



Appeal Decision

Site visit made on 11 July 2023

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2023

Appeal Ref: APP/P1560/W/22/3311866

Land South West of Hill Farm House, Bromley Road, Ardleigh CO7 7SE

- 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 Mr & Mrs Wood against the decision of Tendring District Council.
 - The application Ref 21/01785/OUT, dated 11 October 2021, was refused by notice dated 12 October 2022.
 - The development proposed is erection of three detached dwellings and parking complete with access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of three detached dwellings and parking complete with access at Land South West of Hill Farm House, Bromley Road, Ardleigh CO7 7SE in accordance with the terms of the application, Ref 21/01785/OUT, dated 11 October 2021, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The planning application was submitted in outline form with all matters other than access reserved for future consideration. I have determined the appeal on this basis, treating the submitted plans and details provided as illustrative, insofar as they relate to matters other than access.
3. The Council is in the process of preparing Development Plan Document (DPD) currently known as the Tendring Colchester Borders Garden Community Draft DPD and published a Regulation 19 version of the DPD for consultation in May 2023. Whilst the DPD remains at a stage that attracts limited weight, it has been confirmed by the Council that the appeal site no longer falls within the emerging Tendring Colchester Borders Garden Community boundary. On this basis, logic dictates no identifiable conflict with Policy SP8 of the Tendring District Local Plan 2013-2033 and Beyond Section 1 North Essex Authorities' Shared Strategic Section 1 Plan Adopted January 2021 (the TDLP1), which governs the development and delivery of a new Garden Community in North Essex. I shall formulate the main issues and determine the appeal on this basis.
4. I am aware that a Neighbourhood Plan (NP) for Ardleigh is emerging. However, as not yet made and thus uncertainty prevailing as regards its final form, I attach limited weight to the NP's emerging policies and shall consider the appeal on this basis.
5. Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 sets out that, in considering whether to grant planning permission for development which affects a listed building, or its setting, the decision maker

shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. I shall have regard to this statutory duty in my determination of this appeal.

Main Issues

6. The main issues are:

- whether the site is an appropriate location for the development proposed having regard to relevant provisions of the development plan;
- the effect of the proposal on the significance of relevant Grade II listed buildings; and,
- the effect of the proposed development on Special Protection Areas (SPAs) and Ramsar sites.

Reasons

Location

7. Policy SP3 of the TDLP1 sets out the spatial strategy for north Essex and states that existing settlements will be the principle focus of additional growth across the authority's and development will be accommodated within or adjoining settlements. Policy SPL1 of the Tendring District Local Plan 2013-2033 and Beyond Section 2 adopted 25 January 2022 (TDLP2) identifies Ardleigh as a smaller rural settlement. These locations are considered to be the least sustainable for growth. Policy SPL2 of the TDLP2 states that to encourage sustainable patterns of growth, and to control urban sprawl, settlements will be defined within a Settlement Development Boundary.
8. The appeal site is located outside of any defined settlement boundary. Policy SPL2 of the TDLP2 indicates that proposals will be considered in relation to the pattern and scales of growth promoted through the Settlement Hierarchy in Policy SPL1 and any other relevant development plan policies.
9. The policies that I have set out above are intended to ensure housing is located in areas which are accessible and sustainable. Nevertheless, they do not prevent the development of land outside of settlement boundaries.
10. The appeal site is not well related to the settlement boundary of Ardleigh and there would appear to be no other realistic means of access to the village's services and facilities other than by private motor vehicle. However, while outside of Tendring district, Colchester is identified in the preamble to Policy SPL1 of the TDLP2 to comprise a Strategic Urban Settlement for the purposes of the Settlement Hierarchy. Such settlements are considered to be the most sustainable locations for growth. The appeal site is, in a physical sense, well-related to this major settlement. Whilst the site does not border the adopted/formal settlement boundary of the City of Colchester, on the ground it is read and experienced as adjoining the settlement owing to the significant intervening development that is under construction next to the site.
11. It is also relevant that the appeal site, due to its immediate relationship with Colchester and the availability of a partially lit footpath along Bromley Road, has good accessibility over a short distance to a wide range of facilities and services. Cycling to Colchester would also be a potentially convenient option.

Within this context, the future occupiers of the development would not necessarily be reliant on trips via private motor vehicle to serve their day-to-day needs.

12. I therefore conclude that the proposal would be appropriately located having regard to the relevant provisions of the development plan. Indeed, on the basis that the small scale development proposed would adjoin a settlement and be suitably respectful of the pattern and scales of growth promoted through the Settlement Hierarchy, I find no conflict with Policy SP3 of the TDLP1 and Policies SPL1 and SPL2 of the TDLP2.

