



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: 26 July 2023

Appeal Ref: APP/P1560/W/21/3281995

Newlands Nursery, Slough Lane, Ardleigh CO7 7RU

- 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 Peter Rodberg against the decision of Tendring District Council.
 - The application Ref 20/00943/FUL, dated 7 July 2020, was refused by notice dated 4 May 2021.
 - The development proposed is conversion of a barn to 1 no. 3-bed and 2 no. 4-bed dwellings alongside the creation of gardens, parking provision and a new vehicular access.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of a barn to 1 no. 3-bed and 2 no. 4-bed dwellings alongside the creation of gardens, parking provision and a new vehicular access at Newlands Nursery, Slough Lane, Ardleigh CO7 7RU in accordance with the terms of the application, Ref 20/00943/FUL, dated 7 July 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. On 25 January 2022, the Council adopted Section 2¹ of the TDLP, which now stands alongside TDLP Section 1² to form the development plan for the area, superseding the saved policies of the previous district-wide Local Plan, adopted in 2007. As such, the emerging policies referred to on the decision notice have now been adopted and the saved local plan policies referred to have been replaced. The appeal process has afforded the main parties sufficient opportunity to make representations on these policies.
3. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework) and I have had regard to it in considering this appeal.
4. The appeal site is located within an area designated as a Scheduled Ancient Monument (SAM) comprising a multi period cropmark complex. The evidence before me indicates that the potential for the survival of archaeological remains associated with the scheduled site is high.
5. The effect of the development on the SAM was not a reason for refusal. However, Framework Paragraph 200 emphasises that SAMs are assets of the 'highest significance'. For this reason, I have included the effect on the SAM as a

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 issue in this appeal. The main parties have been provided with an opportunity to make further representations on this issue.

Main Issues

6. The main issues are:

- Whether the site is a suitable location for the proposed development with particular regard to the Council's strategy for the location of new residential development.
- Whether the development necessitates the provision of open space.
- The effect of the proposed development on Special Protection Areas and Ramsar sites.
- The effect of the development on a Scheduled Ancient Monument.

Reasons

Location of development

7. 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 approximately 600 metres to the south of the settlement of Ardleigh.
8. 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.
9. The TDLP's explanatory text, at paragraph 3.3.2.1, states that the housing that is required for the District will be delivered on allocated land, on sites within settlement boundaries or on sites on undeveloped land on the edge of the settlements. However, Paragraph 3.3.3.1 makes clear that development elsewhere is to be strictly controlled, to protect the character and openness of the countryside.
10. TDLP Section 2 Policy SPL1 defines a settlement hierarchy and identifies Ardleigh as a 'smaller rural settlement'. The TDLP outlines that 'smaller rural settlements' are the least sustainable settlements, with fewer services and facilities provided. Notwithstanding this, Ardleigh has a reasonable range of services and facilities including a convenience store, church, post office, primary school, doctors surgery and village hall. Furthermore, the TDLP outlines that such settlements can accommodate growth of no more than 10 dwellings.
11. 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 (in this case a maximum of 10 units). As such, whilst the scale of growth proposed would be appropriate given the services and facilities within the village, the appeal site is physically separate from the settlement and in this regard, it does not 'adjoin' the settlement for the purposes of applying the development plan policies.

12. Furthermore, the appeal site is functionally divorced from the settlement because, even if I accept that the linking footpaths are suitable for occasional use, future occupiers would be required to walk in excess of 600 metres to access the local services and facilities. Given this extensive distance, it is highly unlikely that they would do so on a regular basis. They would also have to travel even further afield than Ardleigh in order to access services and facilities to meet their every-day needs. On that basis there would be a reliance on the motor vehicle.
13. Given the sites location, outside of and not adjoining the nearest settlement, it would conflict with the Council's strategy for the location of residential development, including TDLP Section 1 policy SP3 and TDLP Section 2 policies SPL1 and SPL2.

Open Space

14. 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.'

15. 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.'

16. 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 such sites. 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.
17. 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.
18. In summary, the wording of the policy clearly indicates that it only applies to developments of 11 dwellings or more.
19. Given that the proposal comprises 3 dwellings, no open space contribution is required and the proposal would comply with Local Plan Policy HP5.

