



Appeal Decision

Site visit made on 31 January 2023

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2023

Appeal Ref: APP/P1560/W/21/3288651

Land to Goose Green, The Green, Tendring, CO16 0BT

- 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 Mr Tony Blake against the decision of Tendring District Council.
 - The application Ref 20/01845/FUL, dated 15 December 2020, was refused by notice dated 8 June 2021.
 - The development proposed is two new dwellings with associated parking and access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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.
3. 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).
4. 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

5. The appellant has also submitted a duly executed unilateral undertaking in order to overcome the fifth and sixth 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.
6. Therefore, the main issues are framed in the context of the Council's other 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;
 - the effect of the proposed development on the character and appearance of the area;

- the effect of the proposed development on highway safety;
- whether the site has an adequate foul drainage connection to serve the development; and
- the effect of the proposed development on the living conditions of future occupiers in respect of private amenity space.

Reasons

Suitable location

7. 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.
8. 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.
9. 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.
10. 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.
11. 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 0.4 miles within an 8 minute walking distance of the appeal site. The appellant has provided a bus timetable which indicates that there are two routes which run intermittently throughout the day, with some services being hourly and some 2 hourly depending on whether you were going to Colchester or Clacton.
12. 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.
13. 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 Section 2 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.

14. I have been referred to a number of other appeal decisions where the suitability of rural settlements for housing has been considered and I will take each of these in turn.
15. In the case of APP/P1560/W/18/3195462, which relates to a site within the Tendring District, the Inspector notes that the site is very close to a bus stop and on that basis considers it is a reasonable alternative to the private car. However, it is not clear from the decision whether the distance is similar to that before me. Furthermore, the Inspector does acknowledge that the development of the site would be contrary to the spatial strategy present at the time.
16. In the case of APP/P1560/W/18/3216163, the appeal site is within walking distance of a shop and post office and the Inspector considered it would be possible to cycle to the larger settlement of Brightlingsea, which was within a mile of the site. Again, conflict with the spatial strategy is noted, but due to its age is given limited weight.
17. In the case of APP/P1560/W/16/3165144, the appeal site is also within Tendring village. The Inspector in that case does refer to regular bus services providing access to the larger towns and villages. However, I can not be certain that the bus services provided in 2017 are of the same regularity as those timetables provided to me as part of this appeal.
18. Having given consideration to these appeal decisions within Tendring District, the Inspectors in these cases acknowledged that housing development in these locations would be contrary to the spatial strategy. But that the Council's spatial strategy was deemed to have limited weight, due to the age of the plan and in some of the cases a lack of 5 year housing land supply. Therefore, I am not acting inconsistently in my findings in relation to the suitability of the location for the proposed development, however the Council now has a recently adopted plan and as such the conflict with the spatial strategy attracts full weight.
19. I have also been referred to an appeal in Braintree District, APP/Z1510/W/19/3243946, in that case the Inspector found that the site was not in a suitable location to access services. However, the tilted balance applied as the Council could not demonstrate a five year supply of housing and it was found that the benefits of the scheme outweighed the identified harm. This is not the same in the appeal before me where the Council's land supply position is not in dispute.
20. 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.
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 Section 2 of the LP which sets out the settlement strategy for Tendring.

Character and appearance

22. The appeal site comprises a triangular plot which is located on the inside bend of Heath Road. Opposite the site are detached dwellings located within reasonably sized plots and adjacent the site is a row of two storey semi-detached dwellings. These form a loose knit linear collection of dwellings. The established pattern of development arises from dwellings being sited along the existing roads, with a variety of plot sizes, predominately of single plot depth. This adds positively to the character and appearance of the area.
23. The proposed development of the site with two dwellings, would result in a change from the current open field. However, the proposed dwellings would be seen as a continuation of the existing residential development. As such the residential development of the site would not, in principle, be unduly prominent or intrusive in wider views.
24. Policy SPL3 of Section 2 of the LP 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 particular, the development must relate well to its site and surroundings, in relation to its siting, height, scale, massing, form, design and materials.
25. The appeal scheme would result in the construction of 2 detached two storey dwellings served off a single access point with the dwellings arranged with their rear boundary adjacent to the spine road, with the amenity space provided to the front. As a result, the proposed dwellings would not respond positively to the character and appearance of the area, which is traditional in its linear form with gardens located to the rear and dwellings sited close to the road. The formal arrangement of the dwellings would be at odds with the established pattern of development. For these reasons, therefore, the proposed development would introduce a discordant built form to the locality that would be harmful to the character and appearance of the surrounding area.
26. 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.