Heritage assets

13. The appeal site is situated close to a complex of Grade II listed former barns that would have once comprised a farmstead associated to Hill Farmhouse. The listed barns comprise: Barn and linked cow byre; Cartlodge Cow byre and hayloft; and Stable/Cartlodge. The buildings themselves are arranged in a stockyard and are of mixed 18th and 19th century origin. Each is timber framed and weatherboarded at least in part. The significance and special interest of the listed barns derives, in part, from their age, historic agricultural origins, and group value. The buildings are most visible from where access to them is drawn from Bromley Road and from within the stockyard itself. Their significance remains appreciable despite various domestic influences brought about by past residential conversions.
14. The Council indicate that the wider site and buildings would have historically been within the same ownership and functioned as part of the same rural operation. Having considered all the evidence before me and carried out a site inspection, I have no reason to consider otherwise. However, the site, although historically agricultural, is physically separated from the barns and clearly perceived as a longstanding part of the domestic garden of Hill Farm House. I also note that available views of the listed buildings are very limited from within the appeal site, with Hill Farm House forming the backdrop to a range of outward views. Moreover, in the absence of no direct or obvious enduring connections, the site comprises a peripheral and somewhat non-influential part of the setting of each listed barn. This is notwithstanding the verdant and predominantly open nature of the site.
15. The appeal proposal is for a modest number of new dwellings, that would be loosely spaced across a relatively large-sized plot of land. Thus, notwithstanding significant new development to the west, a general sense of spaciousness would be retained. Furthermore, visibility of the new development would be limited, including upon approach from Colchester, due to the sloping nature of the land and the existence of heavily vegetated borders with the road.
16. I therefore conclude that the proposal would preserve the significance and special interest of relevant Grade II listed buildings as a result of development within their settings. I therefore find no conflict with Policy SP7 of the TDLP1 and Policies SPL3 and PPL9 of the TDLP2. Amongst other things, these seek to ensure developments protect and enhance assets of historical value, maintain existing site features of heritage and respect the significance of listed buildings and their settings. I also find no conflict with the historic environment conservation and enhancement policies contained within the National Planning Policy Framework.

Special Protection Areas and Ramsar sites

17. The appeal scheme proposes dwellings on a site that lies within the Zone of Influence of the Colne Estuary SPA and Ramsar site and the Stour and Orwell Estuaries SPA and Ramsar site. The Conservation of Habitat and Species Regulations 2017 require that, where a project is likely to have a significant effect on a European site¹, either alone or in combination with other projects, the competent authority must make an appropriate assessment of the project's implications in view of the relevant site's conservation objectives. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
18. The Colne Estuary SPA and Ramsar site is noted for its sand and silt flats and extensive areas of saltmarsh that supports breeding populations of birds and supports migratory waterfowl. The Stour and Orwell Estuaries SPA and Ramsar is noted for its extensive mud-flats, low cliffs, saltmarsh and small areas of vegetated shingle which support breeding birds and major concentrations of waterbirds, especially geese, ducks and waders in the winter.
19. The conservation objectives of both SPAs generally seek to ensure that the integrity of the sites is maintained or restored as appropriate, and ensure that the sites contributes to achieving the aims of the Wild Birds Directive.
20. A threat to the integrity of both SPAs is public access and recreational activities associated to additional development. The site is within the zone of influence where new residential development is likely to result in recreational pressure, which would likely have a significant effect on the aforementioned protected sites.
21. The development is for three new dwellings, as such the number of additional recreational visitors would be limited. However, in combination with other developments it is likely that the proposal would have significant effects on the designated sites. Given my findings, I must undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
22. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) sets out a strategic approach to mitigation adopted by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. These include a range of habitat-based measures such as education, communication and monitoring.
23. The appellants have submitted a signed Unilateral Undertaking for the per dwelling contribution of £137.71 to fund the RAMS. I have consulted with Natural England who have confirmed their endorsement of this mitigation strategy and accepted that these measures are sufficient to avoid an adverse effect upon the integrity of the SPAs.
24. I am satisfied that the planning obligation secured pursuant to the Council's RAMS would enable the expedient delivery of mitigation sufficient to address the likely recreational effects of the development. I therefore find that, in light of this mitigation, the proposal would not result in an adverse effect on the integrity of the SPAs. There is thus compliance with Policy SP2 of the TDLP1 in

¹ as defined at regulation 8 of The Conservation of Habitats and Species Regulations 2017 (as amended)

so far as this policy requires that contributions will be secured towards mitigation measures in accordance with the RAMS.

