



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: 18 May 2023

Appeal Ref: APP/P1560/W/22/3292186

Land Between Fieldside and Eltone, Frating Road, Great Bromley CO7 7JW

- 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 L Foster (LK Developments Ltd) against the decision of Tendring District Council.
 - The application Ref 20/01055/FUL, dated 4 August 2020, was refused by notice dated 5 October 2021.
 - The development proposed is erection of 5no. dwellings (with access from the approved development of five dwellings adjacent).
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Decision

1. The appeal is allowed and planning permission is granted for erection of 5no. dwellings (with access from the approved development of five dwellings adjacent) at Land Between Fieldside and Eltone, Frating Road, Great Bromley, CO7 7JW in accordance with the terms of the application, Ref 20/01055/FUL, dated 4 August 2020 and subject to the conditions in the attached schedule.

Preliminary Matters

2. 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.
3. As a result of the adoption of the TDLP Section 2 the Council has confirmed that the development no longer necessitates the provision of affordable housing given that the threshold for such a requirement, as set out under Policy LP5, is 11 dwellings.
4. A planning obligation has been provided by the appellant as part of this appeal. I have taken this into account as discussed in relation to European Sites and Open Space.

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

Main Issues

5. The main issues are:

- Whether the site is a suitable location with regard to the Council's strategy for the location of residential development and its access to services and facilities.
- The effect of the proposed development on Special Protection Areas and Ramsar sites.
- Whether the development necessitates the provision of open space.

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 Frating as identified on the adopted Policies Map.
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.
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.
9. TDLP Section 2 Policy SPL1 defines a settlement hierarchy. Frating 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. Nonetheless, Frating has two public houses, a village hall and a mobile library. Furthermore, there are extensive employment opportunities in Frating, given that there are a significant number of large employment units to the east of the village.
10. In addition, the evidence before me indicates that there are regular bus services to much larger settlements including Colchester. There are bus stops located on Frating Road to the north and south of the appeal site, both accessible by well-lit footways.
11. TDLP Section 2 Paragraph 3.3.1.4.4 outlines that 'smaller rural settlements' can accommodate growth of up to 10 dwellings. In this case, the settlement has a small range of services and facilities but very good employment opportunities (comparative to the small size of the village). Furthermore, there would not necessarily be an over-reliance on the private motor vehicle, given the availability of regular bus services to much larger settlements further afield.
12. Taking all of these case-specific considerations into account, the provision of 5 dwellings, is a scale of growth which would be appropriate to the settlement of Frating. 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.

European Sites and Appropriate Assessment

13. The appeal site is located within the zone of influence (ZoI) of the Colne Estuary SPA and Ramsar site, the Stour and the Orwell Estuary SPA and Ramsar site, the Dengie SPA and Ramsar site and the Blackwater Estuary SPA and Ramsar. These are European Sites which are protected under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
14. The Stour and Orwell Estuaries SPA and Ramsar sites include extensive mud-flats, low cliffs, saltmarsh and small areas of vegetated shingle on the lower reaches. They also include low-lying grazing marsh and shallow freshwater pools. The sites support breeding and wintering birds³.
15. The Colne Estuary and Ramsar Sites include estuaries and intertidal sand and silt flats, including several islands, shingle and shell beaches and extensive areas of saltmarsh. They also support breeding and wintering birds⁴.
16. Similarly, the Dengie SPA and Ramsar Sites⁵ and Blackwater Estuary SPA and Ramsar sites⁶ also comprise an extensive complex of estuaries and intertidal sand and silt flats, including several islands, shingle and shell beaches and extensive areas of saltmarsh, which support breeding and wintering birds.
17. The conservation objectives of these sites generally seek to maintain and restore the distribution and function of the habitats upon which the qualifying features rely, thereby increasing their populations and distributions.
18. There would be likely significant effects on these sites as a result of the proposed development in combination with other residential development within the ZoI. This is because these sites are within areas where people may undertake a range of recreational activities including (but not limited to) picnics, hiking, walking their dogs, swimming and sailing. The evidence⁷ before me indicates that housing and consequent population growth on sites within reach (ZoI) of these areas is likely to increase the number of visitors to these sensitive coastal areas, creating the potential for impacts from increased recreational disturbance of the birds and their habitats.
19. The appellant has submitted a UU with this appeal which includes a financial contribution aimed at mitigating these effects. I am the competent authority as the decision-maker and as such, it is necessary to undertake an appropriate assessment.
20. Increased recreational activity has the effect of disturbing and reducing the activities of breeding and wintering birds which can have a subsequent impact on their population and distribution. The Essex Coast Recreational disturbance Avoidance & Mitigation Strategy (RAMS) 2018-2038 provides details of

³ Dark-bellied brent goose, Northern pintail, Pied avocet, Grey plover, Red knot, Dunlin, Black-tailed godwit and Common redshank.

