



Appeal Decision

Site visit made on 10 July 2023

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 9 October 2023

Appeal Ref: APP/P1560/W/22/3308970

Land South of Frinton Road, Thorpe Le Soken CO16 0HS

- 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 Oakland Country Homes against the decision of Tendring District Council.
 - The application Ref 22/00056/FUL, dated 11 January 2022, was refused by notice dated 9 June 2022.
 - The development proposed is six bungalows.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was submitted by Oakland Country Homes. This matter is subject to a separate decision.

Preliminary Matters

3. In its response to the costs application, the Council referred to an additional policy and an appeal decision. The policy, SPL2 from the Tendring District Local Plan 2013-2033 and Beyond Section 2 (adopted 25 January 2022) (LPS2), was not cited in the Council's decision notice and the appeal decision had not been referred to in the Council's appeal evidence. In respect of the policy, I must nevertheless make my decision having regard to the development plan and so I requested a copy of the policy, and the related policy SPL1, from the Council. I shall turn my attention to these policies and the appeal decision below.
4. A Unilateral Undertaking (UU) has been submitted which includes mechanisms which seek to make financial contributions towards a Recreational Disturbance, Avoidance and Mitigation scheme in relation to Hamford Water, a designated European site and Open Space provision. I will return to these matters later in this decision.

Main Issues

5. The main issues are:
 - whether the appeal site is a suitable location for housing and if so, whether it should make provision for affordable housing.

Reasons

6. The site is an undeveloped area of land bound by hedgerows to the north and south. Beyond the site to the south is a large complex of glasshouses. Directly adjacent to the west is the residential development of ten single storey dwellings identified as 'Nursery Field' which appeared at an advanced stage of delivery at the time of my site visit. To the east is a detached dwelling which sits back from the road. On the opposite side of the road is a ribbon of semi-detached two storey dwellings.
7. Policy SP3 of the Tendring District Local Plan 2013-2033 and Beyond Section 1 North Essex Authorities' Shared Strategic Section 1 Plan Adopted January 2021 (LPS1) sets out the spatial strategy for North Essex. It states that the existing settlements will be the principal focus for additional growth across the area and that development will be accommodated within or *adjoining* (my emphasis) settlements according to their scale, sustainability and existing role both within each individual district and, where relevant, across the wider strategic area.
8. A small part of the appeal site is located within the defined settlement boundary of Thorpe Le Soken and the remainder is outside but adjoins the boundary. It is reasonable to consider that the area outside of the defined settlement boundary adjoins the settlement for the purposes of Policy SP3.
9. The Council have not provided any assessment in relation to the impact of the proposal in relation to the scale and sustainability of the existing settlement, as set out under Policy SP3. In my view, the scale of the proposed development is limited and would not appear significant when looking at the wider pattern of built form within the settlement and the level of services and facilities available. Moreover, in the Delegated Decision Officer Report (DDOR) the linear layout of the development is considered to respond appropriately to the existing residential character opposite, as well as to the recently approved scheme adjacent to the west and in the wider locality. Overall, the Council considered that the development represented an acceptable scale, layout and appearance that would not harm the visual amenity or the character and appearance of the street scene. I agree.
10. Turning to Policy SPL2, whilst it is anticipated that sites for housing that did not have planning permission as of April 2020 would be delivered on sites that are specifically allocated or on other suitable land within development boundaries, outside of settlement development boundaries planning applications will be considered in relation to the pattern and scales of growth promoted through the Settlement Hierarchy in Policy SPL1 and any other relevant policies in the plan. In this case Thorpe Le Soken is a Rural Service Centre where modest growth is appropriate having regard to the existing size and character of each settlement and their range of, for example, services and facilities. The proposed development is modest and in character with the settlement which is served by a suitable range of services, facilities and shops. Whilst development should be strictly controlled beyond settlement boundaries, this proposal would not harm the character and openness of the countryside.
11. When it comes to the other appeal decision, I do not have the evidence that the parties relied on at appeal and the other site is in a different part of the settlement where the assessment of the development on the character and appearance of the area is likely to be materially different. This is evidenced by what I have read in the DDOR for that scheme and in which the Council clearly

identified harm to the countryside, which is not the case here. On this basis I cannot see a policy requirement to make out a special case for this site. Also, each case should be considered on the basis of its individual circumstances.

