



Appeal Decision

Hearing held and site visit made on 15 November 2022

by Jonathan Price BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 06 December 2022

Appeal Ref: APP/X1545/W/22/3304049

Land at Top Road, Tolleshunt Knights, Maldon, Essex CM9 8EU

- 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 Kler Group against the decision of Maldon District Council.
 - The application Ref 21/00825/OUT, dated 3 August 2021, was refused by notice dated 11 February 2022.
 - The development proposed is outline planning application for up to 97 dwellings, public open space, together with landscaping and associated infrastructure. All matters are reserved for subsequent approval except for access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As set out above, the application was made in outline with all detailed matters reserved for later consideration, other than access onto the public highway. I have dealt with the appeal on this basis, taking all details as illustrative, apart from the proposed access junctions layout (ADC2106-DR-001 P6).
3. The Council's decision notice gives six reasons for refusal (RfR). It was subsequently agreed that a condition could govern a market housing mix that reflected the Council's needs¹, so RfR 2 was not defended. The same applied to RfR 3, given that, subject to conditions and off-site mitigation, the Council was satisfied the details submitted provided a satisfactory means of access.
4. The appellant had produced a revised flood risk assessment. This satisfied the Council that the proposal was capable of attenuating surface water run-off and would not lead to increased flood risk on the site or elsewhere. Subject to conditions relating to drainage, this assessment addressed RfR 5.
5. An agreement under section 106 of the Town and Country Planning Act 1990 (the s106) makes obligations over financial contributions towards the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy and education, the delivery of 40% affordable housing, off-site highway works and the provision and maintenance of suitable on-site public open space. The s106 addresses RfR 6, relating to the absence of such obligations.

Main Issues

6. On the basis of the unresolved RfR 1 and 4, the main issues in the appeal are whether the proposal would be appropriate with regard to:

¹ As set out in the Local Housing Needs Assessment May 2021, or a more up-to-date assessment.

- access to regularly required services, and
- its effects on the character and appearance of the area.

Reasons

Access to regularly required services

7. Tolleshunt Knights is a village that is located within countryside just outside the larger settlement of Tiptree. It is of a rather linear and elongated form, comprising mainly ribbon development along the traversing roads, with some small housing estates off these. There is no clearly identifiable centre to the village and development extends over quite a wide area. The housing proposed is within sites to both sides of Top Road, which are located towards the far end of the settlement from Tiptree. The village hall is nearby and existing bus stops would be within 400m of the new homes. The Council's latest rural facilities survey² lists a shopper and commuter bus service, hall, public open space, church, children's play, outdoor sports, churches and recycling point. Although this survey would confer Tolleshunt Knights medium ranking, given the number of smaller villages, it nonetheless contains little by way of regularly required services, with no convenience store, village pub or primary school.
8. It is proposed that the currently unmarked bus stops would be upgraded to provide a flag and pole arrangement with timetable information. The stops serve the 91 service that runs throughout the day, with generally one bus per hour in each direction. This would provide access from the appeal site to Tiptree, which has a good range of shops, schools and other services, and to Kelvedon train station, which provides half hourly trains to London Liverpool Street and hourly services to Ipswich and Colchester.
9. The scheme would provide footway connection to that which is continuous along the public highways leading to Tiptree, but which involves twice crossing what is quite a busy road. The distances involved would not make the services in Tiptree conveniently accessible by foot. Cycling would be a more realistic option for gaining access to these, although the lack of a dedicated cycleway would not make this the safest of travel choices.
10. Regarding the level of private vehicle use arising from this proposal, the appellant's Transport Assessment³ estimates modal split, with car driving amounting to 76.7%. Such relatively high car dependency is rather typical of a District where only around half the population live in urban areas and Tolleshunt is one of the few rural parishes of a thousand plus population⁴. In a Maldon District context, the proposal would extend one of the larger rural villages, in a location which is neither remote or isolated and where a good range of services could be reached by relatively short private car journeys.
11. Through the Local Development Plan⁵ (LDP), the Council seeks to improve access to jobs, education, services and facilities, and to reduce the District's over dependence on the car. In relation to the accessibility of the appeal site, the Council's RfR 1 specifies conflict with LDP policies T1 and T2.

