



Appeal Decision

Site visit made on 14 June 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th June 2022

Appeal Ref: APP/P1560/W/21/3282526

Land east of Wolves Hall Lane, Tendring, CLACTON-ON-SEA, CO16 0DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Fairley & Sons (Farms) Ltd against the decision of Tendring District Council.
 - The application Ref 21/00063/FUL, dated 22 December 2020, was refused by notice dated 9 March 2021.
 - The development proposed is two bespoke custom build dwellings.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Fairly & Sons (Farms) Ltd against Tendring District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Following the Council's decision, the National Planning Policy Framework (the Framework) was revised on 20 July 2021. The Council and appellant have had an opportunity to comment on the implications of these changes through their submissions.
4. Since the Council issued its decision it has adopted Section 2 of the 2013-33 and Beyond Local Plan on 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 (LP).
5. 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 policies in the LP supersede some of those referred to in the Council's delegated report. The parties have had an opportunity to address these changes in policy.

Main Issues

6. The appellant has also submitted a duly executed unilateral undertaking in order to overcome the third reason for refusal which I have taken into account. It provides for a contribution towards ecological mitigation and I have contemplated this further later in my decision.
7. Therefore, the main issues are framed in the context of the Council's first two reasons for refusal and are:

- whether the site represents an appropriate location for the proposed development, with reference to the spatial strategy in the development plan; and
- the effect of the proposed development on the character and appearance of the area.

Reasons

Suitable location

8. Policy SP3 of LP 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 identifies Tendring 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.
9. Policy SPL2 of the LP 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 and any other relevant policies in the plan.
10. The policies that I have set out are intended to ensure housing is located in areas which are accessible and sustainable but these policies do not prevent the development of land outside of settlement boundaries. Furthermore, paragraph 79 of the Framework promotes sustainable development in rural areas, through locating housing where it will enhance or maintain the vitality of rural communities. It recognises that groups of smaller settlements may support services in a village nearby.
11. Tendring 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. The nearby settlements of Weeley and Thorpe Le Soken both benefit from a range of services, including schools, shops and public house.
12. However, given the distance from the site to these it would be unlikely that you would walk or cycle. There is a bus stop approximately within walking distance of the appeal site and the appellant has provided a bus timetable which indicates that there are two routes which run intermittently throughout the day, with some services being within hourly and some 2 hourly depending on whether you were going to Colchester or Clacton. The services are less regular at the weekends.
13. Whilst this would be an available alternative to the private car, having regard to their frequency and in particular the limited availability in the evenings and weekend, the bus service would be unlikely to be a realistic substitute to the convenience of a private car.
14. It is for these reasons that Tendring is identified as a smaller rural settlement within the LP which states that growth should be limited to the patterns of growth identified. Furthermore, policy CP1 of the LP sets out that proposals for new development must be sustainable in terms of transport and accessibility and should include and encourage opportunities for access to sustainable modes of transport.

15. I consider that the site is less than ideally located in terms of access to services, facilities and amenities and occupiers are likely to prefer the convenience of a private car. As a result, 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 moderate weight.
16. I have been referred to a number of other appeal decisions where the suitability of the settlement for housing has been considered and I will take each of these in turn.
17. The most recent is APP/P1560/W/21/3281960, where the Inspector considered two main issues, neither of which pertained to the acceptability of the location for housing, as at the time the Council made their decision the site was within a defined settlement boundary. The Inspector does state that the site is within an established settlement and is a "sustainable" location in planning terms. However, there is nothing to suggest that the Inspector was referring to access to services and facilities and the Inspector makes no references to policies SP3, SPL1 or SPL3 within his decision which are relevant to the appeal before me.
18. A second appeal decision, APP/P1560/W/21/3276761 considered that there was a conflict with the council's spatial strategy, however the site was considered to be an infill within the centre of the settlement. The Inspector in that appeal found no harm to the character and appearance of the area and concluded that a previous Inspector had found the site to have reasonable access to services and facilities, but noted this no longer included a public house.
19. A third appeal decision on the site itself, APP/P1560/W/17/3190833, was made in 2018 and predates the current Local Plan. The Inspector in that case also refers to regular bus services providing access to the larger towns and villages. However, I can not be certain that the bus services provided in 2018 are of the same regularity as those timetables provided to me as part of this appeal. Furthermore, the Inspector does acknowledge that the development of the site would be contrary to the spatial strategy present at the time.
20. Therefore, having regard to these decisions which relate to the settlement of Tendring, in two of the cases Inspectors acknowledged that housing development in this location would be contrary to the spatial strategy and in the other case, the matter wasn't fully explored. I am content therefore that the circumstances and evidence appear different and therefore I am not acting inconsistently in my findings in relation to whether the proposal represents a sustainable form of development. Furthermore, I am consistent in my findings in relation to the spatial strategy with those of the other Inspectors.
21. 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 SP1 and SP3 of the LP which seeks to direct development to the most appropriate locations. The development would also conflict with policies SPL1 and SPL2 of the LP which sets out the settlement strategy for Tendring.

