



Appeal Decision

Site visit made on 13 October 2022

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2022

Appeal Ref: APP/P1560/W/21/3283545

Land adjacent to Grange Farm Bungalow, Elmstead Market CO7 7DF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
- The appeal is made by Mr S Williams (Hills Residential Construction Ltd) against Tendring District Council.
- The application Ref 21/00367/FUL is dated 15 February 2021.
- The development proposed is described as "full planning application for nine dwellings, landscaping and associated infrastructure".

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address used in the banner above is taken from the appellant's appeal form as it more accurately reflects the location of the appeal site.
3. Since the appeal was submitted, Section 2 of the Tendring District Council 2013-2033 and Beyond Local Plan was adopted by the Council 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 2013-2033 and Beyond Local Plan (LP).

Main Issues

4. Although there is no formal decision from the Council, it has considered the proposal and indicated that had it been in a position to determine the application it would have refused planning permission. The Council argue that the location of the development is not acceptable, having regard to the Development Plan. It also raises a concern that the development would not provide adequate connectivity from the site to the A133.
5. Thus, the main issues in this appeal are 1) whether the location of the appeal site is appropriate having regard to the Development Plan, and 2) whether adequate pedestrian connectivity is provided, with particular regard to the A133.

Reasons

Location

6. The site forms a rectangular parcel of land that is currently devoid of development, with residential properties on Grange Farm Close and a group of business units adjacent to the site. Open fields and agricultural land separate

- the appeal site from Elmstead Market, giving the area around the appeal site a semi-rural appearance.
7. Policy SPL1 of the LP identifies Elmstead Market as a Rural Service Centre. In such locations, opportunities exist for smaller-scale growth. Policy SPL2 of the LP states that to encourage sustainable patterns of growth, and to control urban sprawl, settlements will be defined within a Settlement Development Boundary (SDB). Policy SP3 of the LP also sets out the spatial strategy for north Essex and states that existing settlements will be the principle focus of additional growth across the authority's and development will be accommodated within or adjoining settlements.
 8. The appeal site is not located within or adjoining the SDB of Elmstead Market and therefore, lies within the countryside. Policy SPL2 states that outside of SDB's, the Council will consider any planning application in relation to the pattern and scales of growth promoted through Policy SPL1, and any other relevant policies in the LP.
 9. As stated within my preliminary matter, the Development Plan has changed since the appeal was submitted and the Council can now demonstrate in excess of the five year housing land supply required by the National Planning Policy Framework (the Framework). Thus, in such circumstances, the tilted balanced at paragraph 11 of the Framework is not engaged and the policies that are considered most important for the determination of the planning application remain up-to-date.
 10. The Framework makes it clear at paragraph 12 that the presumption in favour of sustainable development does not change the status of the development plan and where a development is not in accordance with an up-to-date development plan, permission should not normally be granted. Paragraph 15 of the Framework also reiterates that the planning system should also be genuinely plan led with up-to-date plans providing a positive future for each area.
 11. Therefore, whilst I acknowledge the appellant's argument that the site benefits from permission for a business unit which is no longer required, and that housing exists adjacent to the site, this does not justify a deviation from adopted and up-to-date development plan policies which seek to direct development to within or adjoining SDBs.
 12. Moreover, although housing targets are not a ceiling and the Framework highlights the Government's objective of significantly boosting the supply of homes, the social, economic, and environmental benefits that are relied upon would not only flow from dwellings in this location, but they would also apply equally to new dwellings within or adjoining the SDB of Elmstead Market and thus, are not just related to this specific site or development. Consequently, the suggested benefits do not outweigh the harm to the aims of adopted policy which seek to direct development to within and adjoining identified SDBs and conflicts with the aims of sustainable development within the Framework.
 13. Additionally, although I accept that permission for 71 dwellings has been approved¹ close to the site, the Council make it clear that this was at a time when it could not demonstrate a five year supply of housing and as such, the

¹ Application 20/00239/FUL

tilted balance at paragraph 11 of the Framework was engaged. Moreover, housing to the south-west of the site was approved as a departure from the development plan, with the tilted balance engaged, to enable substantial employment development and the provision of a 3G sports pitch.

