



Appeal Decision

Site visit made on 4 April 2023

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 April 2023

Appeal Ref: APP/P1560/W/22/3297669

Land to south of Michael Wright Way, Great Bentley CO7 8RS

- 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 Hills Residential Construction Ltd against the decision of Tendring District Council.
 - The application Ref 21/01560/FUL, dated 26 August 2021, was refused by notice dated 28 March 2022.
 - The development proposed is the erection of six detached dwellings and associated garaging and infrastructure.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of six dwellings and associated garaging and infrastructure at land south of Michael Wright Way, Great Bentley CO7 8RS, in accordance with the terms of the application ref 21/01560/FUL, dated 26 August 2021 and the conditions set out in the schedule appended at the end of this decision.

Preliminary Matters

2. The second and third reasons for refusal in the Local Planning Authority's (LPAs) decision notice relate to the absence of a mechanism to secure planning obligations in relation to local infrastructure and affordable housing as well as mitigation for protected habitats. The appellant has submitted a Unilateral Undertaking (UU) dated 17 October 2022 which contains various obligations. The correspondence before me confirms that the District Council has no objection to the contents of the submitted UU. I deal with proposed planning obligations in the UU in my decision below.
3. The appeal site forms part of a larger residential development site at Admirals Green to the east of Heckfords Road, which is now nearing completion. Whilst the appeal site is currently used as a construction compound the detailed planning consent for the wider Admirals Green development identifies the appeal site as providing for landscaping, including a Locally Equipped Area for Play (LEAP). I observed on site that the LEAP, following the grant of planning permission¹, has been relocated and is now provided on land north of Michael Wright Way. The appellant has also provided details of a deed of variation² in relation to the LEAP provision as part of the original planning obligations. On this basis I am satisfied that the appeal site is no longer obligated to provide

¹ Reference 21/00739/FUL

² Deed of Variation signed and dated 6 December 2022

for formal play space in relation to the approved Admirals Green housing development.

Main Issues

4. The main issues in this appeal are:

- (i) the effect of the appeal proposal on the character and appearance of the surrounding area including the contribution to the appeal site makes to the approach and setting of the new housing development at Admirals Green, and
- (ii) whether the proposal makes adequate provision for any additional infrastructure and facilities arising from the development and affordable housing.

Reasons

Character and Appearance

- 5. When originally consented the concept for the Admirals Green housing development intended for the initial access way from Heckfords Road to pass through a wider area of public open space and landscaping before entering the housing development on the land to the east of Moors Lane. The appeal site comprises an irregular shaped area of land to the south of the initial access road and was intended to provide for an area of grassland/meadow and the location of a LEAP. The LEAP has subsequently been relocated to the corresponding area of public open space to the north of Michael Wright Way. As the LPA officer report confirms (paragraph 6.10) other than the LEAP, the appeal site, as part of the wider Admirals Green planning permission, was shown for landscaping and not specifically designated as 'public open space'.
- 6. The overall extent of planned open and landscaped space north and south of Michael Wright Way would provide a significant green buffer between the new housing constructed at Admirals Green and Heckfords Road. It would be substantially deeper than the frontage landscaping area provided as part of the recent housing development opposite at Newman Fields ('Fusiliers Green') to the west of Heckfords Road. In terms of the general pattern of development at this edge of Great Bentley, the appeal site does not form part of a wider, contiguous open area with the village green given the extent of intervening housing immediately to the south at Moors Close. The appeal site is now largely experienced in the context of the houses at Moors Close together with the new housing at Admirals Green, which are clearly visible within Heckfords Road through a thin band of trees and hedging on Moors Lane, and the new houses at Newman Fields to the west. In many perspectives, including approaching the village from the north on Heckfords Road, the appeal proposal would be largely experienced as a logical consolidation of the modern housing development which now characterises this part of Great Bentley.
- 7. The layout of the appeal proposal would retain the verdant boundaries of the site and provide a landscaped buffer to the Heckfords Road frontage comparable in depth to that found directly opposite at Newman Fields. As such the appeal proposal would suitably accord with the character of the approach on Heckfords Road into this part of Great Bentley, including the Conservation Area to the south. Furthermore, the low density of the proposed housing would ensure an appropriate grain of development at this location and would

respectfully integrate the appeal proposal with the density and character of adjacent housing development, notably that to the south at Moors Close but also the larger plots at the edge of Admirals Green to the east and Newman Fields to the west. Consequently, the appeal proposal would not represent harmful urban sprawl. The proposed design and landscaping means that the appeal development would be of an appropriate standard for a 'gateway' site into the village. Further detailed measures to ensure the development maintains a softer, spacious appearance could be secured through various conditions as necessary.

8. As set out above the wider Admirals Green development, including the new relocated LEAP, would meet development plan requirements for on-site provision without the appeal site. Moreover, I note that the wide expanse of the village green can be safely reached by foot via a very short walk along Moors Lane. As such there would be no harm to open space provision resulting from the appeal proposal.
9. I therefore conclude that the appeal proposal would not result in significant harm to the character and appearance of the surrounding area including the contribution to the appeal site makes to the approach and setting of the new housing development at Admirals Green. The proposal would accord with Policies SPL2, SPL3, LP3, LP4 and SP7 of the Tendring District Local Plan (TDLP). These policies require, amongst other things, that housing developments contribute to sustainable patterns of growth and carefully control urban sprawl, make a positive contribution to the quality of the local environment and protect or enhance local character, provide a sufficient quantum and quality of public open space, be of an appropriate density and secure an appropriate transition between built development and open countryside. The proposal would also accord with national planning policy on this main issue including National Planning Policy Framework (NPPF) at paragraph 130, in terms of achieving well-designed places.

Infrastructure, facilities and affordable housing

10. As set out above, the appellant has submitted a UU as part of the appeal containing various obligations to both Tendring District Council and Essex County Council. The UU contains provisions to pay financial contributions towards open space facilities, education, libraries, affordable housing and for mitigation in relation to potential harm from recreational disturbance at proximate protected habitat sites.
11. In relation to public open space, the UU would provide for a financial contribution towards the provision of recreational facilities in Great Bentley, proportionately based on the 6 additional dwellings proposed and in accordance with the calculations set out in the District Council's latest Supplementary Planning Document³. Overall, I find the proposed contribution would meet the necessary tests and so I have taken it into account.
12. With regards to early years and childcare provision and primary education provision, Essex County Council has presented evidence to demonstrate that the appeal proposal would generate demands that cannot be adequately met within existing catchment provision. The contributions sought are based on a transparent formula which generates a proportionate and fair contribution

³ Provision of Recreational Open Space for New Development' 2008 and addendum 2021

utilising established pupil place costs for both early years and primary provision. On this basis I have found the education contributions would meet the necessary tests. The same applies in respect of the proposed modest per property contribution towards library infrastructure in the locality.

13. The UU contains a provision to make an index-linked financial contribution towards the provision of affordable housing given that the site is in excess of 0.5 hectares and therefore capable in theory of accommodating a "major development". The appeal site is also part of the wider, contiguous major housing development at Admirals Green (uplifting overall numbers to 65 units overall). The sum presented in the UU accords with Council's Housing Services' calculation for an off-site financial contribution based on the open market value of a percentage of the affordable housing normally anticipated to be delivered on site. The sum identified is fair and reasonably related in scale and kind to the appeal development. The proposed contribution would meet the necessary tests and has been taken into account.
14. I therefore conclude that the various planning obligations would meet the relevant legal tests and so the appeal proposal would make appropriate provision for infrastructure arising from the development itself and for affordable housing provision. The proposal would therefore accord with TDLP Policies LP5, PP12 and HP5, as identified in the LPAs reason for refusal.

Other Matters

15. The appeal site is proximate to various protected habitats and so the appeal proposal is required to be subject to a Habitats Regulations Assessment (HRA). The LPA undertook a HRA as part of the planning application process. As the competent authority for the purposes of this appeal I have revisited the matter and conducted my own assessment.
16. The appeal site is within an identified zone of influence (ZOI) for the International, European and nationally important protected sites of the Colne Estuary RAMSAR, Special Area of Conservation and Special Protection Area⁴. The evidence before me identifies that a likely significant effect from new housing within the ZOI cannot be ruled out given the proximity of these habitats and their attractiveness for visitors. The issue of recreational disturbance has been identified and addressed at the plan-making level and consequently a strategic approach to mitigation has been developed with input from Natural England to enable a conclusion of no adverse effect on the integrity of the internationally designated sites regarding in-combination recreational effects.
17. The agreed strategic approach to mitigation is a per dwelling financial contribution towards measures including, but not limited to, visitor information, site management, signage and rangers/wardens. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD) 2020 identifies a total cost for the mitigation package for all sites over the period 2019-2038. A proportionate RAMS mitigation tariff payment has been developed on a per net additional dwelling basis. The SPD is clear that such payments should be made no later than commencement and that schemes of less than 10 units can secure the payment through a UU.