² Maldon District Rural Facilities Survey and Settlement Pattern, Maldon District Council - January 2022

³ Kler Group Proposed Residential Development Tolleshunt Knights Transport Assessment - by ADC Infrastructure Limited - reference: ADC2031-RP-B, 27 July 2021

⁴ Maldon District Rural Facilities Survey, Maldon District Council - January 2016

⁵ Maldon District Approved Local Development Plan 2014 - 2029, July 2017

12. Policy T1 of the LDP seeks to secure provision for sustainable transport in new development, giving priority to pedestrians, wheelchairs, cyclists and public transport over private vehicles. Policy T2 seeks that development proposals provide safe and direct walking and cycling routes to nearby services, facilities and public transport. The proposal has met the part of Policy T1 concerning provision of a Transport Assessment to show the scheme suitable in terms of highway safety and network capacity. This is subject to agreed conditions and mitigation secured through the s106 for off-site works and implementation of a Travel Plan. Otherwise, because no material improvement would be secured towards public transport provision and the location means services and facilities are otherwise not readily accessible other than by private car, the proposal gains little further support from policies T1 and T2.
13. The National Planning Policy Framework (the Framework) is also an important consideration and its central aim is to achieve sustainable development. This is embraced by LDP Policy S1, which seeks to meet local housing needs in the most sustainable locations. Policy S2 provides the spatial strategy for this, which is to focus planned growth in the District's main settlements, as these constitute the most suitable and accessible locations.
14. Under Policy S2, the majority of new strategic growth will be delivered through sustainable extensions to Maldon, Heybridge and Burnham-on-Crouch in the form of Garden Suburbs and Strategic Allocations. The policy goes on to state that a proportion of new development will be directed to the villages to support housing needs, local services and facilities and the rural economy. In this regard, strategic growth in the rural villages will be related to the settlement hierarchy, reflect the size, function and physical capacity of the settlement and will not result in unsustainable spatial patterns to the detriment of the wider area.
15. There is no dispute over the fact that this scheme is outside any of the District's main settlements and is not a location where housing growth is planned for. The amount of housing proposed is comparable to planned allocations for 108 dwellings at Wycke Hill South, 100 at north of Holloway Road, 101 at Heybridge Swifts and 90 at North of Burnham-on-Crouch (East). As such, the proposal comprises a substantial amount of unplanned housing growth, conflicting with the LDP.
16. LDP Policy S7 supports prosperous rural communities, inviting Neighbourhood Plans to identify appropriate land to meet the needs for their area, in accordance with the principles of sustainable development. However, a Neighbourhood Plan has yet to be progressed for Tolleshunt Knights. In any case, this proposal would not comply with Policy S7, which states that such Neighbourhood Plan allocations be of a scale that reflects the size and character of the village concerned, its position within the settlement hierarchy, its level of service provision, and availability of, or potential for, sustainable transport choices.
17. Under Policy S8, Tolleshunt Knights is classed third in a four-tier settlement hierarchy as a 'smaller village', below 'main settlements' and 'larger villages' and above 'other villages'. The supporting text in paragraph 2.94 advises that the hierarchy does not in itself dictate the levels of growth for individual settlements. However, the 97 dwellings proposed is almost the amount Policy S2 allows for in Maldon's combined Neighbourhood Plans.