Other Matters

25. The appellant contends that the provision of self-build dwellings is a positive benefit in favour of the scheme. However, there is no robust mechanism before me to provide the legal certainty that self-build dwellings would come forward should the appeal be successful. There is also no reference to self-build dwellings in the description of development considered and consulted upon by the Council. For the avoidance of doubt, I have considered the appeal on this basis – apportioning no weight to any potential benefit of the proposal specifically catering for people wishing to build their own homes. On this basis, Policy LP7 of the TDLP2 is of limited relevance to my considerations.
26. There is no clear reason to consider that the proposal would have an adverse effect upon ancient woodland or associated wildlife. Indeed, a comprehensive Preliminary Ecological Appraisal and robust Arboricultural Impact Assessment have been undertaken, each incorporating site-specific recommendations. There is also no clear reason to consider that the modest scale of development proposed would lead to unacceptable traffic congestion or highway safety implications.
27. Overall, I find that the proposal accords with the development plan when read as a whole and there are no material considerations to lead me to a decision otherwise.

Conditions

28. I have considered the Council's suggested conditions. Where necessary, and in the interests of clarity and precision, I have slightly altered them to more closely reflect advice in the Framework and Planning Practice Guidance.
29. Conditions 1, 2, 3 and 4 are standard conditions that relate to the submission of reserved matters, commencement of development and approved plans. They are in the interests of certainty and for the avoidance of doubt.
30. A programme of archaeological work and subsequent evaluation is justified through conditions 5, 6 and 7 to enable full investigation and recording, as the site lies within an area of archaeological interest.
31. Conditions 8 and 9 would be required for the creation of an appropriate visibility splay and access width, and are justified in the interest of highway safety.
32. Conditions 10, 11, 12 and 13 are justified to ensure that the biodiversity of the site is protected, enhanced and effectively managed following the completion of the development. The site is an area where Great Crested Newts and bats could be present, so additional mitigation measures are needed including details of external lighting. An up-to-date site survey is also required to ensure that any delay in construction is preceded by more up-to-date survey work.
33. A construction management plan is required through condition 14 to protect the amenities of the occupiers of nearby residential properties and the surrounding area and in the interest of highway safety and environmental protection. The Statement is required prior to the commencement of

development to ensure that measures are in place to safeguard the amenity of the area prior to any works starting on site.

34. A scheme for the provision and implementation of water, energy and resource efficiency measures is required by condition 15 to enhance the sustainability of the development through better use of resources.
35. The Highway Authority has put forward conditions relating to car parking, turning areas, surface water, cycle parking and boundary treatment. However, other than the private driveway width, the Council has not suggested that these conditions are imposed. Such matters can be assessed when the reserved matters are considered and thus those conditions are not currently necessary.
36. The Council have suggested conditions relating to screen walls and fencing. However, layout and appearance are reserved matters, and subsequent submissions in respect of these would need to demonstrate the acceptability of any proposed boundary treatments. It is therefore not necessary to impose these conditions at this time.
37. The Council have suggested the removal of some permitted development rights but have not provided any substantive evidence as to why these need to be removed. Layout and appearance are also reserved matters so it would be not necessary to remove these permitted development rights at this stage.

Conclusion

38. For the reasons set out above, I conclude the appeal should be allowed.

D Wilson

INSPECTOR

Schedule of conditions

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 6841/1105 and Proposed Access Location Plan IT2218/SK/001.
5. No development or preliminary groundworks of any kind shall take place until a scheme of archaeological evaluation of the site, including timetable, has been submitted to and approved in writing by the Local Planning Authority (including any demolition needing to be carried out as necessary in order to carry out the evaluation). The evaluation shall be carried out in its entirety as may be agreed.
6. No development or preliminary groundworks of any kind shall take place until a written report on the results of the archaeology evaluation of the site has been submitted to the Local Planning Authority and that confirmation by the Local Planning Authority has been provided that no further investigation work is required in writing.

Should the Local Planning Authority require further investigation and works, no development shall take place on site until the implementation of a full programme of archaeological work 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.

