and the supporting text to this policy identifies that these smaller villages are considered to be the least sustainable locations for growth, whilst recognising the pressures that exist for them to grow. The supporting text identifies that developments which exceed 10 dwellings in size will not be permitted.
12. 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.
13. At the hearing the parties also directed me to further policies within SSS1. Policy SP1 sets out the Councils positive approach to development which reflects the presumption in favour of sustainable development and I have therefore had regard to this policy in my reasoning.
14. The appellant raised Policy SP8 and SP9 of the SSS1 which deals with the development and delivery of a new garden community in North Essex (Tendring/Colchester Borders) which is anticipated to deliver between 2,200-2,500 homes. The broad location for this development is identified within SSS1 and the parties agreed it was distinct and separate from the village of Ardleigh. Therefore, in relation to the services and facilities which may be provided as part of this development, having regard to the uncertainty over the timing of these facilities and the distance from the appeal site I have given these policies limited weight such that they have not altered my overall decision.

15. Common ground exists between the main parties that the Council can demonstrate a five year supply of housing, although the extent of this is a matter of dispute with the appellant putting the figure at 6.15 years and the council at 6.66 years. The appellant has provided a list of sites which they consider should be discounted from the supply. However, even if I were to accept the appellant's lower figure, this is above the 5 year requirement and therefore paragraph 11d of the National Planning Policy Framework is not engaged.
16. The uncertainty over the delivery of the Tendring Colchester Borders Garden Community has been raised as a material consideration in this appeal, however the council have confirmed that delivery of housing from this development is not anticipated within the current 5 year housing land supply period. Therefore, I am satisfied that any uncertainty would not impact on the Council's ability to meet its current housing requirement.

Appropriate Location

17. The appeal site comprises a parcel of agricultural land which is outside of the settlement boundary of Ardleigh. The site is adjacent to St Mary's Primary School and a public right of way runs along the eastern boundary of the site and leads to an agricultural reservoir located to the north of the site.
18. Ardleigh is a small settlement with some limited facilities and services which are unlikely to be capable of sustaining the everyday needs for the future occupiers of the development and I consider they would be more likely to travel to the services and facilities within the nearby town of Colchester.
19. There is a bus stop directly outside of the appeal site which provides an hourly bus service to Colchester with journeys taking around 20mins to the centre of town. Whilst this would be an available alternative to the private car, having regard to their frequency, the bus service would be unlikely to be a realistic substitute to the convenience of a private car.
20. It is for these reasons that Ardleigh is identified as a smaller rural settlement within the ELP which states that growth should be limited to the patterns of growth identified. As part of discussions during the hearing the Council agreed that the figure of 10 dwellings, which is set out within the supporting text to policy SPL1, was not a fixed or firm ceiling but that any development should be suitable for the pattern and scales of growth envisaged within the emerging spatial strategy.
21. The policies that I have set out earlier in my decision 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.
22. Indeed, during the hearing evidence was provided of other development that has recently taken place within the village of Ardleigh. These included a development of 7 dwellings on the former Squash Court (16/00878) and 18 dwellings on the former Notcutts Garden Centre (13/0036/OUT). In this context it is evident that smaller development has been accommodated in the village and furthermore the ELP does not seek to preclude smaller sites coming forward in the future.

23. Having regard to the proposed development of up to 50 dwellings, noting the overall size and scale of the site, this would be a development that would be greater than the scales of growth envisaged in the ELP. Most importantly it would conflict with the adopted SP3 of SSS1 which seeks to direct growth in the most sustainable locations. I consider that the site is poorly located in terms of access to services, facilities and amenities and occupiers are likely to prefer the convenience of a private car, than the hourly bus service.
24. Therefore, there would be minor negative environmental and social effects arising from the location in terms of the use of natural resources and the accessibility of local services. This is an adverse matter to which I afford significant weight.
25. In conclusion, the introduction of the proposed development into the appeal site, would fail to adhere to the relevant policies relating to housing in rural areas. It would conflict with adopted policies SP1 and SP3 of the SSS1 which seeks to direct development to the most appropriate locations.
26. The development would also conflict with policies SPL1 and SPL2 of the ELP which sets out the settlement strategy for Ardleigh.

