



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: 18 September 2023

Appeal Ref: APP/P1560/W/21/3289149

Land adjacent to No. 80 The Street, Kirby-Le-Soken, Essex CO13 0EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Dr Stubbs against the decision of Tendring District Council.
 - The application Ref: 21/00767/OUT, dated 23 April 2021, was refused by notice dated 16 June 2021.
 - The development proposed is one detached dwelling and associated detached garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved for future determination. The submitted plans show the proposed siting, elevations and an access. However, I am advised that these are indicative only and therefore I have considered this appeal on this basis.
3. Since the application was determined, the Council have adopted Section 2 of the Tendring District Local Plan 2013-2033 on the 25 January 2022. Consequently, all policies within the Tendring District Local Plan (2007) have been superseded. For the purposes of determining this appeal, the development plan comprises Section 1 (North Essex Authorities' Shared Strategic Section 1 Plan (January 2021)(Section 1 LP) and Section 2 of the Tendring District Council 2013-2033 (January 2022)(LP).
4. Similarly, following the determination of the application, the National Planning Policy Framework (the Framework) was revised in July 2021 and September 2023. I have had regard to the Framework in my determination of this appeal.
5. A planning obligation in the form of a Unilateral Undertaking has been provided in support of the appeal. It includes provision for the payment of a financial contribution to mitigate the effect of the proposal on the Hamford Water Special Protection Area (SPA) and Ramsar through a Recreational Disturbance, Avoidance and Mitigation Contribution calculated in accordance with the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy. The planning obligation is a material consideration in my determination of this appeal which I shall return to as part of my reasoning below.

Main Issues

6. The main issues are:-

- i) whether the appeal site is a suitable location for the proposed development with particular regard to the settlement strategy of the development plan and the accessibility of services and facilities;
- ii) the effect of the proposed development on the character and appearance of the area;
- iii) the effect of the proposed development on protected species; and
- iv) whether the proposed development would provide adequate living conditions for occupants of the proposed dwelling and neighbouring occupiers with particular regard to outlook and privacy.

Reasons

Settlement strategy and the accessibility of services and facilities

7. Policy SP3 of the Section 1 LP sets out the spatial strategy for development within the district. It seeks to direct growth to within or adjoining existing settlement boundaries. The supporting text recognises that growth needs to be carefully managed so as not to lead to unsustainable developments in remote and poorly accessible locations. Within Tendring District, the spatial hierarchy promotes growth in settlements that are the most accessible to the strategic road network, public transport and offer a range of services.
8. LP Policy SPL1 sets out a settlement hierarchy for Tendring District and identifies Kirby-Le-Soken as a '*Smaller Rural Settlement*'. The supporting text to this policy explains that these smaller villages are considered to be the least sustainable locations for growth given their limited job opportunities, local services, facilities and other infrastructure. It goes on to recognise that these villages are under pressure to grow and therefore a small scale increase in housing stock over the plan period is anticipated. In doing so, Settlement Development Boundaries (SDB) have been flexibly drawn to accommodate a range of sites both within and on the edge of villages thus enabling some small-scale residential 'infill' developments subject to there being no detrimental impact on the historic and natural environment.
9. Given the appeal site's location some 200 metres from the edge of the SDB for Kirby-Le-Soken, for the purposes of applying planning policy, the appeal site is considered to be located within the countryside. By reason of my findings below at paragraph 24 and due the adverse impact on the intrinsic character and beauty of the countryside, I do not find that the development can be considered to be 'infill' development as envisaged by LP Policy SPL1.
10. Policy SPL2 sets out that outside of defined SDBs, development will be controlled in relation to the pattern and scales of growth promoted through the settlement hierarchy in Policy SPL1 and any other relevant policies within the plan. The supporting text recognises that certain forms of development can and sometimes needs to take place in these areas, some of which can bring about positive outcomes for the rural economy.
11. Kirby-Le-Soken is a small settlement with limited services and facilities stated to consist of a village shop, post office, community hall, playing field and a number of public houses and places of worship. Given the restricted range of services and facilities available, these are unlikely to be capable of sustaining the everyday needs of the future occupiers of the proposed dwelling.

