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# Appeal Decision

Hearing held on 8 and 9 March 2022

Site visit made on 10 March 2022

**by M Woodward BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7<sup>th</sup> April 2022**

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**Appeal Ref: APP/P1560/W/21/3279292**

**Land South of Clacton Road and East of Rochford Road, St Osyth, Essex  
CO16 8PR**

- 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 Bennett Homes against the decision of Tendring District Council.
  - The application Ref 19/01946/OUT, dated 20 December 2019, was refused by notice dated 22 January 2021.
  - The development proposed is outline planning with all matters reserved except access for the demolition of existing buildings and the development of up to 100 new homes, public open space, a woodland walk and associated infrastructure.
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## Decision

1. The appeal is dismissed.

## Preliminary and Procedural Matters

2. The application was submitted in outline form with all matters reserved for future consideration, except for access. I have determined the appeal on this basis.
3. Several indicative and illustrative plans, which mainly show details of proposed landscaping, were submitted with the appeal. They show how the site might be developed in the event the appeal is allowed. A Health Impact Assessment and details of indicative biodiversity enhancement were also submitted. The Council have had the opportunity to comment on these documents as part of the appeal. I am satisfied that they do not materially alter the substance of the application the Council originally considered and interested parties would not be unduly prejudiced. Therefore, I have accepted these documents.
4. The appellant submitted an ecological report with the appeal in order to address one of the Council's reasons for refusal, and the Council have commented on this as part of their appeal statement. I consider this further in 'other matters'.
5. A draft bilateral agreement<sup>1</sup> detailing a number of planning obligations was also submitted as part of the appeal. The Council confirmed during the hearing that they did not object to the contents of the agreement. I allowed a short period of time for the appellant to provide a signed copy of the agreement following the closing of the hearing. I return to this matter later in my decision.

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<sup>1</sup> Under Section 106 of the Town and Country Planning Act 1990 (as amended)

6. At the time of the Council's decision on the planning application, the development plan consisted of the Tendring Local Plan 2007. Thereafter, the *Tendring District Local Plan 2013-2033 and Beyond Section 1*<sup>2</sup> (TLP1) was adopted in January 2021 and the *Tendring District Local Plan 2013-2033 and Beyond Section 2* (TLP2) was adopted in January 2022. I invited the main parties to comment on the implications of the change in policy context on each of their respective cases and I have taken these into account. For the purposes of this appeal, the development plan now consists of TLP1 and TLP2. Therefore, I have not considered the previous Tendring Local Plan 2007 further.

### **Main Issue**

7. The main issue is whether or not the appeal site would be a suitable location for the proposed development, having regard to local plan policies on housing delivery and the spatial strategy, and the effect on the character and appearance of the area.

### *Spatial Strategy*

8. TLP1 Policy SP3 sets out the strategic spatial strategy for North Essex. Whilst this policy identifies existing settlements as the principal focus of growth, it does not preclude development adjoining settlements, highlighting that regard should be had to the scale, sustainability, and existing role of such settlements. TLP2 Policy SPL2 applies this wider spatial approach to Tendring, stating '*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 in Policy SPL1 and any other relevant policies in this plan*'.
9. The subtext to Policy SPL1 sets out the role of 'rural service centres' in the District's settlement hierarchy. It highlights that whilst some of the rural service centres could accommodate modest housing growth, it should be on a scale that is proportionate, achievable and sustainable relative to the settlement concerned<sup>3</sup>. It goes on to say 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. At the same time the subtext to Policy SPL2 recognises that proposals outside settlement development boundaries should be controlled to ensure the protection and enhancement of the character and openness of the countryside<sup>4</sup>. This supporting text is an important consideration that assists with the interpretation of these policies.
10. St Osyth is a rural service centre. A relatively small part of the northeast portion of the appeal site lies within the settlement development boundary<sup>5</sup>. The remainder and majority of the appeal site lies outside this boundary and in the countryside, adjoining St Osyth. Consequently, as a point of principle having regard to the foregoing policies, the acceptability of the proposal is largely dependent on the scheme's relationship with St Osyth in terms of scale, sustainability, and the impact on the countryside.