Highway Safety

27. Heath Road is subject to a 40 mph speed limit and the section adjacent to the site has a number of telegraph poles sited within the grass verge. The Council consider that the visibility splay should remain free from obstruction in order to maintain highway safety and that the telegraph poles would obstruct views from the access.
28. Paragraph 109 of the Framework advises that development should be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety. The guidance within Manual for Streets 2 (MFS2) advises that unless there is local evidence to the contrary, a reduction in visibility below the recommended levels will not necessarily be a problem.

29. The highway authority has recommended that the application be refused and the Council's concerns are borne out in third party representations. Based on the evidence before me and from what I saw on my site visit, I also have concerns about the highway safety implications of obstructions within the required visibility splays. This local evidence adds to my concern and as a result I do not consider it would be appropriate to lower the standards set out within MFS2. As a result of the proposed development the use of Heath Road would be intensified and the lack of appropriate visibility splays increases the potential for conflict with vehicles exiting and entering the site.
30. In conclusion, it has not been demonstrated within the evidence before me that the proposed access arrangements would not result in an adverse effect on highway safety, contrary to policies CP1 and CP2 of Section 2 of the LP which seek to ensure development will not be detrimental to highway safety.

Living Conditions

31. Policy LP4 of Section 2 of the LP sets out that housing layouts will provide for private amenity space of a size and configuration that meets the needs and expectations of residents and which is commensurate with the size of the dwelling and character of the area.
32. The site has adequate amenity space commensurate with the size of the proposed dwellings. However, the layout and orientation of the dwellings, shows that the garden room, which appears to be the main living space with access to outside space, will be located facing towards Heath Road.
33. For this reason, the location of the private amenity space would be at odds with the general pattern of development with other dwellings in the locality benefitting from gardens to the rear, away from the road.
34. Furthermore, the proposed plans do not include details of hard or soft landscaping to demonstrate how the proposed gardens could be offered privacy from the road, whilst maintaining the rural character and appearance of the locality. For this reason, I do not consider it would be appropriate to leave this level of detail to be agreed by condition.
35. In conclusion, the layout of the proposed amenity space, and lack of detail as to how it could be both private whilst maintaining the character of the area, would be contrary to policy LP4 of Section 2 of the LP.

Foul Drainage

36. The original application form states that the means of foul drainage is unknown, however the appellant's appeal statement confirms that suitable drainage and sewage connection can be delivered to the site.
37. Policy PPL5 of Section 2 of the LP states that proposals must demonstrate that adequate provision exists or can be provided for sewage disposal to a public sewer and water recycling centre. Private sewage treatment facilities will not be permitted if there is an accessible public foul sewer.
38. The Council have not provided any evidence that there are circumstances locally that indicate sufficient capacity is unavailable to deal with the proposed flows from this site or that there are any problems that would indicate a connection would not be possible.

39. Therefore, having regard to the scale of development proposed, the size of the site and the lack of evidence to the contrary, I am satisfied that the details of foul drainage could be secured by a suitably worded planning condition, if I were to allow the appeal, in accordance with policy PPL5 of Section 2 of the LP.

Other Matters

40. 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 following a consideration of all of the main issues, it would have been necessary to undertake an appropriate assessment before ascertaining if the appeal should succeed overall. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.
41. The appellant has submitted a unilateral undertaking which includes a contribution towards improved play facilities within Great Bromley. However, as I am dismissing the appeal for other reasons it is not necessary for me to consider whether the contribution is necessary to make the development acceptable in planning terms and is fairly and reasonably related to it in scale and kind or whether it would meet the tests for a planning obligation as set out in regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

Conclusion

42. 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