



Appeal Decision

Site visit made on 14 February 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 March 2023

Appeal Ref: APP/P1560/W/21/3287859

Land rear of The Gables/The Towers, Clacton Road, Weeley Heath CO16 9EF

- 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 Mr Evershed & Mr Bouchard against the decision of Tendring District Council.
 - The application Ref 21/00094/OUT, dated 6 January 2021, was refused by notice dated 27 May 2021.
 - The development proposed is 'development of five detached self build or custom build houses.'
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Evershed and Mr Bouchard against Tendring District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appellants are seeking outline planning permission with all matters reserved except for access. As such, I have only had regard to the submitted Site Layout Plan insofar as the layout shown is illustrative.
4. On 25 January 2022, the Council adopted Section 2¹ of the Tendring District Local Plan (TDLP) which now stands alongside TDLP Section 1² (adopted in January 2021) to form the development plan for the area, superseding the saved policies of the previous district-wide Local Plan, adopted in 2007. Both main parties have made representations in relation to the TDLP Section 2 policies and I have had regard to them in this decision.

Main Issues

5. The main issues are:
 - Whether the site is a suitable location for the proposed development with particular regard to the Council's strategy for the location of new residential development.
 - The effect of the proposed development on the character and appearance of the area.

¹ Tendring District Local Plan 2013-2033 and Beyond: Section 2 – Adopted 25 January 2022

² Tendring District Local Plan 2013-2033 and Beyond: Section 1 – Adopted January 2021

- The effect of the proposed development on protected species.

Reasons

Location

6. TDLP Section 1 Policy SP3 sets out the broad strategy for the location of new housing in the district. It states that development will be accommodated within or adjoining existing settlements according to their scale, sustainability and existing role. The appeal site is located outside of but directly adjacent to the settlement boundary of Weeley Heath as identified on the adopted Policies Map. The appeal site is also located approximately 450 metres to the north of Little Clacton, which is a larger settlement to the south of the appeal site.
7. TDLP Section 2 Policy SPL2 states that outside settlement boundaries, development proposals will be considered in relation to the patterns and scales of growth promoted through the settlement hierarchy. Policy SPL2 also states that development outside of settlement boundaries will be considered in accordance with other relevant Local Plan Policies.
8. As such, when read as a whole, these policies do not preclude the principle of new residential development on sites 'adjoining' the settlement boundaries, subject to a consideration of the patterns and scales of growth set out within the settlement hierarchy. The appeal site adjoins the settlement boundary of Weeley Heath. It does not adjoin the settlement boundary of Little Clacton. As such, in the first instance, it is necessary to determine whether the proposed development is compatible with the scale and pattern of growth identified for Weeley Heath.
9. TDLP Section 2 Policy SPL1 defines a settlement hierarchy. Weeley Heath is identified as a 'smaller rural settlement'. The TDLP outlines that 'smaller rural settlements' are the least sustainable settlements, with fewer services and facilities provided. Indeed, Weeley Heath has a very limited range of services and facilities. Nonetheless, TDLP Section 2 Paragraph 3.3.1.4.4 outlines that such settlements can accommodate growth of up to 10 dwellings.
10. Furthermore, whilst Weeley Heath itself has no significant services and facilities, there are services and facilities only a little further afield, to the north at Weeley and to the south in Little Clacton. Indeed, Little Clacton is defined as a 'rural service centre' under TDLP Section 2 Policy SPL1, where there are a greater range of services and facilities. To add to this, the evidence indicates that there are good sustainable transport links with these settlements as well as settlements further afield, with access available on foot or by bus.
11. Taking all of these considerations into account, the provision of 5 dwellings, is a scale of growth which would be appropriate to the settlement of Weeley Heath. As such, given that the site adjoins this settlement, the proposed development would accord with the Council's strategy for the distribution of residential development. It would therefore comply with TDLP Section 1 Policy SP3 and TDLP Section 2 Policies SPL1 and SPL2.
12. In terms of other relevant development plan policies, both parties have addressed TDLP Section 2 Policies LP7 and LP8 which deal with self-build and 'backland' development respectively. With regard to Policy LP7 the proposed dwellings would be over 600 metres from the District's strategic and small 'urban settlements', more than 400 metres on foot from the settlement

boundary of Little Clacton (which is the closest rural service centre) and would not be sited on previously developed land. As such, there would be no support from Policy LP7. Nonetheless, such support is not necessary given the compliance with the aforementioned development plan policies in relation to the principle of development. The extent to which the self-build nature of the scheme is relevant as a material consideration is discussed further in relation to 'other matters'.

