



Appeal Decision

Site visit made on 20 March 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 8 June 2023

Appeal Ref: APP/P1560/W/22/3295162

Mount View, Fox Street, Ardleigh, Colchester, CO7 7PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Wambugu Ltd against Tendring District Council.
 - The application Ref: 21/02132/FUL, is dated 17 December 2021.
 - The development proposed is described as '4 No self build eco bungalows with associated access road'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal results from the Council's failure to reach a decision on the information submitted by the appellant. There is no formal decision, as jurisdiction over that was taken away when the appeal was lodged. After the appeal was lodged, the Council confirmed that it would have refused the application and it has provided its putative reasons for refusal. I have taken this into account, together with the assessment and conclusions submitted in the statement of the Council, which sets out its concerns regarding the proposed development.
3. A signed and completed unilateral undertaking (UU) made in accordance with section 106 of the Town and Country Planning Act 1990 (as amended) was submitted as part of the appeal. It makes provision for the payment of a financial contribution calculated in accordance with the Council's Essex Coast Recreational Disturbance and Mitigation Strategy (2020). This legal agreement is a material consideration in my determination of this appeal and I consider these matters further in my reasoning below.
4. A previous appeal decision¹ for the development of nine dwellings within a wider field parcel that includes the appeal site has been brought to my attention. I note that the appeal scheme is for a reduced number of dwellings and where relevant I have had regard to the previous Inspector's comments in my determination of this appeal.

¹ APP/P1560/W/19/3240479

Main Issues

5. The main issues are:-

- i) whether the appeal site is a suitable location for the proposed development having regard to the spatial strategy of the development plan and the appeal site's accessibility to services and facilities; and
- ii) the effect of the proposed development on the character and appearance of the area.

Reasons

Spatial strategy

6. The development plan for the area comprises, in part, Section 1 North Essex Authorities' Shared Strategic Section 1 Plan adopted in January 2012 (Section 1 LP), and Section 2 of the Tendring District Local Plan 2013-2033 and Beyond Local Plan (Section 2 LP) which was adopted in January 2022. Section 1 LP Policy SP3 sets out the Council's spatial strategy for development of new housing within the district. Whilst it seeks to focus the majority of new development to existing settlements, development will be accommodated within or adjoining settlements subject to their scale, sustainability and existing role within their district and, where relevant, across the wider strategic area. The supporting text explains that growth will be planned to ensure existing settlements maintain their distinctive character and role and to avoid coalescence to conserve their setting.
7. Section 2 LP Policy SPL1 identifies a hierarchy of settlements where new development will be directed to. In doing so, it seeks to prioritise locations with access to the strategic road network, public transport and those with the potential to offer the widest range of services. It goes on to state that all settlements which may experience growth have a development settlement boundary. In areas outside of development settlement boundaries, these are considered to be part of the countryside. Section 2 LP Policy SPL2 reiterates that outside of settlement boundaries, the Council will consider any planning application in relation to the pattern and scales of growth promoted through the Settlement Hierarchy in Policy SPL1 and any other relevant policies within the development plan.
8. For the purposes of the settlement hierarchy, Ardleigh is classed as a 'smaller rural settlement' where development is limited to smaller development within defined settlement boundaries consistent with local community needs. By reason of the appeal site's location within the hamlet of Fox Street and outside of the settlement development boundary (SDB) for Ardleigh, it is considered to be within the countryside where development is restricted to particular types of development consistent with other policies of the development plan to protect and enhance the character and openness of the countryside. Policy LP2 of the Section 2 LP sets out that the Council will be supportive of, among other things, bungalows and self-build development.
9. Section 2 LP Policy LP7 sets out the criteria for self-build and custom built homes. It states that 'all new dwellings on such developments must either be safely accessible on foot within 600 metres of the edge of the SDB of one of the District's 'strategic urban settlements' or 'smaller urban settlements', or 400 metres of the edge of the SDB of one of the District's 'rural service

centres', or involve the redevelopment of vacant or redundant previously developed land (PDL) that is unviable for employment use.