18. Policy S8 supports sustainable developments within the defined settlement boundaries, which for Tolleshunt Knights are drawn tightly around its main built-up area. The appeal site lies outside of the settlement boundaries whereby Policy S8 provides no support to this proposal. This support is given only to developments identified in adopted Neighbourhood Plans, rural exception sites for affordable housing or schemes where further non-applicable criteria apply.
19. LDP Policy D2 concerns climate change and the environmental impact of new development. Its measures include seeking to reduce the need to travel, particularly by private vehicle, by encouraging sustainable transport methods, and providing flexibility to enable home working or similar facilities. The scheme seeks to address this by proposing rear garden home working pods for 40% of the open market dwellings and for each dwelling to have fibre broadband and an electric vehicle charging point. Nevertheless, by placing this amount of housing in a location where regularly required services would be conveniently accessible only through a high reliance on private motor travel, there is clear conflict with Policy D2.
20. The amount of housing proposed, in a location with relatively poor access to regularly required services, would be directly in conflict with these LDP policies, when considered in the round. These policies are generally consistent with Framework paragraph 105, by focusing significant development on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes, thereby helping to reduce congestion and emissions and improve air quality and public health. The LDP directs a proportion of new development to the villages to support housing needs, local services and facilities and the rural economy. It thus implicitly complies with paragraph 105 by recognising that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
21. With reference to Framework paragraph 79, the appellant's sustainability statement⁶ makes a case over the need to maintain the vitality of the Tolleshunt Knights community. However, the LDP policies identify opportunities for villages to grow and thrive, to support local services, and implicitly recognise there are groups of smaller settlements in Maldon District, where development in one may support services in others nearby. However, the Framework would not support a case for this disproportionately large amount of housing being sustainable in this location, particularly as there is no evidence it would lead to improved service provision here.

Effects on character and appearance

22. The proposal has been the subject of a Landscape and Visual Impact Assessment⁷ (LVIA), prepared in accordance with the relevant professional guidelines⁸. I acknowledge that the appeal site is not covered by any designation that might confer a special degree of landscape protection. It therefore does not comprise a 'valued landscape' where paragraph 174 of the Framework would require protection or enhancement in a manner commensurate with any statutory status or identified quality defined in the

⁶ Land to the east and west of Top Road, Tolleshunt Knights Socio-Economic Sustainability Statement by Tetra Tech Environment Planning Transport Limited July 2022

⁷ Land off Top Road & Rectory Road, Tolleshunt Knights, Essex Landscape and Visual Impact Assessment 7241.LVIA.001.DV by Aspect Landscape Planning, July 2021.

⁸ Guidelines for Landscape & Visual Impact Assessment', produced jointly by the Institute of Environmental Assessment and the Landscape Institute (GLVIA 3rd edition 2013)

development plan. Instead, this paragraph requires recognising the intrinsic character and beauty of the countryside and considering how this proposal might contribute to and enhance the local environment.

23. I have referred to the rather linear and elongated form of this settlement, and of this comprising mainly ribbon development and some small estates of housing. Therefore, development here spreads quite thinly through the area, with countryside providing a backdrop to this and preserving a strong rural character. In this sense, the appeal site does not have an urban fringe nature, insofar as it does not lie adjacent to a large built-up area. Development of the two distinct land parcels either side of Top Road would perpetuate the elongated settlement pattern and extend a suburban form of development further into the open countryside.
24. With regard to how this proposal fits in with the existing built character, the westerly section cannot be considered an extension to the housing at Hawthorn Road, as it is unable to take access from this small estate and instead relies on a new estate road entering from Top Road on the opposite side. There would remain a large swathe of intervening land between this part of the appeal site and the adjacent ribbon housing along Brook Road. Therefore, the scheme would form a narrow arm of housing projecting rather incongruously into the countryside.
25. In visual terms, this westerly part of the scheme is screened by the ribbon housing along one long side and the densely vegetated former railway line to the other. The most harmful visual impact would arise from the necessity to serve this land and the other part of the appeal site from new estate road entrances to either side of Top Road. At present, thick hedging hugs narrow grass verges along this quite narrow section of Top Road, with horse pastures behind, preserving a strongly rural character and appearance to the surroundings. Notwithstanding the potential for landscaping, these new accesses and their associated footways would have a strongly urbanising effect and detract significantly from this existing rural character.
26. In addition to contributing to the harm to the countryside character along Top Road, the easterly part of the scheme would extend the quite narrow arm of estate development further into more open countryside. The former railway line continues its role in screening wider views from that direction. The other long side of the site is bound by Rectory Road, up to where it joins Blind Lane which marks the far edge of the scheme. These narrow lanes are flanked by naturally vegetated verges that run adjacent to open ditches with long-established lines of hedging and trees to their other sides, which enclose grassed paddocks. The wider area contains some sparse and not always attractive development. Nevertheless, the landscape character along these lanes appears quintessentially that of countryside, in respect of its natural features, overall rurality and comparative tranquility.
27. I agree that the landscape impact of the scheme is localised, with the level of harm increasing with outward projection, and that mitigation would be provided through the proposed landscape strategy. External views of the new housing would be screened by the eventual layout, the location of open space and semi-mature planting. Nevertheless, by occupying these sites, the scheme would alter the rural character of this area and comprise a rather incongruous projection of residential estate development into the countryside, where I

would differ from the LVIA and find a significant level of visual and landscape harm.