20. The Council has referred to the Supplementary Planning Document (2021)³. Whilst this document does refer to the prospect of the adoption of the TDLP Section 2 it also confirms that until that point it 'relies' on former Local Plan Policy COM6. However, this policy has now been replaced and there is no updated SPD before me to indicate the implications of this for the SPD. As such, this consideration does not alter my findings.
21. I note that the Council's Public Realm consultee has identified that there is a deficit of 1.70 hectares in Ardleigh and suggests improvements to the closest recreation ground at Station Road. However, no evidence has been provided to indicate the extent to which other nearby villages and larger settlements have equipped play/open space capable of meeting the demand from the proposed development. This is particularly pertinent given my findings (and indeed, the Council's own position) that future occupiers would be unlikely to travel to Ardleigh on foot in any case.
22. For these reasons, these considerations do not demonstrate that an open space contribution is necessary and there would be no conflict with TDLP Section 2 Policy HP5. An open space contribution would not therefore meet the tests set out under Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). As such, I have not taken the inclusion of this contribution within the submitted Unilateral Undertaking (UU) into account in consideration of this appeal.

European Sites and Appropriate Assessment

23. 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 and the Dengie SPA and Ramsar site. These are European Sites which are protected under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
24. 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 birds and wintering birds⁴. 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 birds⁵. The Dengie SPA and Ramsar sites 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 birds⁶.
25. 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.
26. There would be likely significant effects on these sites as a result of the proposed development in combination with other residential development

³ Addendum: Supplementary Planning Document For Policy COM6 Tendring District Local Plan 2007 - Provision of Recreational Open Space for New Development. May 2021 guidance (May 2021)

⁴ Dark-bellied brent goose, Northern pintail, Pied avocet, Grey plover, Red knot, Dunlin, Black-tailed godwit and Common redshank.

⁵ Dark-bellied brent goose, Common pochard, Hen harrier, Ringed plover, Common redshank and Little tern.

⁶ Hen harrier, Dark-bellied brent goose, Grey plover, East-Atlantic Flyway, Dunlin, Black-tailed godwit and Bar-tailed godwit.

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.

27. The appellant has submitted a UU with this appeal which includes a financial contribution aimed at mitigating these effects. The Council is satisfied that the UU submitted with the appeal addresses the reason for refusal. Nonetheless, I am the competent authority as the decision-maker and as such, it is necessary to undertake an appropriate assessment.
28. 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 strategic mitigation for the effects of increased residential development (and as such, populations) upon designated European Sites on the Essex coast.
29. 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.
30. The appellant's UU includes provision for an index-linked sum 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.
31. The contributions 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. They therefore meet the tests set out under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations).
32. The required mitigation would be properly secured. As a result, the proposal 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. It would also comply with TDLP Section 2 Policy PPL4, which amongst other things seeks to protect the integrity of European Sites.

Scheduled Ancient Monument

33. The SAM primarily derives its significance from its archaeological importance as a site of possible bronze, iron age and roman settlement activity, with remains likely to be present given the presence of various crop marks which intersect the appeal site. Given that the proposed development involves the conversion of an existing building it is not likely that any archaeological remains would be disturbed as a

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

result of the conversion itself. Similarly, the removal of the glasshouses need not require any below ground disturbance. However, the new access track, any below ground services and the parking area all have potential to result in below ground disturbance depending upon the method of construction adopted.

34. The Council recommended a condition requiring a programme of archaeological monitoring. However, this condition alone would not give sufficient control such that I can be certain that there would not be harmful effects on the SAM or its setting. However, a condition could be imposed which requires that, in the event that archaeological features are identified during construction, work is halted until details (including a detailed design of below ground works and method statement relating to carrying out these works) have been submitted to and approved in writing by the local planning authority. This would ensure that any unidentified remains are preserved in situ.
35. On that basis, subject to conditions, there would be no harm to the significance of the SAM. The proposal would therefore comply with TDLP Section 2 Policy PPL7 which in part requires that archaeological remains are suitably protected. It would also comply with the Framework's policies on protecting heritage assets.

