



Appeal Decision

Site visit made on 7 June 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th June 2022

Appeal Ref: APP/P1560/W/21/3274309

Land Adjacent Cross Farm, Station Road, Thorrington CO7 8JA

- 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 & Mrs Robert and Kathryn Long against the decision of Tendring District Council.
 - The application Ref 20/01629/OUT, dated 30 November 2020, was refused by notice dated 29 January 2021.
 - The development proposed is described on the application form as 'Outline planning application (all matters reserved) for the erection of six new dwellings'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was for outline planning permission with all matters reserved. I have had regard to the 'Proposed Block Plan' only insofar as it provides an indication of the possible siting and layout of the proposed development.
3. The decision notice refers to several policies contained within Section 1 of the Tendring District Local Plan (TDLP) ¹. However, these are referred to as 'emerging policies' despite the plan having been adopted three days prior to the decision.
4. On 25 January 2022, the Council adopted Section 2² of the TDLP, which now stands alongside TDLP Section 1 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, PPL4 and HP5.
5. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). The appeal process has afforded the parties sufficient opportunity to comment on it and I have had regard to it in considering this appeal.

¹ Tendring District Local Plan 2013-2033 and Beyond: Section 1 – Adopted 26th January 2021

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

Main Issues

6. The main issues are as follow:

- 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 and in particular, the access to services and facilities and the effect of the development on the character of the countryside.
- The effect of the proposed development on the Colne Estuary Ramsar Site and Special Area of Conservation (SAC).
- Whether a planning obligation is necessary to secure provision of open space.

Reasons

Location of 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. I have not been provided with a copy of the adopted policies map showing the settlement boundary of Thorrington. Nonetheless, the appellants accept that the site is approximately 160 metres outside of the settlement boundary. The site is therefore located within the countryside.
8. TDLP Section 2 Policy SPL2 states that outside settlement boundaries, development proposals will be considered in relation to the patterns 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. TDLP Section 2 Policy SPL1 defines a settlement hierarchy and identifies Thorrington as a 'smaller rural settlement'. The TDLP outlines that 'smaller rural settlements' are the least sustainable settlements, with fewer services and facilities provided. Indeed, Thorrington has a limited range of services and facilities including a store/post office, village hall, pre-school, public house, allotments, tennis and bowls club and playing fields. The TDLP outlines that such settlements can accommodate growth of no more than 10 dwellings.
11. As such, when read as a whole, these policies do not preclude the principle of new residential development on sites 'adjoining' the settlement boundaries, subject to a consideration of the patterns and scales of growth set out within the settlement hierarchy (in this case a maximum of 10 units). Nonetheless, the appeal site is physically separate from the settlement and in this regard, it does not 'adjoin' the settlement for the purposes of applying the development plan policies.
12. Furthermore, the appeal site is functionally divorced from the settlement because, even if I accept that the linking footway is suitably maintained and lit, future occupiers would be required to walk in excess of 850 metres to access

the local shop on foot. Given this extensive distance, it is highly unlikely that they would do so on a regular basis. They would also have to travel even further afield to access services and facilities to meet their every-day needs.

13. The appellants have suggested that there are good public transport links to Colchester within a short walking distance from the appeal site and a train station within 1.8 miles. However, even if I were to accept this, this does not overcome the conflict with the aforementioned development plan policies, which seek to ensure that new development is located within or adjoining the settlement boundaries, in locations with good access to services and facilities. In this case, the appeal site is located significantly outside of the least sustainable settlement type within the Council's hierarchy.
14. In addition, these development plan policies serve two separate functions. They seek to guide development towards the most sustainable locations. However, they also seek to ensure that development protects the character of the countryside.
15. The appeal site is located on an area of land between Cross Farm and Greenacres Farm (which comprise sporadically located residential properties). It is understood that the site has most recently been used as a large paddock. The site sits behind a mature hedgerow which assists in providing visual screening when viewed from the highway. Beyond the hedgerow, the site is fairly open. Indeed, this character is relatively typical of the countryside within the surrounding area. The site has a distinctly different character to the more urban and linear character on the opposite side of Station Road.
16. Whilst the appeal relates to an application for outline planning permission, the appellants have provided an indicative layout plan which shows that dwellings could be arranged in a linear manner similar to the layout of the residential development opposite. However, the presence of a strip of linear residential development in this location would be contrary to the prevailing character on this side of Station Road, which is far more sporadic and rural than that to the east. Station Road forms a natural boundary for the majority of the built development surrounding Torrington. Indeed, the rural character to the west of this road plays an important role in providing a rural setting for Torrington. This role would be significantly diminished as a result of the proposed development.
17. Access is a reserved matter. Nonetheless, even taking into account the prospect of additional planting, it is inevitable that the development would be at least partially visible from the street scene over a proposed access or accesses, even if single storey dwellings were proposed. The visual harm caused by the development would also likely be visible from the neighbouring dwellings to the north and south.
18. For these reasons, the appeal site would not be a suitable location for the proposed development, given its location, significantly divorced from the settlement of Torrington and its limited services and facilities. It would also have a significant harmful visual impact on the character of the countryside. It would therefore conflict with the Council's strategy for the location of residential development, including TDLP Section 1 policy SP3 and TDLP Section 2 policies SPL1 and SPL2.