13. Policy LP8 primarily focuses on the impact of backland development on the character and appearance of an area as opposed to the acceptability of such sites in principle. Indeed, given the overall compliance of the proposal with the strategic policies it is not necessary for it to comply with Policy LP8 for the principle of development to be considered acceptable. However, I have considered Policy LP8 in the context of the effect of the proposal on the character and appearance of the surrounding area.

Character and Appearance

14. The appeal site comprises part of the residential garden of The Gables and The Towers, which are large detached properties located on Clacton Road. The surrounding area to the east is characterised by typically linear residential development. The evidence before me indicates that there have been several planning permissions granted for residential development on this part of Clacton Road, with some sites set back from the highway, contrary to the prevailing linear character. Directly to the north of the appeal site is the settlement boundary of Weeley Heath and a recently constructed residential development on Kidby Way. This development and other development further north, has a more-built up character, which is not synonymous with that which prevails beyond to the south of the settlement boundary.
15. Indeed, the area of land between Weeley Heath and Little Clacton, including the appeal site, has a unique rural character which helps distinguish the aforementioned settlements from their rural surroundings. This character has been and will be somewhat eroded by future development which is likely to come forwards under the planning permissions highlighted by the appellant. Nonetheless, even taking into account those permissions, the prevailing character would still be notably more rural, linear and spacious than that of the nearby settlements. Furthermore, the appeal site itself plays a particularly important role given its edge of settlement location and its proximity to development on Kidby Way.
16. Whilst the appellant only seeks outline planning permission, the site boundary and quantum of development proposed are such that there would be an inevitable and significant erosion of the existing valuable rural character of the appeal site. This would be particularly harmful given that the dwellings would be in close proximity to the nearby development on Kidby Way. As a result, despite the prospect of different scales and layouts, it is very likely that there would be a visual amalgamation of residential development between the proposal and the existing development on Kidby Way, effectively extending the urban edge of Weeley Heath. This visual harm would likely be apparent to occupiers of dwellings on Kidby Way as well as the future occupiers of the proposed development itself.
17. The harmful effect of the proposal would be further exacerbated by the location of the site such a long way from the highway and the awkward and

uncharacteristic relationship between the proposed access and the existing residential properties to the north. Indeed, any proposed layout and scale of development on the appeal site would be completely at odds with the character of existing and proposed residential development to the south, given that the dwellings would need to be located such a long way from Clacton Road.

18. In summary, the proposed development would be harmful to the character and appearance of the area and it would therefore conflict with TDLP Section 1 Policy SP7 and TDLP Section 2 Policies SPL3 and LP8, to the extent that these policies collectively seek to ensure that development is in keeping with local character.
19. The appellant contends that Policy LP8 is not relevant. However, the appeal site is located behind the line of an existing frontage development, has little frontage with the highway (only the proposed access point) and it does not form part of an allocated development. In such circumstances, TDLP Section 2 Paragraph 5.8.1 is clear that Policy LP8 will apply.
20. The appellant has also referred to the Essex Design Guide for Residential and Mixed Use Areas, suggesting that the layout accords with the Arcadia style layout set out within it. However, only a very short extract of the design guide is provided. The extract appears to be just one example of a certain layout and it does not even endorse this layout in preference to others. As such, this consideration carries very limited weight.
21. The proposal would also conflict with Framework Paragraph 130 insofar as it requires that development is sympathetic to local character.