Other Matters

36. The Council has raised concerns in relation to highway safety within its Statement of Case (para 6.11) given the perceived 'lack of safe pedestrian facilities nearby'. However, these concerns are at odds with the Council's later contention that 'walking or cycle[sic] will not be attractive for people aiming to get safely to the nearby village' (para 6.13). Indeed, there is no substantive evidence to indicate that the proposal would result in an adverse impact on highway safety and I agree with the Council's conclusion that future occupiers are likely to be dependent on the private motor vehicle and as such, are very unlikely to regularly traverse the highway on foot.
37. The Parish Council has referred briefly to the Ardsleigh Neighbourhood Plan in representations made in respect of this appeal. However, no specific policies have been referred to or provided. Furthermore, the representations from the Parish Council indicate that the plan has not yet been 'made'. Indeed, I have not been provided with the precise status of the plan in the plan-making process nor copies of any emerging policies. As such, I cannot attribute any significant weight to the Neighbourhood Plan in the consideration of this appeal.
38. The Parish Council has also raised the issue of odour arising from the alleged failure of equipment for the Martells Quarry Landfill Site. However, no precise details (for example details of complaints or where those complaints have arisen from) have been provided. Furthermore, the fact that the Parish Council implies that odours are omitted as a result of equipment failure implies that such occurrences are not the norm. Indeed, where they do occur they are likely to be the subject of a separate regulatory regime. As such, I do not consider that this issue makes the appeal site an unsuitable location for housing.

Planning Balance

39. There would be a conflict with the development plan policies relating to the location of new housing (SP3, SPL1, SPL2). This conflict arises insofar as the

residential development would not be on a site which adjoins the settlement boundary. However, the Council does not assert that there would be any harm in terms of character and appearance, which is one of the main purposes of these policies. Indeed, to the contrary, the proposals would enhance the appearance of the building.

40. Framework Paragraph 80 outlines that isolated homes in the countryside should be avoided, except in certain circumstances. One such exception is where the development would re-use redundant or disused buildings and enhance its immediate setting. The appeal site is isolated given that it is physically and functionally detached from any settlement. The existing barn is redundant, as partially evidenced by the appellant's planning application but also confirmed during my site visit. During my site visit I noticed that part of the barn had been damaged by a fire. The proposals would rectify this damage and this alone would constitute an enhancement. In addition, the removal of the glass house and new planting (which could be required by condition) has the potential to further enhance the appearance of the site. For these reasons the proposal accords with Framework Paragraph 80c.
41. This is similar logic to that which was adopted by the Inspector in the appeal⁸ referred to by the appellant. Whilst the case-specific circumstances are very different, the approach which the Inspector took in applying Framework Paragraph 80 is relevant.
42. There would be no other harm in relation to open space provision, the impact on European sites or the effect on the SAM.
43. Whilst I do not dispute that the Council can demonstrate a housing land supply (HLS) in excess of five years, this does not represent a cap on new housing development. There would only be a moderate level of harm arising from the sites location outside of and not adjoining the settlement boundary, with the occupants of three dwellings likely reliant on the private motor vehicle.
44. In this particular instance, given the moderate scale of the harm and the fact that the proposal would comply with Framework Paragraph 80c, the conflict with the development plan⁹ would be outweighed by the social and economic benefits arising from the contribution of three new dwellings to the housing stock. Indeed, this is a benefit of significant weight even in the context of a HLS in excess of five years.

Conditions

45. 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. I have also several of the conditions recommended by the Council.
46. Conditions relating to timeliness [1] and the identification of plans [2] are necessary to provide certainty.
47. Conditions [3 and 4] requiring a written scheme of investigation and method statement (if necessary) have been imposed in the interest of preserving

⁸ PINS Reference: APP/U1105/W/ 17/3191044

⁹ Policies SP3, SPL1 and SPL2

archaeological remains. A construction method statement [5] is required in the interest of neighbouring living conditions and highway safety. A foul water strategy [6] is necessary in the interest of drainage. Details of proposed hard and soft landscaping measures [7] are required in the interest of preserving the character and appearance of the area. Various conditions have been imposed in the interest of highway safety [8 and 11 to 14]. A noise assessment, specific to the proposed residential units, is required given the close proximity of the site to a noise generating land use [9]. A condition requiring site investigation for contamination and possible remediation [10] is imposed given the former use of the building/site for agriculture. I have also withdrawn permitted development rights for enlargements and extensions [15] of the approved dwellings in the interest of preserving the rural character of the building.