⁴ Dark-bellied brent goose, Common pochard, Hen harrier, Ringed plover, Common redshank and Little tern.

⁵ Hen harrier, Dark-bellied brent goose, Grey plover, East-Atlantic Flyway, Dunlin, Black-tailed godwit and Bar-tailed godwit.

⁶ Little tern, Hen harrier, Pochard, Dark-bellied brent goose, Grey plover, East-Atlantic Flyway, Dunlin, Black-tailed godwit, Cormorant, Shelduck, Gadwall, Teal, Goldeneye, Ringed plover, Curlew and Redshank.

⁷ Essex Coast Recreational disturbance Avoidance & Mitigation Strategy (RAMS) 2018-2038

strategic mitigation for the effects of increased residential development (and as such, populations) upon designated European Sites on the Essex coast.

21. Strategic mitigation measures set out within the RAMS include provision of information and awareness raising, fencing/waymarking/screening, pedestrian and vehicular access restrictions, habitat creation and partnership working with other organisations. The measures are fully costed. For development in Tendring district the RAMS sets out a contribution of £122.30 per residential unit. This figure increases in line with the retail price index.
22. The appellant's UU includes provision for an index-linked sum (currently set at £137.71) to be paid prior to commencement of development. As such, I am satisfied that this obligation will ensure that the proposed development would make the required contribution to the mitigation measures outlined within the RAMS.
23. The contribution would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. It therefore meets the tests set out under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations).
24. I conclude that the required mitigation would be properly secured and that the proposals would not have an adverse effect on the integrity of the identified European Sites either alone or in combination with other projects. The proposed development would therefore comply with TDLP Section 1 Policy SP2, which requires that RAMS contributions are secured.

Open Space

25. TDLP Section 2 Policy HP5 outlines that residential development of 11 or more dwellings will be expected to provide open space on site. It states in part:

'All new residential developments of 11 or more dwellings on sites of 1.5 hectares and above will be expected to provide a minimum 10% of the gross site area as open space laid out to meet the Council's specifications having regard to the Council's Open Spaces Strategy and the requirements of any SPD. No single area of useable open space will be less than 0.15 hectares in size. Financial contributions will also be sought through s106 legal agreements (or an appropriate alternative mechanism) towards ongoing maintenance.'

26. It also states in part:

'If new development would be better served by existing or proposed open spaces within an accessible distance (having regard to the standards set out in the Open Spaces Strategy or any future update), a financial contribution in lieu of on-site provision may be sought through a s106 legal agreement or an appropriate alternative mechanism towards any necessary improvement or expansion of existing, or the delivery of new, open spaces and/or sports facilities.'

27. On a plain reading of these paragraphs together, they mean that the provision of open space only applies to residential developments comprising of 11 dwellings or more or on sites of 1.5 hectares or above. They also require that a minimum amount of open space is provided on site. However, provision is also

made for a financial payment to be made in lieu of on-site provision where the development would be better served by existing or proposed spaces within an accessible distance.

28. It is not the case that the second paragraph applies to all development. The two paragraphs are clearly related as the second refers to scenarios where development would be 'better served'. The use of the term 'better served' is a clear reference to the on-site provision referred to in the previous paragraph.
29. If this policy were to apply to all new residential development then there would be no minimum provision specified for open space on-site for developments comprising less than 11 dwellings. Such developments would therefore always be required to provide a payment in lieu of on-site provision in order to comply with Policy HP5, even if provision could easily be made on-site.
30. In summary, the wording of the policy clearly indicates that it only applies to developments of 11 dwellings or more. If it did not, then its application in practice would be illogical as it would prohibit any on-site provision of open space for developments of 10 dwellings or less. Even if the latter were not the case, then the plain terms of the policy are still nonetheless sufficiently clear and unequivocal.
31. Given that the proposal comprises 5 dwellings (or 10 if a pragmatic approach is taken where the recently completed development on the adjacent site is included) no open space contribution is required.
32. The appellant has submitted a Unilateral Undertaking which includes an open space contribution, outlined in the fifth and sixth Schedule. However, given that the proposal would comply with TDLP Section 2 Policy HP5 without this contribution, the contribution is not necessary to make the development acceptable in planning terms. As a result, the open space contribution is not compliant with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) nor the relevant provisions of the Framework. As such, I have not taken it into account or given it any weight in considering this appeal.