Character and appearance

22. The appeal site is formed from an area of larger field and is open and undeveloped. It is in contrast with the linear pattern of residential development

which forms the settlement of Tendring Green which is located along the triangle formed by Parsonage Lane, Chapel Lane and the B1035.

23. The proposal would extend development along this part of Wolves Hall Lane, beyond the junction of Parsonage Lane and Chapel Lane. The introduction of further dwellings in this location would alter the character and appearance of this rural site. Resulting in an urban form that would intrude into the countryside, beyond the edge of the current settlement.
24. In addition, the proposed development would lead to a more intensive use of the site. This would include an associated increase in domestic paraphernalia, with the effect of eroding the open and rural character of the immediate area.
25. The development would be particularly noticeable when entering the settlement along Wolves Hall Lane and from these localised viewpoints the development would be noticeable. The urban form of the proposals would extend development into an area which is currently undeveloped. This would diminish and result in harm to the intrinsic character and beauty of the Countryside, contrary to policies SLP3 and SP7 of the LP.
26. The appellants site layout plan shows the layout of the two dwellings which have been approved adjacent to 10 Parsonage Lane. These extend the linear pattern of development which is clearly evident along Parsonage Lane. Whilst the boundary of these plots does extend into Wolves Hall Lane, their orientation, fronting Parsonage Lane will enable them to be viewed in the context of the existing linear development.
27. The recently constructed development adjacent to the appeal site extends along Chapel Lane, terminating at the junction with Parsonage Lane. I consider the harm arising from the proposed development which extends further along Wolves Hall Lane is considerable and far greater than both the recently approved and constructed development. These consented dwellings give the appearance of rounding off the cluster of dwellings forming Tendring Green terminating neatly at the point where the roads meet. However, the proposed development would extend and intrude into the countryside beyond the existing cluster of dwellings.
28. For the foregoing reasons, therefore, the proposed development would have a significantly harmful effect on the character and appearance of the area. The development would conflict with Policy SPL3 of the LP which sets out that all new development should make a positive contribution to the quality of the local environment, and protect or enhance local character. In addition, it would fail to accord with Policy SP7, which requires all new development to reflect the local character and context to preserve and enhance the quality of existing places and their environs.

Other Matters

29. In addition to those outlined above the appellant has drawn my attention to a number of other appeal decisions. Including, APP/P1560/W/20/3252825, where the Inspector states that the existence of a five year housing supply was not a cap on housing development and this is a statement upon which I would not disagree. However, in that case the Inspector concluded that the benefits of boosting supply would outweigh the conflict with the development plan.

30. The second appeal, APP/P1560/W/21/3274492 is familiar to me as I was the Inspector. In that case development was allowed within Little Clacton, a Rural Service Centre where a modest increase in housing stock is envisaged. Furthermore, the site represented an infill of an existing gap within a linear pattern of development with housing on either side. As the settlement hierarchy places Tendring in a lower tier than Little Clacton, this appeal is of limited relevance to the case before me.
31. It has been put to me that the proposal will go some way to meeting the Council's requirements to deliver self build and custom housing and I accept that government policy is supportive of self-build housing, with Paragraph 23 of the Planning Practice Guidance highlighting that authorities must give suitable development permission to enough suitable serviced plots to meet the demand for self-build and custom built housing in the area.
32. Since the determination of the appeal the Council has adopted policy LP7 which permits proposals for small developments of new Self-Build and Custom-Built Homes on land outside of the settlement boundaries. However in order to support a sustainable pattern of growth this relates to urban settlements and rural service centres. It also requires development to have no significant material adverse impact on the landscape or the form and character of nearby settlements. Therefore, the proposal does not gain support from this policy.
33. I acknowledge the appellants evidence that there is a demand for such housing locally, which is not disputed by the Council. However, whilst the proposal is described as two bespoke and custom build dwellings, I can not be certain that they would accord with the definition of self-build and custom housebuilding as the proposal is for full planning permission and therefore future occupants input into the final design would be limited. But more importantly no mechanism is before me which would ensure that it would be so. I therefore attach modest weight to this matter.
34. The appellant has directed me to another appeal decision¹ which was allowed in Weeley Heath. The Inspector gave significant weight to the proposed provision of self build housing but also the contribution of housing supply generally, as at the time of that decision the Council could not demonstrate a five-year housing supply. Therefore, the tilted balance was applied which is not the same as the case before me. However, the benefits arising from the construction of self build housing will be considered within my planning balance. As such my approach is consistent with this previous decision.

Conclusion

35. The development would give rise to some economic benefits during the construction phase and provide limited support to local services albeit from a remote base. There would be modest social benefits arising from the contribution to the Council's housing supply, noting the Framework highlights the contribution small and medium sized sites can make to meeting the housing requirement in the area. I have also given limited weight to the appellant suggestion that the housing could meet demands arising from the nearby industrial estate, currently under construction.

¹ APP/P1560/W/20/3246370

36. There would also be limited benefits arising from the provision of custom or self build plots, noting there is some uncertainty that the housing would be delivered as such. However, these benefits are not of sufficient magnitude to outweigh the harm I have identified and the significant weight I afford to the conflict with the development plan in this instance and the impact on the character and appearance of the area.
37. The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict. For the reasons given above, I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR