

Appeal Decision

Site visit made on 17 February 2023

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th March 2023

Appeal Ref: APP/P1560/W/22/3306779

Land adjacent Lilac Cottage, Heath Road, Tendring Heath CO16 0DA

- 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 and Mrs Balfour against the decision of Tendring District Council.
 - The application Ref 22/00783/OUT, dated 28 April 2022, was refused by notice dated 13 July 2022.
 - The development proposed is the erection of one self-build bespoke designed dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is for outline planning permission with all matters reserved for subsequent consideration. No indicative plans are submitted at this stage.
3. I note that the appellants submitted a unilateral undertaking at application stage to address the required mitigation by the Council of the effect of the proposal on protected European sites.

Main Issues

4. The main issues are the suitability of the location for the proposed dwelling, with particular regard to development plan policies concerned with development in the countryside; and the effect on the character and appearance of the appeal site and the surrounding area.

Reasons

Suitability of the Location

5. The appeal site is land forming the garden of Lilac Cottage, which is on the southern side of Heath Road. There are dwellings and a haulage yard to the east, dwellings and a farm to the north and a small group of non-residential buildings immediately behind the appeal site. Land to the west and south is open, undeveloped countryside.
 6. Policy SPL1 of the Tendring District Local Plan 2013-2033 and Beyond, Section 2 (2022) sets out the settlement hierarchy for the District. The Plan indicates
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that all settlements which may experience growth have a development settlement boundary. Those without a settlement development boundary are considered to be part of the countryside. The nearest settlement with a defined boundary is Tendring, which is identified as a 'Smaller Rural Settlement' in Policy SPL1. The appeal site is some 3,000 metres from the edge of Tendring's settlement boundary and, therefore, is within the countryside.

7. Policy SPL2 of the Local Plan Section 2 concerns settlement development boundaries. It says that outside these boundaries development proposals will be considered 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. Consequently, given the appeal site's location, it is necessary to consider the appeal proposal against these requirements of Policy SPL2.
8. The main objective informing the pattern and scales of growth promoted and managed through the Local Plan is to ensure that development occurs in the most sustainable locations. The supporting text to Policy SPL1 says that smaller villages are considered to be the least sustainable locations for growth and there is a concern that encouraging too much development in these areas will only serve to increase the number of people having to rely on cars to go about their everyday lives.
9. With regard to the other requirement of Policy SPL2, of other policies in the Local Plan, Policy LP7 is particularly relevant as it concerns self-build homes, as proposed in this case. This policy states that proposals will be considered on their merits for small developments of new self-build homes on land outside of, but within a reasonable proximity to, settlement development boundaries, where they will still support a sustainable pattern of growth in the District. The policy then sets out the acceptable distances from the settlement boundaries of the more sustainable urban settlements and rural service centres. As the nearest settlement in this case is designated a Smaller Rural Settlement, the appeal proposal is not supported by Policy LP7.
10. Both main parties draw my attention to a number of recent decisions concerning development proposals that are considered relevant to the current appeal. Of particular significance is the appeal decision for a single dwelling at the appeal site¹. While the proposal was not for a self-build dwelling, the Inspector considered similar issues to those relevant to this appeal and also took account of nearby developments, which are referred to by the main parties. For these reasons, this decision is an important material consideration.
11. In that earlier appeal decision and the successful appeal for five dwellings at Stones Green Road², which have now been built opposite the appeal site, both Inspectors found that the sites were not in an inaccessible location to services and facilities by means other than private vehicle. Based on the available information before me, particularly concerning the access to local bus services and recent opening of a farm shop in the hamlet, I have no basis to find otherwise. However, these proposals were considered in the context of previous development plan policies rather than the more recently adopted Section 2 Local Plan. The Plan has reviewed and established the future spatial

¹ APP/P1560/W/17/3180690 dated 4 December 2017.

² APP/P1560/W/16/3165144 dated 31 March 2017.

strategy and settlement hierarchy for the District and, despite some accessibility by public transport and a local shop, the site is in one of the least sustainable locations in this wider context.