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<sup>2</sup> Full title - *Tendring District Local Plan 2013-2033 and Beyond: North Authorities' Shared Strategic Section 1 Plan*

<sup>3</sup> TLP2 paragraph 3.3.1.3.1

<sup>4</sup> TLP2 paragraph 3.3.3.1

<sup>5</sup> Settlement Development Boundary included in adopted TLP2

### *Character and Appearance*

11. The site comprises a south facing mainly grassland slope covering an area of *circa* 6.8 hectares. It is generally undeveloped save for agricultural buildings, tracks, and vehicles and machinery located close to the eastern boundary of the site.
12. The appeal site does not constitute a 'valued landscape', which the National Planning Policy Framework (the Framework) indicates should be protected and enhanced. Furthermore, I do not agree with the Council that the fact that the site lies in the countryside means that it is valuable and should be protected for its own sake<sup>6</sup>. This is not reflective of the Framework, which states that the intrinsic character and beauty of the countryside should be recognised. Therefore, whether or not the scheme would be acceptable in this countryside location requires an understanding of the underlying characteristics of the site and its surroundings.
13. In this respect, the upper part of the appeal site is located within the St Osyth/Great Bentley Heaths Landscape Character Area<sup>7</sup> (LCA) with the lower part of the site falling within the St Osyth Coastal Slopes LCA. The St Osyth/Great Bentley Heaths LCA is partly defined by its rural character, and open plateau of agricultural fields which is visually sensitive. The landscape quality is moderate. The strategy for this LCA includes conserving its rural character and historic elements of the landscape and to enhance woodland cover. The defining characteristics of the St Osyth Coastal Slopes LCA comprises rural mixed farmland, gently sloping landform with some elements of woodland. As a result of its visibility and its function as a setting to nearby marshes and creeks, the LCA considers its character to be strong, and it highly sensitive to any change. Strategies for both LCAs highlight the importance of ensuring new development does not intrude onto the crests of slopes so that it would be conspicuous on the skyline.
14. The appellant's Landscape and Visual Impact Assessment (LVIA) and accompanying note<sup>8</sup> assessed the landscape and visual effects based partly on the submitted illustrative masterplan, which itself has been derived taking into account the key characteristics of the site having regard to the LCAs within which the site falls and those nearby. An appraisal of effects on visual receptors included a large number of viewpoints including Public Rights of Way, roads, and private and residential views. The Council raises no objection to the LVIA methodology.
15. Alongside the evidence submitted I also visited the site and I have used my own judgment based on the observations I made. This helped me understand the most important attributes of the site in relation to the LCA and in this regard, I accept that some of the key characteristics detailed in the LCA are not altogether reflective of the appeal site and its surroundings. In particular, the site is relatively enclosed within the landscape which restricts its visibility from the wider surroundings. Furthermore, the site is faced by an abrupt and prominent urban edge due to the presence of housing close to the western and northern boundaries.

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<sup>6</sup> As set out in the Council's Reason for Refusal no 2

<sup>7</sup> Tendring District Landscape Character Assessment 2001

<sup>8</sup> Landscape and Visual Issues Note July 2021

16. Nevertheless, the site has notable qualities. It has the appearance of pasture and in itself the site is open, set within a wider swathe of sloping agricultural fields which are bound by hedgerows. The southern portion of the site falls away towards a creek which is shrouded in trees and vegetation reinforcing the site's affinity with several features referred to in the LCA. In addition, some views from the more elevated parts of the site offer vistas of generally rolling countryside to the south and east. As a result, the site exhibits a pleasant, verdant and rural character, diminished to an extent by the presence of urban form.
17. As detailed on the submitted illustrative masterplan, there would be opportunities to soften the eastern and southern boundaries of the proposed scheme by introducing additional hedgerows, vegetation, and trees. Furthermore, the introduction of additional planting would improve the wooded character of the lower section of the site, and this would be complemented by a woodland walk and an area of public open space with integrated sustainable drainage ponds. During the hearing it was agreed that such measures could be secured by condition, requiring any future reserved matters details to be submitted in accordance with the overarching illustrative landscaping plans. Therefore, given the conspicuousness of the existing settlement edge, these measures would result in a softer verdant edge to this part of the village, more sympathetic with the rural surroundings than the existing settlement boundary. However, this would come at the expense of encroachment due to the scheme's resultant expansion of St Osyth into the countryside.
18. In this regard, whilst acknowledging that publicly obtainable views of the scheme from the surrounding area would be generally well contained, the proposal would constitute a large expanse of built form and a significant permanent encroachment into the countryside. Even taking into account the landscaping and associated measures, the proposal would inevitably detract from the site's rural character.
19. This is emphasised by obtainable views from Daltes Lane, which lies mid-distance from the appeal site to the south, where the proposal would be intermittently visible from various points through the gaps in the vegetation. I appreciate it would be less prominent on the skyline than, and seen in the context of, existing housing which lies near the site and towards the crest of the slope near Clacton Road. Be that as it may, there would be obtainable views from this country lane where the scheme would be seen as an expansive area of built development, including houses and hard surfacing. It would replace an area of countryside which is largely undeveloped.
20. In terms of other visual impacts from the surroundings, given the scale of the development proposed and the proximity of existing housing, there would be moderate long-term visual adverse effects for the residential receptors located close to the site boundaries. However, there would be limited harmful visual effects from other more distant viewpoints.
21. Nevertheless, I find that the development would have a harmful urbanising effect on the character and appearance of the area. I have taken into account the scale of the proposal, the resultant encroachment into the countryside, and the irreversible harm to the site's rural character and appearance which I consider would be significant. Set against this would be the elements which would reduce the long-term level of harm including the landscaping proposed,

and the limited visibility of the proposal from the wider landscape. Consequently, I find moderate harm to the character and appearance of the area.