The scheme of investigation shall include an assessment of significance and research questions; and:

- a) The programme and methodology of site investigation and recording.
- b) The programme for post investigation assessment.
- c) Details of the provision to be made for analysis of the site investigation and recording.
- d) Details of the provision to be made for publication and dissemination of the analysis and records of the site investigation.
- e) Details of the provision to be made for archive deposition of the analysis and records of the site investigation; and
- f) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- g) The written scheme of investigation shall be carried out in its entirety prior to any other development taking place, or in such other phased

arrangement including a phasing plan as may be previously approved in writing by the Local Planning Authority.

7. No building shall be occupied until the archaeology evaluation, and if required the Written Scheme of Investigation, have been completed, submitted to and approved, in writing, by the Local Planning Authority. Furthermore, no building shall be occupied until analysis, publication and dissemination of results and archive deposition from the archaeology investigations as agreed under the Written Scheme of Investigation has taken place, unless an alternative agreed timetable or phasing for the provision of results is agreed in writing by the Local Planning Authority.

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

8. Prior to first occupation of the development, the road junction / access at its centre line shall be provided with a minimum visibility splay with dimensions of 2.4 metres by 120 metres to the east and 2.4 metres by 91 metres to the west, as measured from and along the nearside edge of the carriageway in accordance with drawing no. IT2218/SK/001. Such vehicular visibility splays shall be provided before the road junction / access is first used by vehicular traffic and to the west retained free of obstruction above 600mm and below 2 metres at all times.
9. Prior to the first occupation of any dwelling hereby approved, the proposed private drive shall be constructed to a minimum width of 5.5 metres for at least the first 6 metres from the back of Carriageway / Footway / Highway Boundary and provided with an appropriate crossing of the verge.
10. All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (EECOS, June 2021). This may include the appointment of an appropriately competent person such as an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction.

The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

11. Concurrently with the first reserved matters application to be made, a Great Crested Newt Method Statement shall be submitted to and approved in writing by the Local Planning Authority. This will contain precautionary mitigation measures and/or works to reduce potential impacts to Great Crested Newt during the construction phase. The measures and/works shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter.
12. Concurrently with the reserved matters application, a Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the Local Planning Authority having regard to

the content of the accompanying Preliminary Ecological Appraisal (EECOS, June 2021). 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) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- e) persons responsible for implementing the enhancement measures;
- f) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter.

13. Concurrently with the first reserved matters application to be made, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances shall any other external lighting be installed without prior written consent from the Local Planning Authority.

14. Prior to the commencement of development, details of the construction methodology, layout plan and timetable shall be submitted to and approved, in writing, by the Local Planning Authority. This shall incorporate the following information:-

- a) Details of the hours of work/construction of the development within which such operations shall take place and the hours within which delivery/collection of materials for the said construction shall take place at the site.
- b) Details of the loading/unloading/storage of construction materials on site, including details of their siting and maximum storage height.
- c) Details of how construction and worker traffic and parking shall be managed. This shall include routing of all traffic and any directional signs to be installed and where.
- d) Details of any protection measures for footpaths and trees surrounding the site.
- e) Details of any means of access to the site during construction.
- f) Details of the scheduled timing/phasing of development for the overall construction period.
- g) Details of measures to control the emission of dust and dirt during construction and including details of any wheel washing to be undertaken, management and the location it is intended to take place.

- h) Details of the siting of any on site compounds and portals.
- i) Details of the method of any demolition to take place, including the recycling and disposal of said materials resulting from demolition.
- j) Site waste management plan (that shall include reuse and recycling of materials).
- k) Scheme for sustainable construction management to ensure effective water and energy use.
- l) Scheme of review of complaints from neighbours.
- m) Registration and details of a Considerate Constructors Scheme.
- n) Details on the provision, location and management of any show home/s or reception, including opening times, parking and advertisements (including flags and directional signs for the development and details of times for removal when not required).

The said methodology as may be approved shall be implemented in its entirety and shall operate as may be approved at all times during construction.

- 15.No development shall commence above slab level until a scheme for the provision and implementation of water, energy and resource efficiency measures for the lifetime of the development has been submitted to and approved, in writing, by the Local Planning Authority. The scheme shall include as a minimum:-
- Agreement of carbon level
 - Agreement of provisions to ensure the development is zero carbon ready
 - Details of, including the location of an electric car charging points per dwelling
 - Details of, including the location of a Water-butts per dwelling
 - Details of, including the location of solar panels for each dwelling
 - Agreement of heating of each dwelling/building
 - Agreement of scheme for waste reduction

The scheme shall be fully implemented prior to the first occupation of the development unless otherwise agreed in writing by the Local Planning Authority. The scheme shall be constructed and the measures provided and made available for use as may be agreed and thereafter shall be maintained.