Education

27. The appellants have provided a unilateral undertaking (UU) 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 these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 and as set out in paragraph 57 of the Framework. These state that a planning obligation must be necessary to make the development acceptable in planning terms, directly related to and fairly and reasonably related in scale and kind to the development. I will consider the obligations which are not in dispute later in my decision.
28. The appellants UU provides a Primary School Contribution based on the evidence provided by Essex County Council in their consultation response. Their response states that the contribution figures set out are calculations only on the basis of the units being two or more bedrooms and that final payments will be based on the actual dwelling unit mix and the inclusion of indexation.
29. The proposed development is expected to generate the need for 15 primary school places, at a cost of £16,596 per place. This equates to a total contribution of £248,940 index linked to April 2020. The UU defines the Primary School Contribution as the sum of £4,978.80 per dwelling subject to the Education Index provided that the contribution shall not exceed in aggregate the sum of £248,940. This sum is also subject to the Education Index. The contributions have been calculated based on the evidence provided by Essex County Council and I am satisfied that this planning obligation meets all three planning obligation tests and so is necessary.

30. It has been put to me that as the overall sum is subject to the Education Index this is acceptable and ensures sufficient funding can be secured. However, the use of the wording "shall not exceed" casts some doubt in my mind on the ability of the County Council to secure sufficient funding for the primary school places despite the second reference to the Education Index. There is some ambiguity created by the wording which would appear to restrict the overall contribution to no greater than £248,940 and this leads me to conclude that the UU would not be sufficiently robust to ensure that the full contribution could be secured. This concern is shared by the Council's legal officers who have not accepted the wording within the agreement.
31. The evidence before me indicates that the existing Primary School is already over capacity and that this is likely to remain the case for the remainder of the plan period, with a deficit of 36 places indicated. Therefore, any shortfall in the Primary School Contribution would place an unreasonable burden on the County Council in light of the scale of the deficit identified and be harmful to future occupiers of the development who could be required to look beyond Ardleigh for education provision.
32. The lack of certainty over the delivery of sufficient funding for the identified need for Primary School places is contrary to policy PP12 of the ELP which states that planning permission will not be granted unless the cumulative impacts of development on education provision can be addressed at the developer's cost.

Other Matters

33. In addition to concerns raised about the location of the development, interested parties have also made representations on other issues. In particular during the hearing matters relating to landscape impact, loss of agricultural land, impacts on ecology and the layout and access were raised. As I am dismissing the appeal for other reasons, it is not necessary for me to reach a conclusion on these matters.
34. Both the Council and Parish Council submitted a number of other appeal decisions for my consideration. Those submitted by the Council were presented as evidence regarding the Council's five-year housing land supply, however as this matter is no longer in dispute it was agreed that there was no need for me to have further consideration of those.
35. The appeal decisions provided by the Parish Council were highlighted to indicate the relevant parts which I should have consideration of in my decision. APP/X3540/W/21/3267603 and APP/J3530/W/18/3212430 were cited with reference to landscape matters and broadly discuss the length of time landscaping would take to mitigate the adverse impacts arising from the development. As landscaping is not a matter before me for consideration as part of this appeal, I have given these examples limited weight.
36. The third decision submitted by the Parish Council, was also in reference to the Council's five-year housing land supply, and again as this is no longer a matter in dispute I have not been required to have regard to this example.

37. The appeal site falls within the 'Zone of influence' for a designated habitats site. As the competent decision making authority, if I had been minded to allow the appeal it would have been necessary for me to complete an Appropriate Assessment for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.
38. Following the closure of the hearing, an interested party submitted information relating to two sites within the district that were relevant to the consideration of the appeal. The main parties have had the opportunity to consider these as part of their comments on the newly adopted Local Plan.
39. The first is the Harwich Freeport, which is anticipated to bring an increase in economic activity and jobs within the District, but particularly around Harwich. However, there is no evidence before me that demonstrates that the housing provision outlined within the adopted Local Plan would be insufficient to meet the housing demands generated by this development, having regard to the uncertainty surrounding its ability to meet its economic potential in the short term.
40. The second is a recently submitted planning application for a food storage and distribution facility at land adjoining Ipswich Road and Wick Lane, Ardleigh. It has been put to me that the approval of this application would generate a need for more housing in the locality. However, this application has not yet been determined and as such may be subject to change and consequently carries limited weight.

Planning Balance

41. The proposal would conflict with the development plan for the reasons previously outlined, however the appellant has put forward a number of benefits, which they consider are material considerations which would outweigh this conflict.