10. I have considered the issue of the site's accessibility on foot under the sub-heading of 'accessibility of services and facilities' below, and I have concluded that the nearest 'strategic urban settlement', Colchester, is not safely accessible on foot. Moreover, notwithstanding the Tendring/Colchester District boundary is adjacent to the appeal site, the appellant states that Colchester is located at a distance of approximately 3km which would fall short of the requirements of the policy.
11. Furthermore, whilst the original application refers to the land as being 'garden land', the Council confirm that a previous application for a certificate of lawful use for a change of use of the land to residential curtilage was refused². On the evidence before me, it has not been demonstrated that the appeal site falls to be considered as PDL. In these circumstances, the appeal scheme fails to satisfy the requirements of Policy LP7 for self-build and custom built homes (SBCH). Similarly, given my findings below concerning the appeal scheme's impact on the character and appearance of the area, the proposal would fail the overarching requirement of Policy LP7 to have no significant material adverse impact on the landscape and character of nearby settlements.
12. I note that Government policy is strongly supportive of SBCH, with the Self-Build and Custom Housebuilding Act 2015 Act requiring a local planning authority to keep a Register of those interested in acquiring serviced plots for SBCH in its area, which it must then have regard to in carrying out its planning functions. The Planning Practice Guidance sets out that SBCH demand is to be measured by the Register with the relevant authority having a duty to grant permission within three years to sufficient suitable serviced plots for SBCH, to meet the number of entries on the Register for a given base period. It is the appellant's case that there is significant demand for SB plots (120 entries currently on the register) within the district and that the Council are failing to meet this demand. I also note the comments of interested parties whom have provided some support in respect of this matter.
13. Although the provision of four SBCH plots would make a useful contribution to the Council's supply of suitable permitted plots, in this instance, despite the description of development making reference to the proposal being for SBCH, the no legal agreement before me to limit the development to this type of housing. An application was made for full planning permission and there is little information before me to show that an initial owner has had primary input into the final design and layout of the scheme. Off-plan housing, homes purchased at the plan stage prior to construction and without input into the design and layout from the buyer, are not considered to meet the definition of self-build.
14. Similarly, to meet the requirement for an exemption from the Community Infrastructure Levy, anybody who is building their own home or has commissioned a home from a contractor, house builder or subcontractor, individuals must own the property and occupy it as their principal residence for a minimum of 3 years after the work is completed. To be properly considered as SBCH, I would expect to see such matters contained within a legal agreement. In the absence of evidence to compel the appeal scheme to be self-

² Certificate of lawful use – reference -14/01081/LUEX

built, there would be no restriction preventing the scheme from evolving into a different type of development.

15. Overall, I conclude that the appeal site is not a location to which new housing should be directed. To do so would undermine the development plan in this regard and there would be conflict with Section 1 LP Policy SP3 and Policies SPL1 and SPL2 of the Section 2 LP, the requirements of which are set out above.