19. There would also be a conflict with Framework Paragraph 130, which requires in part that development is sympathetic to local character.

Effect on the Colne Estuary Ramsar Site and SAC

Planning Obligation

20. The evidence before me indicates that the appeal site is located within the zone of influence for the Colne Estuary Ramsar *Site and SAC*. The Conservation of Habitats and Species Regulations 2017 as amended (Habitats Regulations) require that permission may only be granted after having ascertained that it will not affect the integrity of the European site.
21. In general terms, adverse effects to this area may arise from additional recreational pressure, which is likely to occur the more dwellings are located nearby to them. The appeal proposal, which includes the provision of six dwellings, would therefore likely have a significant effect on habitats and areas protected by these designations. In order to mitigate these effects, the Council require contributions from qualifying developments towards the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS).
22. In the absence of a sufficiently robust mechanism to secure a financial contribution and satisfactorily show how any such contribution will be spent, such as a planning obligation in this case, I cannot be satisfied that the harm that would arise from the appeal scheme will be mitigated appropriately.
23. As such, I cannot conclude that likely significant effects to the ecological integrity of Colne Estuary Ramsar and SAC would not occur. Therefore, the proposed development would conflict with TDLP Section 2 Policy PPL4, which in part seeks to protect SACs and Ramsar Sites.
24. There would also be a conflict with Framework Paragraph 174a, which requires in part that planning decisions should protect sites of biodiversity value in a manner commensurate with their statutory status (in this case, a site afforded statutory protection under the Habitat Regulations).
25. Given that I am dismissing the appeal on other grounds, it is not necessary to undertake an appropriate assessment.

Planning Obligation

26. Framework Paragraph 57 states that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development.
27. The Council's evidence indicates that the development necessitates a contribution towards open space provision. However, the newly adopted TDLP Section 2 Policy HP5, which has replaced the previous Local Plan (2007) Policy, only applies to residential developments of 10 or more dwellings on sites of 1.5 hectares and above. Neither of these thresholds are breached by the proposed development.
28. Whilst the Council and the Parish have indicated that there is a deficit in open space provision in Thorrington, no substantive evidence has been provided to

support this assertion, nor the extent to which (if any) the proposed development would necessitate a requirement for additional open space.

29. For these reasons, the proposed development would comply with Policy HP5 and there is no substantive evidence to demonstrate that a contribution to open space provision is necessary to make the development acceptable.

Other Matters

30. The appellants have referred to various appeal decisions relating to residential development within the district. However, those referred to all pre-date the adoption of TDLP Section 2. Furthermore, every case should be treated on its own merits with regard to the relevant site-specific circumstances. As such, none of the cases highlighted alter my conclusions in relation to this appeal.
31. The Morton House appeal decision³ related to a residential development to the north of the appeal site on Station Road. Whilst the Inspector concluded that that site was within walking distance to the services and facilities within the village, it is not clear what he considered a reasonable walking distance to entail. Indeed, there was also a previous appeal⁴ on the appeal site relating to a proposal for three dwellings. In that case the Inspector found that the site was not within an 'easy walking distance' of the services and facilities in the village. I am minded to agree with the latter, particularly given that the Inspector's decision in that case related to the current appeal site.
32. In any case, I have found that even with sustainable transport links present, the site conflicts with the Council's strategy for the location of residential development as set out within the recently adopted TDLP Section 2. This is because, unlike in the case of the Morton House appeal, the proposed development would harm the character and appearance of the area.
33. The appellants have also referred to Wood v SoS CLG and another [2014] EWHC 683. However, this judgement concerns limited infilling in a village in terms of Green Belt policies. In any case, the Council's policies do not preclude development outside the settlement boundaries, and they are consistent with the Framework in this regard.
34. The provision of 6 dwellings would bring some social and economic benefits and would be consistent with the Framework's emphasis on boosting housing supply. However, given the limited scale of the development the benefits associated with this would be of moderate weight.
35. The appellants have suggested that one dwelling would be self-build but there is no obligation before me to secure this and as such this is a benefit of limited additional weight.
36. The Council has provided a recent appeal decision⁵ which indicates that it can demonstrate in excess of 5 years Housing Land Supply (HLS). The appellants have questioned this but have not provided any substantive evidence to support an alternative position. As such, the evidence before me indicates that there is an HLS position in excess of 5 years and Framework Paragraph 11D is not engaged.

³ APP/P1560/W/17/3175859

⁴ APP/P1560/A/14/2219816

⁵ APP/P1560/W/20/3259859

37. The appellants assert that the site comprises poor quality soil for agricultural purposes. However, this is not a factor of sufficient weight to warrant allowing the appeal.
38. Whilst I accept that the site is not isolated within the context of Framework Paragraph 80 (given proximity to neighbouring dwellings), that does not mean that it has good access to services and facilities.

Conclusion

39. The proposed development would conflict with the development plan taken as a whole and the modest benefits of the development would not outweigh this conflict. There are no other material considerations which warrant a decision other than in accordance with the development plan. The appeal is therefore dismissed.

Luke Simpson

INSPECTOR