12. The appeal decision for two dwellings at The Fat Goose Public House site did, however, involve an assessment of the site's suitability against the Section 2 Local Plan, which was near adoption at the time of the decision³. In that case the Inspector placed particular emphasis on the fact that the proposal involved infill development rather than sporadic development in the countryside. Moreover, the proposal involved replacing an existing approved development. The proposal in this case does not involve infill or replacement development and, in any case, Policy LP7 was not a relevant consideration in this and the other appeals. I give little weight to the appeal concerning land at 'The Laurels' as this involved an infill site fully surrounded by other dwellings and addressed different main issues to those in this appeal⁴.
13. Therefore, while I have had full regard to these other decisions, they do not alter the fact that as it involves a self-build dwelling in this particular location, the proposal is not supported by Policy LP7 and I conclude as such with regard to the suitability of the location for the proposed dwelling.
14. The appellants question the consistency of this policy with the National Planning Policy Framework (the Framework), which is a material consideration in planning decisions⁵. I am mindful that this is a recently-adopted policy and this matter would have been considered at the Local Plan examination. More specifically, the Inspectors would have considered the draft policy in the wider context of the spatial strategy and other relevant policies against the Framework as a whole (albeit a previous but not substantively different version to the current one). As such, I have no basis to find that this policy seeks unduly to restrict development in the countryside, contrary to the Framework or Planning Practice Guidance. Instead, it appears to seek to balance the benefits of promoting the majority of development in the most sustainable locations with the flexibility to provide some self-build housing in locations outside but close to the boundaries of the most sustainable settlements.
15. As noted above, Policy SPL2 requires proposals outside settlement development boundaries to be considered in relation to any other relevant policies in the plan. The Council has referred to other relevant policies with regard to its second reason for refusal concerning character and appearance and, therefore, this must also have a bearing on the suitability of the location for the proposed development.

Character and Appearance

16. The appeal site is an irregularly-shaped area of land immediately to the west of Lilac Cottage. Aside from some hardstanding and small outbuildings associated with its use as a domestic garden the land is otherwise open. A large haulage depot neighbouring Lilac Cottage to the east and residential development beyond this, are characteristic of substantive development in this part of the small settlement, despite its wider rural setting. However, Lilac Cottage is the

³ APP/P1560/W/21/3276761 dated 11 January 2022.

⁴ APP/P1560/W/21/3281960 dated 10 May 2022.

⁵ Paragraph 2.

last dwelling on the southern side of Heath Road and, as such, the open garden marks a distinct transition from the developed area to open countryside.

17. The earlier appeal for a single dwelling at the same site, referred to above, also involved an outline application with most matters, except access, reserved for subsequent consideration. The Inspector considered the effects on character and appearance and, as already noted, took account of the effects of nearby development. As a general principle, appeal decisions should be determined on a consistent basis as well as on their own merits. It appears that the circumstances in the earlier appeal and the one before me in terms of this main issue are largely the same. For these reasons, I have had particular regard to the findings and conclusion in the earlier appeal.
18. The Inspector in that case also found that the haulage depot and Lilac Cottage represent a clear boundary between the built-up area and the open countryside. He further found that constructing a house within the site would appreciably change the open character of the site and considered that it would take on a much more urban appearance, when compared with the prevailing situation, which would be harmful to the area. As the physical circumstances on this side of Heath Road have not changed, and based on my own inspection, I concur with these findings.
19. A clear distinction was drawn in the earlier appeal between the proposed dwelling and the permissions for dwellings at The Fat Goose Public House site and at Stones Green Road. The first involved infilling development, while the proposal would be a westward extension of built development into the countryside. The second would be self-contained and lie to the east of Knights Farm, but the appeal proposal would involve a more obvious extension into open land. The Inspector referred to the lack of existing boundaries and I accept the appellants' contention that there is a boundary hedge to the west and some screening to the south. However, this does not overcome the harm resulting from the expansion of built development into open land at the settlement edge with no further development to the west. Therefore, based on the appeal submissions as a whole and my own inspection, there is no justification for me to reach a different view on this issue.
20. The appellants refer to conversion of an agricultural storage building to the south of the appeal site to a dwelling, which can be undertaken as permitted development given that prior approval is not required⁶. I acknowledge the contention that developing the proposed appeal dwelling in lieu of this conversion could, in principle, amount to a 'fallback' position. However, I am not aware that any means of securing this through a legal or other agreement is proposed.
21. More significantly, the agricultural building is an existing small structure located discreetly behind the appeal site, the character and appearance of which will not alter substantively as result of its conversion. As such, its effects are not comparable to those found above with regard to a new building on open land and these would not be overcome by a dwelling of greater energy efficiency than the converted building. Furthermore, many of the other examples referred to concern the direct replacement of an approved building by another

⁶ Ref 22/00751/COUNOUT.

development. For these reasons, the appeal proposal would result in material harm compared to the conversion and, therefore, I give limited weight to the suggested substitution as a fallback.

22. Accordingly, for the reasons given, I conclude that the proposed dwelling would have an unacceptably harmful effect on the character and appearance of the appeal site and the surrounding area. Consequently, it is contrary to Policy SP7 of the Tendring District Local Plan 2013-2033 and Beyond, Section 1 (2021), which requires development to respond positively to local character and context; and to Policy PPL3 of the Section 2 Local Plan, which requires development not to cause overriding harm to the character and appearance of the rural landscape, including to settlement settings.

Other Matters

23. I have had regard to the representations made by interested parties. These do not, however, raise any additional matters in relation to the main issues that would lead me to reach a different overall conclusion.

Conclusion

24. For the reasons given above, it is concluded that the appeal should be dismissed.

J Bell-Williamson

INSPECTOR