### *Housing Delivery*

22. There is no dispute between the main parties that the Council are able to demonstrate a five-year housing land supply, and the appellant has not challenged the Council's stated 6.66-year supply of deliverable housing sites. The Council's Strategic Housing Land Availability Assessment (SHLAA) anticipates the delivery of approximately 1500 homes within the rural service centres as a whole over the plan period, equating to between 100 and 400 dwellings within each rural service centre settlement.
23. There are no housing sites allocated within St Osyth in the Local Plan and I was not made aware of any notable committed future developments within the settlement development boundary. However, there are two schemes with planning permission located just outside the settlement boundary. These developments would result in approximately 261 dwellings, both schemes comprising enabling development to repair and restore a heritage asset, St Osyth Priory<sup>9</sup> (priory developments).
24. The bespoke nature of the priory developments and their parkland setting means that they have, and will likely continue to be, marketed at a significantly higher price than the market average of homes sold in St Osyth over recent years. Conversely, the price of the new homes proposed would likely be more typical of the local market average, thus they would be more attainable for the local population. In terms of affordable housing, Policy LP5 of TLP2 requires that schemes such as this deliver at least 30% affordable housing. The proposal would be policy compliant in this respect. Overall, I am satisfied that the proposal would make a meaningful contribution to addressing local housing needs.

### *Accessibility*

25. Despite its location mainly outwith the settlement boundary, the appeal site is sufficiently close to, and within reasonable walking distance of, a range of services and facilities which are generally located to the west along Clacton Road. Bus stops lie close to the site entrance which link to regular bus services which link larger settlements in the District. Even though St Osyth lacks a railway station and there are no strategic employment centres in close proximity, the appeal site is nevertheless located whereby future residents of the proposal could meet their day to day needs in a sustainable manner.

### *Conclusions on locational suitability of appeal site*

26. The scheme would make a meaningful contribution towards addressing local market and affordable housing needs in a location reasonably related to services and facilities. Moreover, the scale of the proposal would not be significant relative to the existing population and housing numbers within St Osyth<sup>10</sup>.

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<sup>9</sup> As detailed in the Tendring District Council Strategic Housing Land Availability Assessment – October 2021 – these developments comprise 190 dwellings on a site known as 'Wellwick' and 71 dwellings at 'Westfield'

<sup>10</sup> According to appellant the proposal would increase population of St Osyth by 8.5% and housing stock by 9.5%, significantly less than this when factoring in household and population increase due to priory developments.

27. However, the proposal would involve up to 100 dwellings which would mostly be located outside of the settlement development boundary. The Local Plan makes it clear that existing settlements are the principal focus of future growth. When combined with the overall scale and footprint of the built form, the scheme would represent a significant encroachment into the countryside resulting in moderate harm to its character and appearance. The development would not be a modest addition to the village, as it would not be commensurate with the growth envisaged in St Osyth in the Local Plan in terms of scale.
28. Consequently, the site would not be a suitable location for this proposal, in conflict with Policies SPL1 and SPL2 of TLP2, and SP3 of TLP1. In summary, these policies seek to direct development to the most appropriate locations, ensuring that proposals outside settlement development boundaries relate to the pattern and scales of growth envisaged in rural service centres, whilst also ensuring that development does not harm the character of the countryside. As the proposal would fail to protect the local character, it would also be contrary to Policy SPL3 of TLP2 and paragraph 174 of the Framework which seeks to ensure that the intrinsic character and beauty of the countryside is recognised.
29. The Council refer to Policy PPL3 in their reason for refusal. Compliance or otherwise with this policy relies on an assessment of whether there is overriding harm to the rural landscape, so I return to this later in my 'planning balance'.