12. Therefore, future residents would need to travel further afield to nearby settlements where there is a greater range of services and facilities and opportunities for shopping and employment. These settlements are located a distance away from the appeal site and access for a large part of the route would be along roads where there is no footway and limited streetlighting such that I consider that the majority of pedestrians and cyclists would not feel safe having to walk or cycle within the highway particularly during inclement weather or at night. In my view, given the nature of the route and the distances involved, it is likely to discourage most journeys on foot and by cycle to the services and facilities of nearby villages.
13. Bus services 98, 98A and 107 are in operation from the village. The appellant suggests these provide an hourly service between the hours of 7am and 6pm to Walton-on-the-Naze, Clacton, Kirby Cross, Frinton-on-Sea, Ardleigh and Colchester. There is little information regarding the operation of the bus service at weekends. Some journeys by bus would therefore be an option, however, the bus stop is positioned some 650 metres from the site and part of that route is without a footway and with limited streetlighting. Consequently, individuals would need to walk within the grass verges, or where they are overgrown, uneven or unavailable, a person would be required to walk within the highway. Notwithstanding that vehicles are restricted to 30mph along the route, it would not provide a safe or attractive route, particularly for those with young children and restricted mobility. Furthermore, the limitation of an hourly service that ceases to operate in the early part of an evening is unlikely to offer a realistic substitute to the convenience of using a private motor vehicle.
14. Although I note that the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, I do not consider that there is a genuine choice of sustainable transport modes nor that they will be encouraged in this instance. The location is not well served in terms of walking, cycling and public transport and it is therefore likely that the majority of journeys by future occupiers of the proposed development to access services and facilities would be made by private motor vehicle.
15. Accordingly, I consider that the appeal site is not a suitable location for a new dwelling having regard to the settlement strategy of the district and the availability of services and facilities. Therefore, the appeal scheme would conflict with LP Policy SP2, the requirements of which are set out above. In addition, the proposed development would conflict with the aims of the Framework insofar as it seeks to promote sustainable travel modes that limit future car use and emphasises the importance of a plan-led approach to development.

Character and appearance

16. Kirby-Le-Soken is a village set within an agricultural landscape which comprises a varied pattern of open and undeveloped fields together with parcels of mature woodland. It is an elongated village that is predominantly arranged along the B1034 with a dense arrangement of built form at its core that becomes a broadly linear pattern of development as it extends outwards in the direction of the appeal site. Whilst there is no common build line, properties are predominantly of single plot depth with a frontage to the highway.
17. The northern side of The Street in the vicinity of the appeal site is typically characterised by more loosely spaced properties set within generous sized and

mature landscaped plots. Notwithstanding there being a variety of housing types and materials, the established ribbon pattern of dwellings set within verdant and spacious plots are important features of the character of the area.

18. The appeal site comprises part of the rear garden to 80 The Street (the host dwelling). As a detached two-storey property, the host dwelling sits within a large plot with a wide frontage to the highway and an extensive garden to its rear. The host dwelling shares many of the typical characteristics noted above and it therefore makes a positive contribution to the character and appearance of the surrounding area.
19. The rear garden of the host dwelling, of which the appeal site forms part, is largely undeveloped and comprises roughly mown grassland together with some occasional trees arranged sporadically within the site. Whilst a densely vegetated boundary defines the common boundary between the host dwelling and the neighbouring property, Norton's Barn, the other boundaries are largely open thus providing views into the appeal site from neighbouring properties and their gardens and from the wider countryside. Some partial views of the appeal site can also be glimpsed from the highway through the existing access opening. Overall, the appeal site makes an important contribution to the spaciousness of the host dwelling and surrounding area and notwithstanding the position of a horse menage and paddocks beyond the rear boundary of the garden to the host dwelling, there is a gradual and soft transition between the urban form of the host dwelling, village edge and the countryside.
20. By reason of the appeal scheme's position to the rear of the detached garage and parking forecourt of the host dwelling, the proposed frontage to the highway would be limited to the short width of an access thus failing to replicate the established pattern of development with a wide frontage to the road. Furthermore, given its proposed position set back from the highway by some 20 metres, taking the Council's measurements, which have not been disputed by the appellant, the appeal scheme would have the effect of creating a backland form of development which would be at odds with the prevailing pattern of linear development. This would be detrimental to local distinctiveness.
21. Notwithstanding that matters concerning scale, appearance and design of the proposed dwelling cannot be considered at this stage, the resultant garden area to the east of the existing property would be reduced and in combination with its proximity to the host dwelling, the appeal scheme would unduly diminish the space to the existing dwelling which would be to the detriment of the spacious character and appearance of the host dwelling and the surrounding area.
22. The introduction of a dwelling together with a detached garage and areas of hardstanding for the parking and manoeuvring of vehicles into an area which is largely without any built form at present would result in a significant degree of urbanisation of the appeal site. It would erode the open and undeveloped character of the site. The inclusion of built form and the likely need for boundary treatments to subdivide the garden curtilage of the host dwelling would cause the appeal scheme to be viewed as an encroachment into the countryside. This intrusion into the countryside would also be to the detriment of the appeal site's Countryside Protection Belt (CPB) designation where

