
Appeal Decision

Site visit made on 8 February 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 April 2022

Appeal Ref: APP/P1560/W/21/3272055

Land to the west of Folkards Lane, Folkards Lane, Brightlingsea CO7 0SJ

- 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 Mr Robert Pomery (West Folkards Ltd) against the decision of Tendring District Council.
 - The application Ref 20/01106/OUT, dated 14 August 2020, was refused by notice dated 18 February 2021.
 - The development proposed is Demolition of stables and erection of 3no. dwellings with access and parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was for outline planning permission with appearance, landscaping and scale reserved. Access and layout were not reserved matters. As such I have had regard to the access and layout shown on the submitted site layout plan. I have also had regard to the elevation plans but only insofar as they are indicative (bearing in mind that scale and appearance are reserved matters).
3. The appellant originally proposed 5 dwellings. However, the evidence before me indicates that the scheme was amended to include a total of 3 dwellings. As such, I have amended the description of development to that which was included on the decision notice. The appellant has agreed to this description.
4. On 25 January 2022, the Council adopted Section 2¹ of the Tendring District Local Plan (TDLP) which now stands alongside TDLP Section 1², adopted in January 2021, to form the development plan for the area, superseding the saved policies of the previous district-wide Local Plan, adopted in 2007. As a result, the Council has confirmed that the following TDLP Section 2 policies are now relevant to this appeal: SPL1, SPL2, SPL3, PPL3 and LP8. The Council has also highlighted that, as a result of the adoption of the TDLP Section 2, the site is no longer located within the Coastal Protection Area. The Council has also identified a number of TDLP Section 1 policies which they suggest are relevant to this appeal but were not referred to in the reasons for refusal, including: SP3, SP4 and SP7. An opportunity has since been provided for the appellant to comment on these policies and I have had regard to them in this decision.

¹ Tendring District Local Plan 2013-2033 and Beyond: Section 2 – Adopted 24th January 2022

² Tendring District Local Plan 2013-2033 and Beyond: Section 1 – Adopted January 2021

5. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework) and I have had regard to it in considering this appeal.

Main Issues

6. The main issues are:

- Whether the site is a suitable location for the proposed development with regard to the Council's strategy for the location of new residential development as set out within the development plan.
- The effect of the proposed development upon the character and appearance of the appeal site and surrounding area.

Reasons

Location of residential development

7. TDLP Section 1 Policy SP3 sets out the broad strategy for the location of new housing in the district. It states that development will be accommodated within or adjoining existing settlements according to their scale, sustainability and existing role. Policy SP3 outlines that beyond the settlements, development to support the diversification of the rural economy will be supported. TDLP Section 2 Policy SPL1 defines a settlement hierarchy, in which Brightlingsea is identified as a 'smaller urban settlement'. These settlements are the second most sustainable settlement type identified and they typically provide a range of existing infrastructure and facilities. Notwithstanding this, the appeal site is approximately 40 metres outside of the defined settlement boundary and it is therefore within the countryside.
8. Policy SPL2 states that outside settlement boundaries, development proposals will be considered in relation to the pattern and scales of growth promoted through the settlement hierarchy.
9. The TDLP's explanatory text, at paragraph 3.3.2.1, states that the housing that is required for the District will be delivered on allocated land, on sites within settlement boundaries or on sites on undeveloped land on the edge of the settlements. However, Paragraph 3.3.3.1 makes clear that development elsewhere is to be strictly controlled, to protect the character and openness of the countryside.
10. Overall, there is support within Policy SP3 for sites 'adjoining' existing settlements, dependent in part on the scale and sustainability of the settlement. However, the appeal site, whilst only 40 metres from the settlement boundary, would be physically divorced from the settlement, with intervening swathes of countryside between the site and the settlement boundary. In this regard, the appeal site does not 'adjoin' the settlement. Therefore, notwithstanding that Brightlingsea provides a good range of services and facilities capable of supporting the number of dwellings proposed, the proposed development would conflict with the spatial strategy set out under TDLP Section 1 Policy SP3 and TDLP Section 2 Policy SPL2. There would also be a conflict with Section 1 Policy SP1, but only insofar as it requires that proposals accord with the development plan.

11. TDLP Section 1 Policy SP4 sets out that the local planning authorities will identify sufficient deliverable sites, developable sites and/or broad locations for their respective plan period. As such, there is no conflict with this policy.
12. Both parties make reference to Framework Paragraph 80, which deals with isolated homes in the countryside. The appeal site is relatively close to other residential development and is not isolated within the terms of Framework Paragraph 80. However, whether or not the site is isolated in these terms is not a precursor to the acceptability of the principle of development. This is just one consideration and it does not outweigh the need to ensure that the planning system is genuinely plan-led, as set out at Framework Paragraph 15. Indeed, the proposed development would conflict with Paragraph 15 to the extent that it is contrary to the strategy for the location of residential development as set out in the development plan.