Conclusion

48. For the reasons given, the appeal is 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: Site Plan (Project Ref 0563 – Drawing No. 1), Proposed Floor Plans and Elevations (Project Ref 0563 – Drawing No. 4), Existing Block Plan (Project Ref 0563 – Drawing No. 3), Existing Elevations (Project Ref 0563 – Drawing No. 2).
- 3)
 - a) 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.
 - b) No development or preliminary groundworks of any kind shall take place until the completion of the programme of archaeological investigation identified in the WSI (defined in 'a') above.)
 - c) Within six months of the completion of the fieldwork a post excavation assessment shall be submitted to the local planning authority.
- 4) Any historic or archaeological features not previously identified which are revealed when carrying out the development hereby permitted shall be retained in-situ and construction work shall be immediately halted in the area/part of the development affected and no further development shall commence until details (including a detailed design of below ground works and method statement relating to carrying out these works) to show how the surviving archaeological remains which are to remain in situ are to be preserved, have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
- 5) No development shall take place until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The statement shall include details of:
 - the parking of vehicles of site operatives and visitors;
 - the loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;
 - details of noise, dust, emission and lighting control measures;
 - wheel and under-body washing facilities;
 - hours of constructionThe development shall be carried out in accordance with the approved details.
- 6) No development shall commence until a foul water strategy has been submitted to and approved in writing by the local planning authority. No dwellings hereby approved shall be occupied until the works have been carried out in accordance with the foul water strategy so approved. The development shall thereafter be retained in accordance with the approved details.

- 7) No development shall commence until details of both hard and soft landscape works (including details of retained trees and/or hedgerows), and a timetable for their implementation, have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out and retained in accordance with the approved details. 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.
- 8) No development shall take place other than construction of the access hereby approved until the proposed vehicular access at its junction with Slough Lane has:
 - a) been constructed to a width of 6 metres and provided with an appropriate dropped kerb crossing of the verge. (No kerb radii).
 - b) been provided with a combined pedestrian and vehicular surface of 6 metres.
 - c) been constructed to at least binder course.
- 9) No development shall take place until a full noise assessment has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented prior to first occupation of any dwelling hereby approved and shall be retained as such thereafter.
- 10) No development shall take place until the specific requirements of paragraphs numbered a) to c) below have been undertaken. If unexpected contamination is found after development has commenced, no further development shall be carried out on that part of the site affected by the unexpected contamination until the requirements of paragraph d) have been complied with in relation to such contamination.
 - a) Site Characterisation - An investigation and risk assessment, in addition to any assessment provided within the planning application, shall be carried out in accordance with a scheme to assess the nature and extent of any contamination of the site. The investigation and risk assessment shall be undertaken by a competent person and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority. The report shall include:
 - b) Submission of Remediation Scheme - A detailed Remediation Scheme (if required as a result of site characterisation under 'a') to ensure that the site is suitable for the intended use by removing any unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the Local Planning Authority.
 - c) Implementation of Approved Remediation Scheme - Any Remediation Scheme approved under 'b' above shall be carried out in accordance with its terms prior to the commencement of any works of construction. The Local Planning Authority shall be notified in writing a minimum of two weeks prior to commencement of the remediation scheme works of the date that the remediation works will commence. Following completion of the measures identified in such an approved Remediation Scheme, a verification report to

demonstrate the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority.

d) Reporting of Unexpected Contamination - In the event that contamination is found which was not previously identified, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall then be undertaken in accordance with the requirements of paragraph 'a' above and, where remediation is necessary, a new Remediation Scheme shall be prepared in accordance with the requirements of paragraph 'b' above and submitted to and approved in writing by the Local Planning Authority. Following completion of all necessary measures identified in any such Remediation Scheme as may be approved, a verification report shall be submitted to and approved in writing by the Local Planning Authority in accordance with paragraph 3 above. In such circumstances, no further works of development shall be carried out to that part of the site until such time as the requirements of this paragraph have been satisfied.

- 11) Prior to occupation of any dwelling hereby approved, the road junction / access at its centre line shall be provided with a visibility splay with minimum dimensions of 2.4 metres by 160 metres in both directions, as measured from and along the nearside edge of the carriageway. The visibility splays shall thereafter be retained free of obstruction above 600mm and below 2 metres at all times across the entire site frontage.
- 12) Prior to occupation of any dwelling hereby approved design details of a vehicle turning and parking area (including details of provision two car parking spaces for each dwelling and one electric vehicle charging point for each dwelling) shall be submitted to and approved in writing by the local planning authority. The turning and parking area shall be implemented in accordance with the approved details prior to first occupation of the dwellings hereby approved and shall be retained for their purpose, free from any other obstruction, thereafter.
- 13) Prior to occupation of each dwelling hereby approved, details of secure, convenient and covered cycle parking shall be provided to and approved in writing by the Local Planning Authority. The cycle parking for each dwelling shall be constructed prior to first occupation of that dwelling and retained thereafter in accordance with the approved details.
- 14) No unbound material shall be used in the surface treatment of the approved vehicular access within 6 metres of the highway boundary.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or reenacting that Order) no extension or enlargement (including additions to roofs) shall be made to the dwellinghouses hereby permitted.