LP Policy PPL2 seeks to protect the open character of the undeveloped coastline.

23. The proposed development would be seen as a hard edge to the village and the adverse effects of the scheme would be readily apparent in public views from the highway and in wider views from the countryside.
24. It has been put to me that the appeal scheme should be considered as 'infill' development, however I disagree. Notwithstanding the position of Norton's Barn and taking into account that the appeal dwelling would be broadly aligned to a similar position as an approved dwelling¹ adjacent to the appeal site, the appeal scheme would be sited beyond the rear build line of the majority of properties along this part of The Street and it would have the effect of commencing a second line of development. Accordingly, I do not consider that the proposed development would fill a gap in between the existing frontage development and importantly, it would appear as an extension of built form outside of the existing ribbon pattern of development.
25. Furthermore, having had regard to the appellant's submitted plan 'PLG3', I find that there are a number of material differences between the two schemes. In that instance, the garden area accompanying Norton's Barn is extensive and its consequent subdivision ensures large spacious plots for the existing and proposed dwelling are achieved. Similarly, the approved dwelling would include a wide frontage to the road set behind vegetation. To my mind, the approved dwelling adjacent to Norton's Barn is not directly comparable to the appeal scheme and it does not therefore provide adequate justification for the development proposed.
26. Accordingly, I conclude that there would be unacceptable harm caused to the character and appearance of the host dwelling, the surrounding area and countryside. It would conflict with LP Policies SPL3, PPL2, PPL3 and LP8 insofar as these policies require new development to make a positive contribution to the quality of the local environment, protect local character and distinctiveness and the character and appearance of the undeveloped coast.
27. In addition, there would be conflict with the aims of the Framework which requires development to contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Protected species

28. At the time of my visit, I noted that the appeal site was largely comprised of roughly mown grassland together with some occasional trees, predominantly fruit trees, arranged sporadically within the site. Dense and mature vegetation is positioned along the common boundary with neighbouring property Norton's Barn. Although the layout is only indicative, it is inevitable that some of the trees and large areas of vegetation would be removed in order to accommodate the proposed dwelling, garage and areas of hardstanding. The vegetation within and adjacent to the site has the potential for roosting bats and together with the appeal sites' proximity to the open countryside, there is also a reasonable likelihood of the site being used for commuting and foraging bats.