Character and appearance

16. The appeal site comprises a parcel of predominantly open grassland forming part of a wider field parcel that is bounded by mature trees and hedgerow with open countryside to the rear. The topography of the site is elevated above and slopes downwards towards the A137 where an access point and a long driveway provide a route to the appeal site with other dwellings positioned along its length.
17. Properties situated along the A137 are varied in terms of size, type and style and whilst there is no common build line, properties along this part of the road are broadly arranged in a ribbon pattern of development characterised by single depth dwellings with a frontage onto the highway. Gaps between built form comprise of fields and open countryside and together with plots being spacious and verdant, this gives the area an open and generally semi-rural character and appearance, which is enhanced by the presence of mature landscaping and established trees. As an undeveloped area of grassland, the appeal site makes a positive contribution to the open and semi-rural character and appearance of the area.
18. There are some examples of dwellings without a frontage to the highway, including High View, a modest sized bungalow positioned towards the end of the access driveway leading from the A137 to the appeal site, together with a recent development of chalet type dwellings positioned between the highway and High View. However, High View is set within a spacious and verdant plot with established vegetation and as such, it is discrete and not readily noticeable. Fen Farm is a predominantly two-storey dwelling that also lacks a highway frontage, however, its farmhouse charm and position within an extensive plot surrounded within a setting of open fields and countryside provides an attractive rural character that makes a positive contribution to the rural setting of Fox Street.
19. The recent development of four dwellings³ along the access driveway is unlike the prevailing pattern of built form, however, their effect within the semi-rural environment is largely mitigated by reason of not projecting much further than the frontage properties along the A137 and by reason of having built form on all sides. Consequently, this gives the appearance of an infill development rather than an encroachment into the countryside. I also observed a further dwelling to be under construction at the time of my site visit⁴. Whilst situated within the wider field parcel, it is positioned roughly to the side of High View and in close proximity to the shared boundary with Mount View thus limiting its appearance of projecting into the countryside.

³ Planning Reference:- 20/01142/FUL

⁴ Planning Reference: 20/01058/FUL

20. Whilst the layout of the appeal scheme shows four plots set out in a similar linear pattern to the recently constructed chalet bungalows, these would nonetheless, be at odds with the prevailing pattern of linear development with a highway frontage that is characteristic of the wider area. The proposed dwellings would appear as a continuation of built form projecting a considerable distance beyond the built form of High View. As a consequence of the layout and extent of built form it would create the appearance of a suburban estate-like development that would be unsympathetic to local distinctiveness.
21. The appeal scheme would not be readily visible from the highway, however, the introduction of a significant amount of urban form including buildings, access road, fencing and domestic paraphernalia would be seen as a significant urbanisation of the site, thus eroding the sense of openness and its semi-rural character. It would encroach well into the countryside and be viewed as a harmful incursion into the rural landscape. The effect would be readily visible when viewed from neighbouring dwellings and from the fields and countryside beyond the site's boundaries. This would be detrimental to the semi-rural character of the site and its surroundings, as well as the intrinsic countryside character of the area more widely.
22. Whilst I recognise that the proposed dwellings would be single storey in height and the boundary trees and vegetation would provide some visual containment, the degree of visibility will vary according to the seasons thus becoming more visible during the winter months when foliage is less dense and the screening effect of vegetation is diminished.
23. It appears to me that even with additional planting and once established, vegetation could not realistically screen the proposed development to a satisfactory extent that would avoid the development being seen as a protrusion of built form into the rural environment.
24. Accordingly, I find that the appeal scheme would fail to reinforce local distinctiveness and integrate well within the wider landscape thus having a harmful effect on the character and appearance of the area. The development would conflict with Section 2 LP Policies PPL3 and SPL3. Among other things, these policies require new development to protect the rural landscape and make a positive contribution to the quality of the local environment and local character.

Accessibility of services and facilities

25. The appeal site is located to the rear of Mount View and other properties positioned along Harwich Road, Fox Street (A137). Given the proximity of these other dwellings and premises, the appeal site is not 'isolated' for the purpose of the National Planning Policy Framework (the Framework), since it cannot be said that it would be far away from other places, buildings or people, albeit the location is rural.
26. However, it does not necessarily follow that a site that is not 'isolated' will be reasonably accessible to services when considered in the context of other requirements of the Framework.
27. Access to Ardleigh is possible on foot via a footpath however, the distance involved is likely to discourage future residents from travelling to Ardleigh on foot. Whilst Colchester is closer to the appeal site, there is no continuous

footpath link. Consequently, future occupants travelling on foot would have to walk for a large part of the journey within the grass verge which is uneven and overgrown in places, or alternatively within the highway.