Character and Appearance

13. The appeal site is an existing paddock, which predominantly comprises grassland. Other than a row of trees along the northern boundary, the site is generally open and devoid of vegetation, in contrast to the more built up areas to the west and east of the appeal site. The site has a rural character which contributes positively to the transition between the sporadic linear residential development along this side of Folkards Lane and the more open countryside to the north. There is a proliferation of development on the opposite side of Folkards lane which includes a boarding kennels and a site for the storage of touring caravans/touring caravan site but this has a markedly different character to the appeal site.
14. Whilst the proposal is for outline planning permission, access and layout are not reserved matters. The proposed layout of the development includes three relatively large dwellings which would be spread out within the site, each with a relatively large curtilage. The dwellings would be set back much further than the existing row of dwellings to the south west. As a result, there would be a harmful disruption to the linear pattern of sporadic development as well as a harmful urbanising effect on the existing rural character of the appeal site. This would diminish the sites contribution to the rural setting of the settlement of Brightlingsea (even accepting that the dwellings could be designed to have a 'farmstead' appearance). This harm would be exacerbated through the presence of a long driveway leading up to the properties and the inevitable proliferation of residential paraphernalia which would arise within the large curtilages.
15. Landscaping and planting measures would not be capable of mitigating the harmful impact, given that they themselves would contribute to a less open character and they would therefore likely exacerbate the harmful visual impact of the development, particularly when perceived from the west and south west.
16. The proposed development would be harmful to the character and appearance of the surrounding area. As such, it would conflict with TDLP Section 1 Policy SP7 and TDLP Section 2 Policy SPL3, which require in part that development responds positively to local character. There would also be a conflict with TDLP Section 2 Policy PPL3, which requires the rural landscape to be protected (noting that the list of features referred to under the policy is not exhaustive).

17. Notwithstanding the fact that the proposed development would be set-back from the adjacent linear development on Folkards Lane to the south, there are no existing dwellings directly in front of the site, adjacent to Folkards Lane. As such, the site is not a 'backland' site for the purposes of TDLP Section 2 Policy LP8 and this policy does not apply.
18. The proposed development would also conflict with Framework Paragraph 174 which requires in part that decisions recognise the intrinsic character and beauty of the countryside. There would also be a conflict with Paragraph 130, which states in part that development should be sympathetic to local character.

Other Matters

19. Planning permission was granted on part of the appeal site for a single dwelling and cart lodge, under application reference 19/00179/FUL. This decision was made at a time when the Council could not demonstrate a five year supply of deliverable housing sites. This permission remains extant and I consider that there is a realistic prospect of it coming forwards. As such, it represents a fallback position, material to the consideration of this appeal. However, the proposed development is materially more harmful than that approved under the fallback position. This is because there are a greater number of dwellings proposed in a location which is not 'adjoining' to the settlement of Birghtlingsea. Furthermore, the proposed development would be set back further from the linear development on Folkards Lane, such that it would have a far more prominent and harmful impact on the character of the surrounding area (even noting that the approved dwelling turns it back on Folkards Lane). For these reasons, the fallback position does not outweigh the harm which the development would cause.
20. The appellant has also referred to other Council and Appeal decisions on sites nearby, including along Folkards Lane. However, most of these developments do not disrupt the linear character of development to the extent that the proposed development would. Furthermore, most of these decisions were granted in circumstances which were materially different to those that now apply. For example, the Council can now demonstrate a housing land supply of more than five years and the TDLP Section 2 has been adopted (replacing the previous Local Plan). For these reasons, the decisions referred to alter my findings in relation to the main issues of this appeal.
21. Whilst not the case at the time the planning application was submitted, it is now common ground that the Council can demonstrate a supply of deliverable sites in excess of five years. The appellant has made various representations in relation to the previous Local Plan (2007) policies, suggesting that they are out-of-date. However, these policies have now been replaced by the new TDLP Section 1 and 2 policies, both of which have been found consistent (through their adoption) with a recent version of the Framework. Indeed, as I have noted, the relevant policies to the principle of development do not place a blanket ban on development in countryside locations and they are consistent with the Framework in this regard. As a result, these policies are not out-of-date and Framework Paragraph 11d(ii) is not engaged.
22. The proposed development would result in a net increase of three dwellings which would lead to social and economic benefits. This would be consistent with the emphasis on boosting housing supply within the Framework. There would also be social and economic benefits associated with the increase in population

and the resultant support for local services in Brightlingsea, a benefit consistent with the framework. Nonetheless, given the small scale of the proposed development, this benefit can only be afforded moderate weight.

23. The site has good access to services and facilities. However, this is not a benefit of the development itself, because the Framework and Development Plan aim to ensure that residential development is guided primarily to such locations. As such, this is a factor which carries neutral weight.
24. There would be contributions to open space and recreational amenity mitigation secured through a planning obligation. However, these are neutral factors as they are necessary to ensure compliance with other development plan policies and mitigate the impact of the proposed development.
25. The appellant has suggested that the site comprises previously developed land (PDL), given its use as a paddock. Even if I were to accept this position, the benefits associated with the use of PDL when combined with the other moderate benefits would not outweigh the conflict between the proposal and the development plan.
26. The evidence before me indicates that the appeal site is within the zone of influence for the Colne Estuary Special Protection Area (SPA) and Ramsar. The proposed development would lead to a net increase of 3 dwellings and there would be resultant recreational pressure on the SAC/Ramsar site and as such, likely significant effects on this designated habitat. The appellant has provided a Unilateral Undertaking which makes provision for a Recreational Disturbance and Mitigation Contribution to be paid. However, given that I am dismissing this appeal on other grounds it is not necessary to consider this matter further, nor undertake an Appropriate Assessment.

Conclusion

27. The proposed development would conflict with the development plan taken as a whole. There are no material considerations of sufficient weight to indicate a decision other than in accordance with the development plan. As such, the appeal is dismissed.

Luke Simpson

INSPECTOR