¹ Planning Reference: 19/00564/OUT & 21/00391/DET

29. LP Policy PPL4 sets out that any proposed development on sites which may support protected species will be required to provide a relevant survey(s) by a suitably qualified ecologist and in the event that protected species are present, a suitable mitigation plan will also be required prior to planning permission being granted.
30. A similar approach is advocated by Circular 06/2005 which advises that the presence of a protected species is a material consideration when a proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to state that it 'is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposal, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
31. No ecological survey has been provided to support the scheme. In the absence of such survey, and on the basis of the information before me, I cannot be certain that protected species are not present or the extent to which they may be affected. A precautionary approach, as is enshrined within the Habitats Regulations 2017 is therefore appropriate. Given the potential for protected species within the appeal site, it needs to be clearly demonstrated why the proposed development would not have a detrimental effect on the protected species and their local habitat.
32. I have given consideration to whether an ecological survey is capable of being carried out under an appropriately worded planning condition, however, the need to ensure ecological surveys are carried out should only be left to coverage under a planning condition(s) in exceptional circumstances. Furthermore, if protected species were to be affected, I cannot be certain as to what mitigation, if appropriate, might be required.
33. It has been put to me that similar schemes approved by the Council for development in the locality did not involve ecological concerns. However, in the appeal case before me I have a statutory duty to have regard to the conservation of protected species. The presence of other developments whereby ecological surveys were not required does not provide adequate justification for the appeal scheme. In the proposal before me, the presence of, and extent of protected species has not been clearly established and necessary measures to protect them have not been specified.
34. In the absence of an ecological survey, I find that the appeal scheme fails to demonstrate that there would not be an adverse impact on a protected species, specifically bats. The proposal would therefore conflict with LP Policy PPL4 insofar as it requires new development to be supported by an appropriate ecological assessment and aims to protect biodiversity. Similarly, there would be conflict with the Framework which seeks to conserve and enhance the natural environment.

Living conditions

35. At present, the host dwelling is served by a rear garden of ample size which reflects the character of the surrounding area and is commensurate with the size of the dwelling. LP Policy SPL3 requires new development to be designed and orientated to, among other things, ensure adequate outlook and privacy for future and existing residents. This is broadly consistent with the approach

within the Framework which aims to ensure the provision of appropriate levels of amenity for existing and future users.

36. The Council are concerned that given the close relationship between the proposed and host dwellings, the new dwelling would appear unduly dominant and an unacceptable loss of privacy would occur. I am mindful that matters of layout, scale and appearance are all reserved for consideration at a later stage and that, as is suggested by the appellant, matters regarding the detailed design of the property and positioning of windows could be dealt with at the reserved matters stage to ensure acceptable levels of outlook and privacy are maintained between the properties.
37. Therefore, on the evidence before me, it has not been demonstrated that the appeal scheme would have an unacceptable effect on outlook and privacy. There would be no conflict with LP Policy SPL3 insofar as it requires new development to ensure, among other things, adequate outlook and privacy for future and existing residents. Similarly, there would be no conflict with the Framework insofar as it requires development to have a high standard of amenity for existing and future users.

Other Matters

38. The Council are currently able to demonstrate a housing land supply position of 6.5 years and in these circumstances, the tilted balance does not apply to the appeal scheme before me. Several examples of similar developments being granted planning permission have been brought to my attention in support of the appeal scheme, including a development of land to the west of Norton's Barn², land adjacent to 41 The Street³ and land between 45-53 The Street⁴. However, I am mindful that, whilst similarly located outside of the SDB, these developments were approved by the Council at a time when it was unable to demonstrate an adequate five year supply of housing land. As such, the weight to be applied to conflict with settlement strategy policies of the local plan would have been different.
39. Furthermore, whilst I have been provided with some limited information in the form of decision notices and some plans for those developments, it is not clear to me that the character and appearance circumstances of those developments are comparable with the appeal scheme. In particular, the schemes at 47 The Street, Land between 45-53 The Street, Norton's Farm⁵ and Norton's Barn all include a dwelling(s) with a frontage to the highway and which fill a gap within the ribbon pattern of development. As such, the impact of those schemes upon the established character and appearance of the area is not directly analogous to the impacts of the appeal scheme.
40. With regards to the development of a number of dwellings at 64 The Street⁶, again the circumstances of that development are not directly analogous with the appeal scheme. In particular, having regard to the appeal decision⁷ in that matter, the Inspector concluded the site had a domestic character and appearance. Furthermore, the scheme concerned the development of a number

² Planning Reference: 19/00564/OUT and 21/00391/DET – Land West of Norton's Barn, 72 The Street – PLG3

³ Planning Reference: 19/01845/OUT and 21/01482/DET – Land adjacent 41 The Street – PLG2