28. However, as the route is along a well trafficked A-road, the opportunity to walk within the highway is limited. Taken together with an absence of any street lighting, in my view, the site is not within a reasonable or appropriate walking distance of Ardleigh or Colchester. Given the nature of the route and the distances involved, I do not consider that the routes would be perceived as a safe and convenient pedestrian environment for future occupants of the proposed dwellings, particularly during inclement weather or at night, and for more vulnerable groups such as the elderly, disabled or those with young children.
29. The presence of nearby footpaths are noted, however, other than a business park, there is little information regarding the destinations that can be reached and the distances involved. I therefore cannot be certain that they offer a realistic alternative.
30. Albeit the distance would not be excessive for those travelling by bicycle, the nature of the route along an unlit and heavily trafficked A-road would be unlikely to encourage travel to nearby settlements by this sustainable mode of transport.
31. A limited range of services are available within the vicinity of the site. However, a bus stop is located nearby and several bus services (102, 103 and 104) are stated to run within the locality providing access to Ardleigh, a 'smaller rural settlement' and the 'Strategic Urban Settlement' of Colchester. The services are stated to operate from 6.51am to 11.17pm albeit it is not clear to me whether this exists for all seven days of the week. Some journeys by bus would be an option. An interested party describes the bus service to Colchester and Harwich via Ardleigh as 'reliable and frequent', but it is not clear to me whether this would be a view shared by all future occupants of the proposed dwellings particularly given that with some 28 daily bus trips this would equate to roughly 1.6 trips per hour. This is likely to discourage the use of the bus, and individuals may be less inclined to utilise a bus service if it is reduced during the weekend thus reducing its potential as an alternative mode of transport.
32. I have had regard to some local employment opportunities. The appellant lists these as being a farm, car sales and business park. There is little detailed evidence regarding the businesses located at the business park and to my mind, the stated employment opportunities are considerably limited. Numerous shops, services and employment facilities are stated to be located at Welshwood Park and St Johns, together with larger scale employment around 3 miles away. Whilst the distances and nature of the route would limit those travelling on foot, some trips by bus would be possible and the on-demand Community Transport and Dial-A-Ride schemes offer an additional service to the bus.
33. The Framework recognises that opportunities to maximise sustainable transport solutions will not be the same in rural areas as in urban locations. The proposal would significantly increase the numbers of residents whose access to day-to-day services and facilities by means of transport other than by private vehicle would be limited such that a large proportion of their journeys to shops,

schools, employment and other services and facilities would be likely to be made by private motor vehicle.

34. As such, I consider that the appeal sites' location offers a limited genuine choice of transport modes to minimise the need to travel by private motor vehicle. Therefore, by reason of my findings above, I consider the location is reasonably well served in terms of sustainable modes of transport such that not all journeys by future occupiers of the proposed dwellings to reach essential day to day services, facilities and employment opportunities in nearby larger settlements would need be made by private motor vehicle. In my view, the availability of reasonably extensive and frequent bus service provides a genuine alternative sustainable mode of transport.
35. Accordingly, I consider that the appeal site would be reasonably well located and connected to local services and facilities to avoid an undue reliance on the use of a private motor vehicle. Thus, the proposal would generally accord with Section 1 LP Policy SP3 and Policies SPL1 and SPL2 of the Section 2 LP, insofar as these policies seek to direct new development towards the most sustainable locations.

Other Matters

36. In relation to SBCH, even if the proposed dwellings were properly restricted to being self-built and I were to attach significant weight to the benefit of this contribution of SBCH plots together with being minded to accept the identified demand, Government support for SBCH and a deficit of suitable permitted plots, I am not persuaded that this would outweigh the substantial harm that would arise from the conflict with the identified development plan policies set out above. The Council states it is currently able to demonstrate an adequate five year housing land supply in the region of 6.5 years and therefore the tilted balance is not engaged.
37. The Framework is permissive of 'windfall' development, however, the determining factor is whether or not this can be achieved without conflict with other policies within the Framework.
38. My attention has been drawn to a number of other similar developments within the vicinity, a number of which I have referred to above. The Council advises that planning permission for a number of these was granted at a time when they were unable to demonstrate an adequate supply of land for housing. In that instance, the weight to be applied to any conflict with the development plan would have been different. Development granted in the absence of an adequate five year housing land supply are not comparable to the appeal scheme before me. In addition, the scheme at Valley Springs⁵ was not considered to have an adverse impact on the character of the area.
39. Reference has been made to various developments adjacent to Sally Brook Nature Reserve, two other developments under construction close to the Colchester boundary and a development at Chantry's⁶. It has been put to me that these set a precedent for development that is contrary to the newly adopted development plan. However, I have little substantive information relating to the particular circumstances of these developments and whether the circumstances are therefore comparable to the appeal proposal. As such, a

