
Appeal Decision

Site visit made on 9 January 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Appeal Ref: APP/P1560/W/22/3303540

Owl Lodge, Vicarage Lane, Thorpe-le-Soken, CO16 0EH

- 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 Mrs Hickford against the decision of Tendring District Council.
 - The application Ref. 21/01958/FUL dated 29 October 2021 was refused by notice dated 7 March 2022.
 - The development proposed is two detached 3 bedroom bungalows.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs Hickford against Tendring District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this case are: i) the suitability of the site for residential development in relation to the policies of the development plan; and ii) the effect of the proposed development on the character and distinctiveness of the locality.

Reasons

4. Owl Lodge is a detached house located at the corner of Vicarage Lane and St Michael's Road, at the edge of the built-up area of Thorpe-le-Soken. The appeal site lies to the north of Owl Lodge and comprises a grassed area with a frontage onto St Michael's Road. This road is one of several similar unadopted roads in the area. Immediately to the east is a double plot with a recently completed detached house on the northern half of that site. To the north of the appeal site are paddocks and extensive areas of tree cover with open countryside beyond.
5. The centre of Thorpe-le-Soken can be reached on foot within 10 minutes. Thorpe-le-Soken is a large village with a wide range of local services including Primary School, Tendring Technology College, GP surgery, 2 public houses, sports and social club, Tesco express and a range of independent shops and restaurants. Regular bus services also connect with larger settlements such as Clacton, Walton-on-the-Naze and Colchester together with direct rail services to London Liverpool Street, Colchester, Frinton and Clacton.

The suitability of the site for residential development in relation to the policies of the development plan

6. Paragraph 2 of the National Planning Policy Framework (the Framework) is a reminder that planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.
7. The council has an up-to-date development plan, which comprises Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan, adopted January 2021 and January 2022 respectively (the local plan), together with any neighbourhood plans (not applicable here) that have been brought into force. The council can demonstrate a five-year housing land supply, meaning that there is no substantial need for further dwellings to counter a shortage. This does not mean that there is any cap on housing supply, simply that this is not an issue that justifies a departure from the development plan on the basis of Framework paragraph 11 d). Therefore, it is the relevant policies of the development plan that should govern my decision, subject to any material considerations. In this context, the appellant considers that the proposal does comply with these policies.
8. A number of policies of the local plan are drawn to my attention. Since they are dealt with fully in the officer's report, I can deal with them fairly briefly. In Section 1, Policy SP3 identifies that existing settlements will be the principle focus of additional growth, which will be accommodated within or adjoining settlements. It states that, in Section 2 of its Local Plan, each local planning authority will identify a hierarchy of settlements where new development will be accommodated according to the role of the settlement, sustainability, its physical capacity and local needs.
9. In Section 2 of the local plan, there is set out the hierarchy of settlements for Tendring where new development will be accommodated. Policy SPL1 'Managing Growth' identifies Thorpe-le-Soken as a 'Rural Service Centre'. For these Centres, the explanatory text states: *"the Local Plan identifies opportunities for smaller-scale growth. Some of these villages will accommodate a modest increase in housing stock, where appropriate, within the plan period. Developments will be of a scale that is proportionate, achievable and sustainable for each of the settlements concerned having regard to the existing size and character of each settlement; their more limited range of jobs, shops, services and facilities; and any physical, environmental or infrastructure constraints. These developments will make a meaningful contribution toward addressing local housing needs, supporting the village economy and assisting with the overall housing growth proposed for the District"*. This is followed by a reference to affordable housing, which is not relevant here.
10. This text continues (at paragraph 3.3.2.1) *"To achieve a sustainable increase in housing stock for each of Tendring District's settlements up to 2033, a high level of new homes have gained planning permission or will have been completed on sites between 1 April 2013 to 31 March 2020. The remaining requirement will be delivered on sites that are specifically allocated for housing development, supplemented by other suitable sites within the Settlement Development Boundaries in this Local Plan. The allocated sites either lie within*

the established built-up area of the settlement or involve undeveloped land on the edge of the settlement. Alongside the planned developments, it is likely that a number of currently unidentified 'windfall' sites will obtain planning permission for housing in accordance with the policies in this Local Plan during the plan period."