⁴ Planning Reference: 15/01566/OUT – Land between 45-53 The Street – PLG5

⁵ Planning Reference: 18/01135/OUT and 20/01006/DET – Norton's Farm – PLG4

⁶ Planning Reference: 16/02067/OUT – Sunnyside, 64 The Street – PLG6

⁷ Appeal Decision: APP/P1560/W/17/3176998

of single storey dwellings that would be largely hidden due to existing buildings and retained and enhanced boundary vegetation. As such, the development would be screened from the adjoining countryside thus preventing a hard urban edge and the enclosed nature of the site would prevent harm to the wider countryside including the CPB. The removal of unsightly buildings from the site was deemed to be a benefit of the scheme and it was assessed not to unduly reduce space to the existing dwellings. Additionally, the site was regarded as having reasonable access to services and facilities within safe and reasonable walking distance along a pavement present near to the site entrance. My findings are not equivalent in relation to these issues within the appeal scheme before me.

41. Other developments are highlighted on the appellant's plan 'PLG1'. However, I have limited information relating to the particular circumstances of these developments and whether the circumstances are therefore comparable to the appeal proposal. A comparison is of limited relevance in this instance. I have considered the appeal before me on its individual planning merits.
42. A number of recent appeal decisions⁸ have also been submitted in support of the appeal which I have had regard to. However, these appeal decisions are concerned with schemes that were deemed to be 'infill' development within an otherwise continuous linear pattern of development with a frontage to the highway. This differs to my own findings in relation to the appeal scheme. Similarly, within the appeal at Bradfield⁹, whilst located outside of the SDB, I have had regard to the Inspector's comments that '*an absence of identified harm to landscape character and access to services and facilities leads me to conclude that the proposal would not undermine the overall intention of LP Policy QL1*'. Again, this differs to my own findings and therefore the submitted appeals do not provide justification for the proposed development.
43. As the appeal scheme before me is in outline with all matters reserved for future consideration, issues of highway safety, parking and drainage will need to be considered as part of a detailed scheme. Similarly, whilst no adverse harm has been identified by the Council with regards to the effect of the proposal on heritage assets, this will also be subject to further scrutiny as part of a scheme of reserved matters.
44. The Council have not identified any concerns regarding flood risk, contamination and housing density. The scheme would retain outdoor amenity space of an adequate size for the host dwelling and whilst the submitted plans are indicative only, there is nothing to lead me to the view that sufficient amenity space would not be capable of being provided for the proposed dwelling. However, the absence of harm is a neutral matter that weighs neither for nor against a proposal.
45. The appeal scheme would provide one additional dwelling with some economic and social benefits derived from its construction and occupation. However, these would be tempered by the limited amount of development that is proposed and thus carry modest weight in favour of the appeal scheme.
46. The site is within the zone of influence of the Hamford Water SPA and Ramsar. The proximity of these European Sites means that determination of the

⁸ APP/P1560/W/21/3281960; APP/P1560/W/21/3276761; APP/P1560/W/21/3274492

⁹ APP/P1560/W/20/3252825

application should be undertaken with regard to the requirements of the Habitats Regulations 2017. As the appeal scheme proposes a new dwelling, there would be a number of additional recreational visitors to Hamford Water, albeit the number would be limited given the scheme is for a single dwelling. However, in combination with other developments it is likely that the proposal would have a significant effect on the designated site. A unilateral undertaking was submitted as part of the appeal and it includes a contribution to mitigate the effect of the proposal on the European Sites through a Recreational Disturbance, Avoidance and Mitigation Contribution calculated in accordance with the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy. Whilst the Council has expressed concerns in relation to this planning obligation, given that I am dismissing this appeal on other grounds, it has not been necessary to consider these matters any further, nor to undertake an appropriate assessment.

Conclusion

47. Whilst I have found that the appeal scheme is likely capable of providing adequate living conditions for future occupiers of the proposed dwelling and neighbouring occupiers, there would be harm arising from the appeal site's location outside of the SDB in relation to its accessibility of services and facilities, undue reliance of a private motor vehicle, harm to character and appearance and protected species.
48. The proposed development is therefore contrary to the development plan and the material considerations weighing in favour of the scheme do not outweigh the harm that would be caused nor justify taking a decision otherwise than in accordance with the development plan. For the reasons given above, I conclude that the appeal should be dismissed.

E Brownless

INSPECTOR