### **Other Matters**

30. The Statement of Common Ground confirms that the Council do not wish to defend one of their reasons for refusal relating to ecological matters due to additional information being provided by the appellant as part of the appeal. It has not been necessary for me to pursue this matter further.
31. The appellant has provided details of a number of appeals which they contend supports their assertion that the market and affordable housing benefits of this scheme should carry substantial weight. However, for a variety of reasons, they are not directly comparable, whether that be because the schemes involved a different number of houses, or because the most important policies for determining the appeal in those cases were out of date. I have also been made aware of another appeal scheme where the Inspector gave substantial weight to biodiversity net gain of 10%<sup>11</sup>. However, I note that scheme involved up to 700 dwellings, much larger than this proposal. I have had regard to these appeals in reaching my decision but ultimately, as set out in the 'planning balance' section, I have applied weight to the benefits as I see fit given the particular circumstances of this case.
32. The proposal would lie within a Zone of Influence in relation to coastal European designated sites<sup>12</sup>. As the competent authority, if I had been minded to allow the appeal, it would have been necessary for me to complete an Appropriate Assessment, taking into account the mitigation contained in the S106 agreement. However, as I am dismissing the appeal for other reasons, I have not pursued this further.

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<sup>11</sup> Appeal ref - APP/V2255/W/19/3238171

<sup>12</sup> As detailed in the Conservation of Habitats and Species Regulations 2017

## **Planning Balance and Conclusion**

33. The proposal would conflict with the development plan overall for the reasons previously outlined. The most important policies for determining the appeal are not out of date and the appeal should be determined in accordance with the development plan unless material considerations indicate otherwise<sup>13</sup>.
34. Material considerations include the benefits of the proposal. In this regard, the 100 homes proposed would align with the Framework's emphasis on boosting housing supply, and they would be situated close to a settlement within which only limited housing numbers are envisaged within the plan period. Furthermore, the scheme would deliver new market homes of a type and affordability not provided for or envisaged elsewhere in St Osyth through the plan period. However, contrary to the appellant's assertion that these benefits should carry significant weight, I instead attribute moderate weight due to the Council's robust housing land supply position as it has sufficient sites for future housing to meet its identified needs.
35. The provision of affordable homes in the District has been weak for a number of years. The situation is exacerbated in St Osyth because of the lack of affordable provision as part of the consented priority developments, thus no future affordable housing locally is planned. Moreover, the Council accepts that there is an acute and pressing need for affordable housing locally and across the District. Whilst the 30 affordable homes proposed would not exceed planning policy requirements, given the local context, this matter carries significant weight in favour of the appeal.
36. The proposal would include the provision and management of a large area of public open space, in excess of minimum planning policy requirements. There would be some benefits to the local community who may use this space, but the benefits would mainly be felt by future residents of the appeal scheme. A contribution would also be made towards upgrading existing local play facilities. Overall, these benefits carry moderate weight.
37. The scheme would include biodiversity net gain of at least 10% which could be secured by planning condition. Due to the localised nature of the environmental and biodiversity benefits envisaged, I attribute moderate weight to this matter.
38. Paragraph 81 of the Framework states, amongst other matters, that significant weight should be placed on the need to support economic growth. However, the proposal would not be a long-term employment generating scheme in its own right. It would provide temporary jobs during the construction phase and future occupiers would make both direct and indirect contributions to the economy. Therefore, this matter carries moderate weight.
39. The proposal would be in an accessible location in relation to shops, services, facilities, and public transport. However, this consideration carries limited weight due to the modest level of services and facilities within St Osyth, which is a rural service centre.
40. Limited weight is given in favour of the proposed conversion of a barn, which is a non-designated heritage asset, due to its localised importance and limited significance.

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<sup>13</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004

41. A range of planning obligations are proposed but they are mainly intended to mitigate the effects of the development and I afford them only limited weight. Obligations are also proposed in relation to affordable housing and public open space, but I have already attributed appropriate weight to them as detailed in the foregoing balance.
42. Weighing against the scheme are adverse effects. Paragraph 15 of the Framework is clear that the planning system should be genuinely plan-led. The Local Plan is up to date, and the proposal would extend beyond the settlement development boundary, at odds with the District's settlement hierarchy which highlights allocated sites and settlement development boundaries as the main focus of future growth. The scale and nature of the proposal would also result in a harmful incursion into the countryside.
43. As a result of the conflict with the development plan overall, this is a matter which carries substantial weight, in addition to the moderate harm to the character and appearance of the area. The conflict identified would not be outweighed by the benefits. As a result, there would also be overriding harm to the rural landscape contrary to TLP2 Policy PPL3.

### **Conclusion**

44. The proposal would conflict with the development plan as a whole and there are no other material considerations which outweigh this finding. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

*Matthew Woodward*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Andrew Tabachnik QC  
Sam Metson  
Harriet Wooler  
Jacqueline Bakker  
Adam Bell

Advocate  
Planning Agent  
Planning Agent  
Landscape Consultant  
Appellant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Matthew Lang BSc (Hons) MRTPI  
Clive Dawson  
William Fuller

Senior Planning Officer  
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