11. Policy SLP2 'Settlement Development Boundaries' states "*To encourage sustainable patterns of growth and carefully control urban sprawl, each settlement listed in Policy SPL1 (with the exception of the Tendring Colchester Borders Garden Community) is defined within a 'Settlement Development Boundary' as shown on the relevant Policies Map and Local Map. Within the Settlement Development Boundaries, there will be a general presumption in favour of new development subject to detailed consideration....*" "*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 in Policy SPL1 and any other relevant policies in this plan. Exceptions to this policy are provided through the Rural Exception Site (affordable housing) Policy LP6, and policy LP7 'Self-build and custom-built homes.*
12. The explanatory text to policy SPL2 includes the statements "*The remaining requirement will be delivered on sites that are specifically allocated for housing or mixed-use development, supplemented by other suitable sites within the Settlement Development Boundaries in this Local Plan.*" and "*In general terms, development outside of defined Settlement Development Boundaries will be the subject of strict control to protect and enhance the character and openness of the countryside*".
13. Beyond the assertion that the proposal complies with the policies, there is no detailed examination of them in the appellant's appeal statement. Reference is made in the appellant's case to the way in which previous appeal decisions have dealt with policy, and also to the policy concerning self-build and custom-built housing – which I come to shortly.
14. I am clear that the current, recently adopted policies of the council direct new development to within the settlement boundaries of the towns and villages so identified; that the need for housing growth has been satisfied by the allocated sites; and that additional 'wind-fall' sites are likely within settlement boundaries. Generally, development outside of defined Settlement Development Boundaries will be the subject of strict control to protect and enhance the character and openness of the countryside. Therefore, outside settlement boundaries there will have to be a special case made which will be judged against the need for strict control to protect and enhance the character and openness of the countryside.
15. The appellant notes that the council's Landscape Character Assessment commissioned in 2001 identifies the site as within area 8b, the Soken Clay Plateaux. This area is described as being gently undulating agricultural clay lands with 'low gappy hedgerows and occasional hedgerow trees'. The land beyond some settlements has an urban fringe character. The overall landscape character is described as 'weak and could even be considered to be poor in some urban fringe locations.' In my view that assessment means that it is all the more important to guard against any development that seeks to benefit from a weak or poor urban fringe character, rather than enhance the boundary

between urban development and the countryside. As the text to policy SPL2 makes the point, there is a need for strict control to protect and enhance the character and openness of the countryside.

16. The appellant also suggests that, by the reduction to two dwellings, this appeal scheme responds to the previous Inspector's criticism of the earlier proposal by ensuring that the development is no longer cramped, with considerable space between each dwelling and also to their respective site boundaries. It is true that the density is reduced and that there is greater opportunity to provide landscaping. Nevertheless, this development would be seen as additional urban development on land, contrary to the appellant's claim, that is part of the open countryside.
17. The matter of 'Self Build and Custom Build' housing is raised in the appellant's appeal statement, and details of the council's record with regard to these is set out as a result of a Freedom of Information request. However, at question 17 of the planning application form for this development, the proposed housing is shown within the 'Market Housing' section, and in the Self Build and Custom Built section there is no entry.
18. Whilst reference is made to the fact that an exception to Policy SPL2 is provided through Policy LP7, whereby the Council will encourage the provision of opportunities for constructing Self-Build and Custom Built Homes outside of settlement boundaries where the development will support a sustainable pattern of growth in the District, the matter of Self Build and Custom Built is not stated to be an intention of the application in the appeal statement. There no declaration that this category of housing is now intended or a justification for it. In the absence of a clear intention and its basis, I give little weight to this matter. The simple statement that there is a clear demand for such housing does not amount to a reason to override the main policy for development beyond settlement boundaries, and does not amount to proposals that can be judged "*on their merits*" or that shows that it is brought forward by "*individuals or associates of individuals who will occupy those homes*" (quotes from opening paragraph of Policy LP7).

The effect of the proposed development on the character and distinctiveness of the locality

19. Little more needs to be said in respect of this issue. It is clear from my remarks above that I find that the site is part of the open countryside over which there should be strict control to protect and enhance its character and openness. The appeal proposal does not do this, and the argument that it would appear as a continuation of the existing linear pattern of the settlement along St Michael's Road does not, to my mind, stand up to scrutiny. The proposed development would be harmful to the character and distinctiveness of the locality, and certainly would not enhance it.

Conclusions

20. I have taken account of all other matters raised, including the appeal decision APP/P1560/W/17/3168892 referred to by the appellant which granted permission for residential development at the Brambles, St Michaels Road, but the issues were somewhat different and a satisfactory housing land supply could not then be demonstrated. I have also taken account of the other appeal decisions cited by the appellant. Appeal APP/P1560/W/20/3254413 was for 3

bungalows on the present appeal site, refused on policy and landscape grounds. I find no support in that decision for the current appeal that override the considerations that I have dealt with.

21. The other 3 appeals referred to - APP/P1560/W/17/3168892, APP/P1560/W/20/3252825, and APP/P1560/W/21/3281960 - were either made when the council's housing land supply was lacking, or the main issues were not the same. I do not find them helpful in reaching my decision. I recognise, as stated in paragraph 69 of the Framework, that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. However, as I have identified above, there is no pressing need in this district for additional housing land to be found.
22. I have had my attention drawn to a boundary dispute affecting the site. This is a civil matter, and not a matter for me. I have determined this appeal purely on the planning considerations that have been raised.
23. In view of the matters that I have dealt with in paragraphs 7 to 18 above, I consider that the proposed development is not supported by up-to-date development plan policies, but breach their terms without any adequate justification. The site is not suitable for residential development having regard to the policies of the development plan. In addition, the proposed development would have a negative effect on the character and distinctiveness of the locality as an area that is part of open countryside. Therefore, the appeal will be dismissed.

Terrence Kemmann-Lane

INSPECTOR