Protected Species

22. There are various trees and hedgerows within the appeal site. In particular the area of land to the rear of The Gables includes a significant number of trees. I noted during my site visit that some of these trees are covered in ivy and many have openings within the trunks and larger branches. Based on the indicative layout some of these trees would require removal. Even if an alternative layout were proposed it is very likely that any development on the land to the rear of The Gables (within the appeal site) would require at least some trees to be removed. In contrast, the land to the rear of The Towers typically comprises mown grassland.
23. The Council has suggested that the site could be used by roosting, commuting and/or foraging bats, which are a protected species. Given the wooded nature of the northern part of the appeal site, the inevitable removal of at least some of the trees as a result of the proposal and the countryside location, I consider there to be a reasonable prospect of bats roosting, commuting and or foraging within the site.
24. Circular 06/2005 advises that, where there is a reasonable likelihood of protected species being present, it is essential that their presence, and the extent to which they would be affected by the development, is established prior to planning permission being granted. Whilst ecological surveys can be carried out under conditions attached to a planning permission, this should only be done in exceptional circumstances. There is no evidence before me to suggest that there are any such exceptional circumstances.

25. Therefore, in line with the precautionary approach set out in paragraph 99 of Circular 06/2005, without this evidence it has not been demonstrated that the proposed development would not have an adverse impact on a protected species. As such, the proposed development would conflict with TDLP Section 2 Policy PPL4, which requires that proposals for new development should be supported by an appropriate ecological assessment.

Other Matters

European Sites

26. The evidence before me indicates that the appeal site is located within the Zone of Influence of the Colne Estuary SPA and RAMSAR. The Council refused the planning application partly on the basis that a planning obligation had not been provided to secure a financial payment to mitigate likely significant effects arising from increase recreational disturbance of these European Sites. The Appellants have submitted a planning obligation with this appeal which makes provisions for such a financial payment. However, given that I am dismissing this appeal on other grounds it is not necessary for me to consider this matter further nor undertake an appropriate assessment.

Other decisions

27. The appellant has cited various appeal decisions, including two which relate to residential development in relatively close proximity to the appeal site. An appeal was allowed for four dwellings at The Oaks in August 2020³. This site was set back from the linear development fronting Clacton Road, but not to the extent that the appeal site is separated from the highway. In any case, the Inspector found that the proposal would harm local character but this harm was outweighed within the context of a Housing Land Supply Shortfall. These are materially different circumstances to those which are now relevant and as such, this decision has no significant bearing on this appeal.
28. Another appeal was allowed for six dwellings at Heath Lodge in August 2020⁴. However, in finding no harm in that case, the Inspector concluded that the site was strongly defined and domesticated. In contrast, the appeal site has an important rural character. Furthermore, the layout plan provided by the appellant indicates that the Heath Lodge site was much closer to the highway. Given the significant divergence in site characteristics, the Heath Lodge appeal does not alter my findings.

Benefits

29. The proposed development would include social and economic benefits associated with the contribution of 5 dwellings towards the housing stock. There would also be some benefits associated with the small increase in the local population and the temporary support for construction jobs.
30. The appellant asserts that the Council has been unable to confirm the numbers of self-build housing projects approved since 2016. However, the council confirmed to the appellants (in response to a Freedom of Information Request) that 249 planning permissions were granted for serviced plots suitable for self and custom build dwellings between October 2016 and October 2021.

³ PINS Ref: APP/P1560/W/20/3246370

⁴ PINS Ref: APP/P1560/W/20/3246105

31. Under section 1 of the Self-Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Nonetheless, the appellants have not produced any substantive evidence to demonstrate that the Council is not meeting their statutory obligations in this regard.
32. For the avoidance of doubt, even in a hypothetical context, where a substantial shortfall in the number of permissions granted for self and custom build plots existed, the substantial harm associated with the proposed development is so great that it would not be outweighed by the significant social and economic benefits of the development.

Conclusion

33. The proposed development would not conflict with the Council's strategy for the location of residential development. However, it would result in significant harm to the character and appearance of the area. Furthermore, insufficient information has been provided to demonstrate that protected species would not be adversely impacted by the proposal. As such, the proposal conflicts with the development plan taken as a whole.
34. There are no material considerations raised which indicate that a decision should be made other than in accordance with the development plan. The appeal is therefore dismissed.

Luke Simpson

INSPECTOR