Other Matters

33. The proposal would not adversely affect highway safety given that it involves a small number of dwellings which would utilise an existing access.
34. Concerns raised by a neighbouring resident in relation to hedgerows are a private matter as opposed to a public consideration.
35. The occupier of the property known as 'Eltone' on Frating Road would not suffer an unacceptable adverse impact on privacy. Whilst the garden of this property does border the appeal site, it is a very long garden and the primary garden space, closest to the dwelling, would be well over 30 metres from the nearest proposed dwelling.

Conditions

36. I have considered the Council's suggested conditions in light of advice contained in the Planning Practice Guidance and the tests within the Framework. As a result, I have amended some of the conditions so that they are enforceable, precise, relevant, necessary and reasonable in all other

respects. With regard to Section 100ZA of the Town and Country Planning Act 1990 (as amended), the appellant has given his written agreement to the precommencement conditions suggested by the Council and where I have modified these it has had no material bearing on their function.

37. Conditions relating to timeliness [1] and the identification of plans [2] are necessary to provide certainty.
38. I have imposed a condition [3] requiring submission and implementation of measures for biodiversity enhancement in the interests of biodiversity. A separate condition pertaining to the extended phase 1 survey is not therefore required.
39. Conditions [4 and 5] have been imposed on the laying out of the internal roads, parking and driveways in the interest of highway safety. The Council recommended a condition pertaining to visibility splays. However, the access with the highway has already been laid out and is in use and such a condition is not therefore necessary.
40. The Council suggested a condition pertaining to the provision of a travel pack. However, this is not considered necessary given the relatively small scale of the development and that bus services are easily accessible.
41. A condition requiring details of secure cycle storage [6] is necessary in the interest of ensuring sustainable modes of transport are encouraged and in the interest of preserving character and appearance.
42. Conditions pertaining to renewable energy [7], landscaping [8], contamination [9] and construction methods [10] are necessary in the interest of the environment, local character, public health and living conditions respectively.

Conclusion

43. The proposed development accords with the development plan taken as a whole. 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 allowed.

Luke Simpson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: - 617.19.11 D, 617.19.18 D, 617.19.17, 617.19.12, 617.19.14 A, 617.19.13 A, 617.19.15.
- 3) No development shall take place until a Biodiversity Enhancement Strategy for Protected and Priority species has been submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following: a) Purpose and conservation objectives for the proposed enhancement measures; b) detailed designs to achieve stated objectives; c) locations of proposed enhancement measures by appropriate maps and plans; d) persons responsible for implementing the enhancement measures; e) details of initial aftercare and long-term maintenance (where relevant); f) a timetable for implementation of the measures. The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.
- 4) Prior to occupation of any dwelling hereby approved, the private drives, turning head, access and vehicular parking spaces shall be laid out in accordance with the approved plan reference: 617.19.11 D. These areas shall thereafter be retained for that use in accordance with the approved plan.
- 5) No unbound material shall be used in the surface treatment of the vehicular access/driveways throughout the development hereby approved.
- 6) Prior to occupation of any dwelling hereby approved, details of the design of cycle storage areas shown on approved plan no. 617.19.11 D shall be submitted to and approved in writing by the local planning authority. The cycle storage shall be implemented prior to occupation of any dwelling hereby approved in accordance with the approved details and shall thereafter be retained in as such.
- 7) No development shall take place until a Renewable Energy Generation Plan (REGP) has been submitted to and approved in writing by the local planning authority. The REGP shall provide for an electric vehicle charging point (Type 2, 32 Amp), and set out the measures that will be incorporated into the design, layout and construction, aimed at maximising energy efficiency and the use of renewable energy. Details shall include a timetable for implementation of the measures. The development shall be carried out in accordance with the approved measures and retained as such thereafter.
- 8) All hard landscaping, planting, seeding or turfing shown on the approved block plan drawing no. 617.19.11 D shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development and shall be retained as such thereafter. 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.

- 9) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 10) No development shall take place until a revised Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The CMS shall include (but is not limited to) the following:
- Details of construction hours
 - Details of construction laydown areas
 - Details of any proposed piling
 - Details of construction waste management
 - Measures to minimise dust
 - Measures to minimise noise

The proposed development shall thereafter be carried out in accordance with the approved details.