⁴ See Table 3.1 of the RAMS SPD May 2020

18. As set out above, the submitted UU contains provisions that would commit to the full payment of a RAMS contribution prior to the commencement of development. I am satisfied that the sum proposed (index-linked) is in accordance with the available RAMS evidence. With this mechanism in place I am satisfied, as the competent authority for the purposes of undertaking an appropriate assessment under the Habitats Regulations that I can conclude that likely significant effects arising from the appeal proposal can be adequately mitigated. With this mechanism in place there would be no adverse effect on the site integrity of the protected habitats identified above. As such I have been able to arrive at a positive HRA conclusion. I also find, that with the RAMS mitigation secured through the UU there would be no conflict with Policies SP2 or PPL4 of the TDLP.
19. The Parish Council and others have raised concerns regarding highway safety. In terms of the junction of Michael Wright Way and Heckfords Road I observed that the 30mph speed limit in Great Bentley starts a short distance to the north of this junction and that Michael Wright Way itself is signed as a 20mph zone. Good visibility splays exist either side of the junction. The appeal proposal due to its set back would not interfere with visibility at this junction. Given these circumstances, the moderate intensification of the junction arising from additional vehicle movements associated with the proposed six dwellings would not result in an unacceptable impact on highway safety. The proposed layout intended for approval⁵ would involve a single cul-de-sac arrangement serving the 6 dwellings. The point of access is set some distance back from the Heckfords Road junction and within a 20mph zone. Even allowing for the sinuous nature of Michael Wright Way, the proposed point of access for the cul-de-sac would be visible and safe. I attach significant weight to the fact that the Local Highway Authority did not object to the proposal subject to the imposition of conditions.
20. There are several dwellings on Moors Close and a property on Moors Lane that border the appeal site. All of these properties would be of a sufficient distance from the proposed dwellings such that there would be no harmful impacts on the living conditions of occupiers of these neighbouring properties in respect of daylight, overlooking or loss of privacy. A strong hedge is developing along the boundary of the appeal site to Moors Close and Moors Lane which would provide a pleasant verdant screen to the appeal development and so mitigate the extent to which the appeal proposal would be visible in the outlook from these adjoining dwellings. As described above, the spacious density and layout of the appeal proposal would readily assimilate with the surrounding pattern and scale of housing development in this part of Great Bentley.
21. There is no dispute that the LPA has a deliverable housing land supply in excess of the required minimum of 5 years' worth. That would not be a reason however to withhold planning permission in this case given that one of the over-arching objectives of national planning policy is to significantly boost the supply of new homes, including the variety of the size, type and tenure of housing. Great Bentley is identified in the spatial strategy as Rural Service Centre and as such is a sustainable location, in principle, for further small-scale windfall housing developments such as the appeal proposal. I also attach significant weight to the fact that the appeal site is located within the recently

⁵ Drawing v12 submitted as part of the planning application process and as considered by the LPA when making their decision

adopted settlement boundary for the village and the site has no specific protection or designation. Furthermore, the appeal site is a small sized site which the NPPF identifies at paragraph 69 can often be built out relatively quickly. As such the benefit of the new homes should be given great weight where, as in this case, it would comprise development on a suitable site within an existing settlement.