14. Furthermore, notwithstanding that the adjoining site was considered sustainable by a previous Inspector, that decision was made in 2015², under the previous development plan and again, when the Council could not demonstrate a five year supply of deliverable housing sites. Thus, I do not find the decisions referred to by the appellant to represent an irresistible reason to find in favour of the development before me.
15. I also acknowledge that the Framework indicates that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that where there are groups of smaller settlements, development in one village may support services in a village nearby. However, this matter needs to be considered in the context of the development plan, which deems Elmstead Market appropriate for only a limited amount of growth, controlled through the defined SDB and limited other development opportunities.
16. The appellant considers paragraphs 78 and 79 of the Framework lends support for the proposed development. Whilst Paragraph 78 indicates policies and decisions should be responsive to local needs, the appeal proposal falls outside the SDB and does not form part of any site allocation for the village and no justification of need has been provided. Furthermore, paragraph 78 also seeks to support affordable housing schemes on an exceptional basis and there is no evidence before me that any affordable housing would be brought forward on the site.
17. Paragraph 79 of the Framework seeks to locate housing where it will enhance or maintain the vitality of rural communities. Although the proposal would result in additional residents contributing to the community, there is no evidence before me of the extent of day-to-day services and facilities in the village. Moreover, the appeal proposal would only provide limited benefit in this regard and would not be well-related to the areas of the village covered by the SDB.
18. The Framework emphasises that the planning system is to be plan-led. At this point in time the proposal is clearly contrary to that plan as adopted as the development it seeks is not within nor adjoining the SDB of Elmstead Market. Furthermore, although paragraph 122 of the Framework asserts the reallocation of land and that applications for alternative uses should be supported, I have not been presented with any compelling evidence that the proposal would contribute towards an unmet need for additional housing in the area.
19. Thus, the location of the development is not appropriate. It would be in conflict with Policies SP3, SPL2 and SPL3 of the LP which seek, amongst other things, to manage patterns of growth.

Pedestrian Connectivity

20. The Council has questioned the ability of pedestrians to cross the A133 to the front of the site, in order to access the pathway on the eastern side of the

² APP/P1560/W/15/3028070

A133 that leads to Elmstead Market. The current layout at Grange Farm Close does not provide a footpath along the western side of the A133. Therefore, although there is an island in the middle of the road where pedestrians could cross safely, a lack of a footpath means standing on Grange Farm Close or using the grassed verge. Clearly, it would be dangerous to stand in the road and the use of a verge could pose problems for those with low mobility or those with pushchairs or small children.

21. However, the appellant confirms that the occupation of the adjoining site at Lanswood Park is restricted until such time as a footpath is provided from the site to bus stops that are to be located on the western side of the A133. A footpath would also link to allow pedestrians to cross the A133 to the existing footpath on the eastern side. The appellant proposes to extend a footpath to the front of the appeal site so that there is connectivity to the footpath proposed as part of the Lanswood Park development.
22. Although I acknowledge that the footpath at Lanswood Park has yet to be created, and indeed there is the possibility that it may not come forward, the appellant has demonstrated that there is scope to provide a footpath to the front of the appeal site. Therefore, I am satisfied that this matter could be controlled through the use of a suitably worded condition, such as the one suggested by the Council.
23. Thus, the development would provide suitable pedestrian connectivity to the A133. It would not be in conflict with Policies SP6, CP1, LP4 e) and SPL3, Part B, Criterion b of the LP and paragraphs 110 and 112 of the Framework which seek, amongst other things, to ensure that developments provide safe and convenient access for people.

Other Matters

24. 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, and consider the unilateral undertaking provided by the appellant to secure contributions towards RAMS³. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.
25. I note that representations were made by the Parish Council, raising additional concerns. However, given my findings on the main issues, it is not necessary to consider these matters in detail.

Conclusion

26. Thus, I conclude that there are no material considerations of such weight as to indicate that a decision be taken other than in accordance with the development plan. Therefore, the appeal is dismissed.

Graham Wyatt

INSPECTOR

³ Essex Coasts Recreational disturbance Avoidance and Mitigation Strategy