28. The proposal would conflict with LDP Policy S8 which, by focusing developments to within the defined settlement boundaries, seeks to protect the intrinsic character and beauty of the countryside. Regardless of the eventual design, this amount of housing would fail to respect and enhance the countryside character of this area and be in conflict with Policy D1. Policy H4 is quoted in the refusal reason but relates to effective use of land and is of less relevance. However, in all, this proposal would be contrary to LDP policies and inappropriate due to its adverse effects upon the character and appearance of this area.

Overall planning balance and conclusion

29. The LDP is not meeting its housing requirement and so this readily deliverable supply of 97 homes would address this shortfall, at a desired mix, which is a benefit of significant weight. The proposal would provide 40% affordable housing, in compliance with LDP Policy H1, helping to address a significant and growing need and thus providing further significant benefits. The scheme would also provide significant benefits to the local economy, as set out in the appellant's evidence, both through the construction works and on occupation through the additional household expenditure supporting local businesses and services. There would be more modest environmental benefits, achievable through reserved matter details, in respect of public open space, biodiversity net gain and green infrastructure provision.
30. The Council can currently demonstrate a 3.66-year housing land supply. This is significantly less than the five-year housing land supply (5YHLS) required under paragraph 74 of the Framework. The Council accepts that some housing outside of the LDP settlement boundaries will be required to address this. Due to the lack of a 5YHLS, the Framework deems the policies most important for determining the appeal out-of-date. As embraced within LDP Policy S1, and thus part of the development plan, this situation engages Framework paragraph 11 d) ii. This means the appeal should be allowed unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole.
31. Although out-of-date in respect of providing a 5YHLS, the LDP is consistent with the Framework in providing an overall spatial strategy for focusing sustainable development growth in main settlements, where most services and facilities exist, and thus reducing the need to travel, particularly by private car, as well as protecting the intrinsic character and beauty of the countryside. Therefore, the LDP policies, whilst out of date in not providing a 5YHLS, still attract significant weight in this decision.
32. The proposal represents a significant breach of the policies discussed and there would be fundamental conflict with the LDP, and the plan led provision of residential development. Such conflict with policy is thus a very weighty matter from which there derives a considerable degree of harm. In an overall planning balance, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework.

33. Because of this, the proposal would not gain the presumption in favour of sustainable development provided by paragraph 11 of the Framework, and this would not indicate that this case be decided otherwise than in accordance with the development plan, with which there would be conflict as a whole. Therefore, having considered all other matters raised, I conclude the appeal should not succeed.

Jonathan Price

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Killian Garvey of Counsel
Michael Robson BA(Hons) DipTP MRTPI – Cerda Planning
Richard West BA(Hons) MRTPI– Cerda Planning
Ben Wright BA(Hons) Dip LA CMLI - Aspect Landscape Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Kathryn Mathews MRTPI – Maldon District Council

INTERESTED PARTIES:

Councillor Maddie Thompson - Tolleshunt Knights Parish Council and Maldon District Councillor for Tolleshunt D'Arcy Ward
Councillor Robert Long MBE - Tolleshunt Knights Parish Council
Diana Webb – Tiptree Parish Council and Neighbourhood Plan Group
Andrea Weston – local resident
Paul Carlier – local resident
Michael Sullivan – local resident
Peter Wilson – local resident
Kim Pearse – local resident
Sheila Styles – local resident

DOCUMENTS

Draft s106
Summary of objections from Chairman of Tiptree Parish Council and Neighbourhood Plan – read out by Ms Webb.