Conclusion and Conditions

22. Whilst I appreciate the level of local objection to the proposal, including from the Parish Council, I have found nonetheless that the appeal proposal would accord with the relevant policies of an up-to-date development plan on the main issues in this appeal. I have taken into account all other matters raised but there is nothing that leads me to conclude other than that the appeal should be allowed for the reasons given.
23. The LPA has suggested a number of proposed conditions which it considers necessary were the appeal to be allowed. I have considered the suggested conditions in light of the content of the Planning Practice Guidance (PPG) on the use of conditions and the guidance at paragraphs 55 and 56 of the NPPF. The appellant has confirmed in writing that they have no objection to the LPAs proposed conditions, including those that may necessarily be pre-commencement conditions.
24. In addition to the standard time limit condition (1), a condition (2) requiring the development is carried out in accordance with the approved plans is needed in the interests of proper planning and for the avoidance of doubt. Given the proximity of nearby dwellings and the appeal site's location at the sole highway entrance to a near completed housing estate a pre-commencement condition (3) requiring a Construction Method Statement is necessary. To ensure a satisfactory appearance and assimilation into its context, conditions (4), (17), (24) and (27) securing details of hard landscaping, a landscaping and open space management plan, details of external materials and implementation of soft landscaping are all necessary.
25. Various conditions (5), (6), (7), (8), (9), (10), (11), (12), (13) and (15) are all necessary to ensure satisfactory vehicular access arrangements and that there would no harm to highway safety on Michael Way Wright or Heckfords Road. Additionally, a condition (14) requiring residential travel information packs for each property is necessary to encourage modal shift at a sustainable location. Furthermore, a condition (29) requiring the timely implementation of a new footway and crossing point to connect to the footway network west of the appeal site is necessary again for modal shift and securing safe pedestrian connectivity in accordance with NPPF paragraphs 104(c), 110(b) and 112(a).
26. Given Historic Environment Records in the vicinity and evidence of historic settlement at this edge of Bentley Green a condition (16) requiring an approved archaeological investigation and post excavation assessment is necessary in accordance with NPPF paragraph 205. Various conditions (18), (19), (20) and (21) would all be necessary to ensure that surface water is dealt with appropriately and managed in such as not to increase the risk of flooding in accordance with NPPF paragraph 167. Similarly, a condition (28) requiring details of foul water drainage is also necessary. Additionally, a condition (25) requiring construction works are carried out in a way which protects the mature

oak tree on the site and other trees close to the site is also necessary for the reasons set out in the appellant's arboricultural impact assessment.

27. In order to ensure appropriate living conditions for future occupants and to protect the amenities of nearby properties a condition (26) specifying the standard of proposed obscure glazing would be necessary. Whilst the PPG generally cautions against conditions that remove permitted development rights I find condition (23) would be necessary to ensure a satisfactory appearance and to maintain the generally verdant character and appearance of the locality. A condition (22) requiring management of external lighting would also be necessary to protect the amenity of neighbouring properties and the character and appearance of the area.
28. I have not imposed a condition requiring the installation of electric vehicle charging points as this is now covered separately under Part S of the Building Regulations.

David Spencer

Inspector.

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission
2. The development hereby permitted shall be carried out in strict accordance with the following approved plans:
 - 21.5181.01 g Amended soft landscape proposals - sheet 1 of 2
 - 21.5181.02 g Amended soft landscape proposals - sheet 2 of 2
 - 170116/101/01/v12 Amended proposed block plan
 - 170116/101/ht/11 House type 7 - elevations
 - 170116/101/ht/10 House type 7 - floor plans
 - 170116/101/ht/13 House type 8 - elevations
 - 170116/101/ht/12 House type 8 - floor plans
 - 170116/101/15 House type garage - elevations and floor plans
 - 170116/101/00 Site plan
 - Amended arboricultural impact assessment received 04 Feb 2022
 - Amended arboricultural impact assessment appendix 1-6 received 04 Feb 2022
 - Amended ecology report received 02 Feb 2022
3. Prior to the commencement of development, a Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The Construction Method Statement shall provide for:
 - safe access to/from the site;
 - the parking of vehicles of site operatives and visitors;
 - the loading and unloading of plant and materials;
 - the storage of plant and materials used in constructing the development;
 - wheel washing facilities;

- measures to control the emission of dust and dirt during demolition and construction;
- a scheme for recycling/disposing of waste resulting from demolition and construction works;
- details of hours of deliveries relating to the demolition and construction of the development;
- details of hours of site clearance or construction;
- a scheme to control noise and vibration during the demolition and construction phase, including details of any piling operations.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