⁵ Planning Reference:- 16/00751/FUL

⁶ Planning Reference:-18/01575/OUT and 21/01406/DETAIL

comparison is of limited relevance in this instance. I have considered the appeal before me on its individual planning merits.

40. No adverse impacts have been identified by the Council with regards to highway safety, ecology, heritage, contaminated land or the living conditions of neighbouring occupiers. However, the absence of harm is a neutral matter that weighs neither for nor against a proposal.
41. My attention has been drawn to the 'eco-credentials' of the proposed development. In particular, I note that the proposed dwellings are stated to include Nudura ICF and Thermo Roofs, solar panels and battery storage systems, upgraded electric, water and telecom fibre connection to provide energy efficiencies. However, Policy PPL10 of the Section 2 LP sets out the requirement for measures to be incorporated into the design, layout and construction which are aimed at maximising energy efficiency and the use of renewable energy. To this extent, albeit such matters are supported by the Framework, these measures are necessary to make the appeal scheme acceptable in planning terms.
42. Whilst gardens are stated to be of a size that would enable future occupiers to grow their own food, this is essentially a personal lifestyle choice that cannot be guaranteed.
43. I have had regard to a number of letters provided in support of the appeal proposal, a number of which refer to the main issues above. However, support for the proposed scheme cannot outweigh general planning considerations and, in this instance, it does not outweigh the harm I have identified above.
44. Reference has been made by the appellant to the performance of the planning officer and conduct of the planning application. However, such matters are not for my consideration as part of the determination of this appeal.
45. My attention has been drawn to the comments within the Examining Inspectors' Report on the Section 2 LP. I note the comments regarding the supporting text to Policy SPL1 being too restrictive in terms of development outside of SDBs. However, main modifications were also suggested and subsequently the Section 2 LP was found to be sound and adopted. I am not satisfied that the approach set out within Policy SPL1 is unduly restrictive such that it conflicts with national policy set out within the Framework.
46. The appeal site falls within the zone of influence of the Colne Estuary SPA and Ramsar Sites. Occupants of the proposed dwellings would have a recreational impact upon these areas which are designated primarily to protect waders and wildfowl. The proximity of these European sites means that determination of the application should be undertaken with regard to the requirements of the Habitats Regulations 2017. Whilst a signed and completed legal agreement in the form of a UU has been provided by the appellant, as the appeal is failing because of the harm which has been identified in relation to the main issues, the development is not going ahead and therefore any harm to the SPA/Ramsar would not occur. Therefore, I do not need to give any further consideration to this matter in this appeal.
47. I have had regard to the various other benefits that the proposal would bring, including, the provision of additional housing, the economic benefits during the construction phase and spending by future occupants within the local economy,

and a contribution to the vitality and vibrancy of mixed communities. While I have given these benefits some weight in favour of the appeal, these modest benefits would not be sufficient to outweigh the substantial harm I have identified.

Conclusion

48. Whilst I have concluded that the appeal site is reasonably well located and connected to local services and facilities to avoid an undue reliance on the use of a private motor vehicle, I have concluded that there would be substantial harm that would arise from the conflicts I have identified with the development plan, with particular regard to the character and appearance of the area and the settlement strategy. There are no material considerations in this instance, either individually or collectively, which indicate determination of the appeal should be other than in accordance with the development plan.
49. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

E Brownless

INSPECTOR