Affordable Housing

42. The proposal would deliver 40% of the development as affordable housing, and this would be above the requirements set out within policy LP5 of the ELP which requires 30% of the development to be affordable housing.
43. The provision of affordable houses as part of the development would accord with the Framework which seeks to ensure a sufficient supply of homes to reflect identified needs. I am satisfied that this planning obligation meets all three planning obligation tests and so is necessary.
44. Ardleigh is identified as having a high demand for housing, evidenced by the housing officers consultation response with details provided of the number of households on the register seeking housing in the area. These figures however, may include an element of double counting as residents are able to select more than one village in terms of their preferences.
45. The provision of additional affordable housing, beyond that required by this adopted policy is a benefit to which I afford moderate weight, noting the modest scale of the additional provision.

Public Open Space

46. The proposed development would include the provision of a large area of open space which would be greater than that required in both the adopted and emerging plan. It has been put to me by the appellant that this is a significant benefit which is evidenced by the Council in their Formal Open Space Audit.
47. This was prepared by the Council in March 2008, and updated in 2011 and identifies a deficit of open space in Ardleigh of 1.70 ha. However, this is broken down into two categories play areas and formal open space. In terms of formal open space there is a deficit of 0.12ha but for play areas this rises to 1.58ha.
48. In particular the audit identifies that the provision of a multi use games area (MUGA) is a priority. My understanding from the evidence offered at the hearing is that this remains undelivered in the 10 years since the audit. As part of my site visit I was able to see the open space provision at Millennium Green which includes a Locally Equipped Area for Play (LEAP).
49. The UU would secure the provision of the public open space and also includes the requirement for a LEAP. This would be required to meet the needs of the future residents of the scheme and so is necessary. However, it would not result in the delivery of a MUGA.
50. Therefore, whilst the provision of increased open space is of benefit, I do not consider it to be significant as it would not result in the delivery of the identified need for a MUGA and therefore I have given this benefit only modest weight.

Other Contributions

51. The appellant has indicated that the contributions listed for the NHS and libraries should also be considered as a benefit. I am satisfied that these planning obligations meet all three planning obligation tests and so are necessary. However, these contributions would be required to mitigate the increased demand on those facilities arising from the development and therefore they are neutral in the planning balance.
52. Local finance considerations, such as New Homes Bonus payments, are also cited by the appellant as a benefit. However, the Planning Practice Guidance, states that whether or not a local finance consideration is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. In this case, I do not consider that the local finance considerations would outweigh the conflict I have identified with the Council's spatial strategy and therefore I have not attributed it any weight in my overall decision.

Social, Economic and Environmental Benefits

53. The appellant set out within their appeal statement a number of environmental benefits that they considered were material. However, during the hearing agreed that these would not be significant in their own right and in particular could not confirm how the development would contribute towards carbon savings and a move to a low carbon economy as suggested within their statement. Therefore, I have only attributed limited weight to the benefits outlined.

54. The development would also give rise to some economic benefits during the construction phase and provide limited support to local services. Nevertheless, these would be outweighed from the unacceptable environmental harm arising from the location in terms of the use of natural resources and the accessibility of local services.

Conclusion

55. Therefore the identified adverse impacts of the development, the conflict with the development plan to which I have afforded significant weight and the moderate negative environmental and social effects arising from the location in terms of the use of natural resources and the accessibility of local services, would significantly and demonstrably outweigh the benefits outlined above.

56. The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.

Conclusion

57. For the reasons given above, I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Musa Coudhary Agent

FOR THE LOCAL PLANNING AUTHORITY:

Daniel Child
Paul Woods

Case Officer
Policy Officer

INTERESTED PARTIES

Nikki O'Hagan	Planning Direct (on behalf of the Parish Council)
Andrew Cann	Planning Direct (on behalf of the Parish Council)
Clive Salmon	Parish Councillor
Tim Barrott	Parish Councillor
Chris Whitfield	Parish Councillor
Bill Marshall	Interested Party

DOCUMENTS SUBMITTED AT THE HEARING

1. Adopted Section 1 of the Local Plan, containing Policies SP1, SP4, SP8 and SP9.
2. Policy EN1 from the adopted 2007 Local Plan.
3. Open Space SPD (2008) and Addendum (2021).
4. Essex Design Guide