4. Prior to the commencement of any above ground works, a scheme of hard landscaping works for the site which shall include all boundary treatments and any proposed changes in ground levels shall be submitted to and approved, in writing, by the Local Planning Authority. The approved details shall ensure that the fence line for plots 2, 3, 4 and 5 allows the existing hedge line to face Moors Close and Moors Lane, with fencing positioned behind the existing hedge line in this location. The approved screen walls and fences shall be erected prior to the dwellings to which they relate being first occupied and thereafter be retained in the approved form.
5. All new driveways and parking areas shall be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwelling
6. Prior to occupation of the development a 1.5 metre x 1.5 metre pedestrian visibility splay, as measured from and along the highway boundary, shall be provided on both sides of each vehicular access. Such visibility splays shall be retained free of any obstruction in perpetuity. These visibility splays must not form part of the vehicular surface of the access.
7. Prior to the occupation of any of the proposed development the internal road site access, parking and footway layout shall be provided in principle and accord with drawing numbers:
 - 170116/101/01/V12 Amended proposed block plan.
 - 170116/101/15 House type garage - elevations and floor plans
8. No unbound material shall be used in the surface treatment of the vehicular access or private driveway throughout.
9. Prior to the occupation of any of the proposed dwellings, the proposed private drive for each access shall be constructed to a width of 6 metres for at least the first 6 metres from the back of Carriageway / Footway / Highway Boundary and provided with an appropriate dropped kerb crossing of the footway/verge.
10. There shall be no discharge of surface water onto the Highway.
11. Any new boundary planting shall be planted a minimum of 1 metre back from the highway boundary and any visibility splay.

12. The proposed development shall not be occupied until such time as the vehicle parking area indicated on the approved plans, has been hard surfaced, and sealed. The vehicle parking area and associated turning area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority.
13. Each vehicular parking space shall have minimum dimensions of 2.9 metres x 5.5 metres.
14. Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator free of charge
15. Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.
16. No development or preliminary groundworks of any kind shall take place until a programme of archaeological investigation has been secured in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

No development or preliminary groundworks of any kind shall take place until the completion of the programme of archaeological investigation identified in the approved written scheme of investigation.

The applicant will submit to the local planning authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork, unless otherwise agreed in advance with the Local Planning Authority). This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

17. No development shall commence until a Landscape and Public Open Space Management Plan including a lighting strategy, long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas has been submitted to and approved, in writing, by the Local Planning Authority. The Landscape and Public Open Space Management Plan so approved shall be carried out in accordance with the details and timescales to be contained in that document.
18. No works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The approved scheme shall subsequently be implemented prior to occupation.
19. No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.

20. Prior to occupation a maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, shall have been submitted to and agreed, in writing, by the Local Planning Authority. Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided.
21. The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.
22. No external lighting shall be installed on the site unless details of such lighting, including the intensity of the illumination and predicted lighting contours, have been first submitted to, and approved in writing by the Local Planning Authority prior to first occupation of the site. Any external lighting that is installed shall accord with the details so approved.
23. Notwithstanding the provisions of Article 3, Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no provision of fences, walls or other enclosures, shall be erected on the northern, western or southern (to Moors Close) boundaries of the site, or forward of plots 1 and 2 except in accordance with drawings showing the design and siting of such enclosures which shall previously have been submitted to and approved, in writing, by the Local Planning Authority by way of a planning application.
24. Prior to commencement of any above ground works details of the proposed facing and roofing materials shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
25. Works shall be carried out in full accordance with the Arboricultural Impact Assessment dated 28th November 2020 by Tree Planning Solutions unless otherwise agreed in writing by the Local Planning Authority.
26. All first-floor side facing windows shall be of obscured glass to a level equivalent to Pilkington Level 5 and maintained as such for the life time of the development
27. All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.
28. Prior to the construction above damp proof course, a scheme for on-site foul water drainage works, including connection point and discharge rate, shall have been submitted to and approved in writing by the Local Planning Authority. Prior to the occupation of any phase, the foul water drainage works relating to

that phase must have been carried out in complete accordance with the approved scheme

29. Prior to occupation of the development a new footway measuring no more than 2.0m in width on the west side of Heckfords Road opposite the existing footway to the development shall be provided. This shall include associated drop kerb/ tactile paving (x1) for the new crossing point with the existing footway, extending southwards to the junction and radius kerb of Newman Fields with associated drop kerb/ tactile paving (x2) to link with the new footway running southwards within Newman Fields.

Schedule Ends.