12. The Council asserts that it does not need to look beyond identified settlements to meet its housing requirement, given that it can demonstrate in excess of five years housing land supply and that it has exceeded the Housing Delivery Test requirement. However, the five year land supply figure is not a target and in any case due to the scale of the proposal it would not result in a significant oversupply of housing land.
13. For the reasons set out above, the proposal therefore complies with Policy SP3 of the LPS1 and policies SPL1 and SPL2 of the LPS2. These policies seek, amongst other things, to direct development to sites within or adjoining settlements, where the scale of development would be appropriate to the settlement. The proposal would also comply with the relevant paragraphs of the National Planning Policy Framework (the Framework).
14. The Council also refers to Policy SP7 of the LPS1 in its first reason for refusal which relates to place shaping principles and ensuring high standards of urban and architectural design. However, neither the reason for refusal nor the DDOR raise any specific objections to the proposal on these grounds.
15. Paragraph 64 of the Framework states that affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). With regard to housing, major development is defined in the glossary of the Framework as development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. Whilst the proposal would not reach the trigger of 10 or more homes, it would have a site area more than 0.5 hectares.
16. However, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
17. Policy LP5 of LPS2 seeks the provision of affordable housing on development proposals outside of the Tendring Colchester Borders Garden Community, involving the creation of 11 or more (net) homes. There is no reference to a site area that would trigger a requirement for the provision of affordable housing set out under Policy LP5. The appeal proposal is for 6 dwellings and therefore taken on its own would not be expected to provide affordable housing under the requirements of Policy LP5.
18. However, the site is immediately adjacent to a development of 10 recently constructed bungalows. If the appeal site under consideration were viewed as forming part of that larger development for planning purposes, then the cumulative number of dwellings provided would be of a scale that would trigger the need for affordable housing provision under Policy LP5 of LPS2.
19. The appeal site was initially granted consent by the Council for a total of 6 dwellings under two separate outline applications¹ each for 3 dwellings in 2016 and 2017. Both outline consents on the appeal site have since lapsed. The

¹ Council References: 16/01652/OUT with 17/01945/DETAIL and 17/01558/OUT

adjacent site for ten dwellings was subject to a separate outline planning application² which was allowed on appeal in January 2019 with the subsequent reserved matters³ approved by the Council in June 2022.

20. The appellant purchased both the appeal site and the adjacent site at the same time as one transaction and therefore it is now in single ownership. I do recognise that previously the two sites have not been considered as one entity in terms of how planning permission has been sought and granted. I also acknowledge that had the appeal site been built out under the previous permissions granted, that no affordable housing would have been required. However, both the previous permissions have since lapsed and I must consider the appeal on the evidence now before me. There is agreement between the parties that there has been no deliberate attempt to avoid the provision of affordable housing, a conclusion which I can find no reason to disagree with.
21. The proposed site layout, whilst I understand it was amended to deal with initial Highway Authority objections, includes the vehicular access into the appeal site from the adjacent development. As a result, there would be a very clear physical link between the appeal site and the adjacent development. The proposed bungalows would be of a similar design and layout to the adjacent development meaning they would result in a uniform character and appearance and would appear as one development visually. As such, there is no reason why the site as a whole should not be treated as a single site for planning purposes.
22. I recognise that Policy LP5 refers only to 'development proposals' and does not set out how the aggregation of sites would be specifically considered in relation to affordable housing provision requirements. However, given the particular circumstances of this case with the clear physical development links with the adjoining site and the same site ownership, it seems reasonable to me that the two sites should be considered together for the purposes of Policy LP5.
23. Whilst I understand the frustrations of the appellant in relation to the lack of engagement on the assessment of affordable housing provision during the processing of the application, there is an identified need for affordable housing in the area, identified through Policy LP5. For the reasons above I consider that it is reasonable to consider the appeal site as forming part of a larger development, which cumulatively would provide a total of 16 dwellings. The overall scale of the larger development would therefore trigger the need for 30% affordable housing provision, subject to viability testing.
24. In response to the second reason for refusal, the appellant has submitted a Financial Viability Assessment (FVA) confirming their view that the proposal would not be viable if an affordable housing contribution is required. There is no doubt that the FVA has been produced by a suitably qualified authority and in the absence of any evidence to the contrary it forms a material consideration of significant weight.
25. The Planning Practice Guidance⁴ (PPG) states that where a viability assessment is submitted, this should be based upon and refer back to the viability assessment that informed the plan. I note there is reference, when considering

² Council Reference: 18/00098/OUT (Appeal Reference: APP/P1560/W/18/3209480)

³ Council Reference: 21/02075/DETAIL

⁴ Paragraph: 008 Reference ID: 10-008-20190509

the Benchmark Land Value, to the Three Dragons and Troy Planning + Design Addendum to the 2019 Economic Viability Study but it is not clear if this document forms part of the plan evidence base or whether it is an independent study. Therefore, on reading the FVA, it is not clear how it links back to the viability assessment that informed the plan and whether the figures and calculations used are in line with the assumptions set out in that evidence base.

26. When calculating the Gross Development Value (GDV) the figures relied upon in the FVA are based on indicative pricing provided by Lamb & Co Property Ltd. The letter states that a report evidencing comparable properties with comments to support the valuation are enclosed, but these are not provided as part of the FVA. I do not therefore have the background details to interrogate the indicative prices used. Moreover, the PPG⁵ states that when considering a specific site or development, market evidence (rather than average figures) from the actual site or from existing developments can be used. In this case there is the adjoining site which is well advanced. It seems to me therefore that there is first hand realistic market details available to the appellant about the price of those units which could be used to more accurately calculate the GDV. I do not have that evidence either. Against this background, I am not satisfied with the GDV quoted.
27. I also have concerns about the clarity of the costs figure identified which is utilised to calculate the Residual Land Value. At paragraph 9.2 of the FVA the externals are identified as costing £677,625 but in the Development Costs Appraisal at Appendix 7, it states £1,807,000. It is not clear from the evidence, why these two figures are different, and how the additional amount identified in Appendix 7 is arrived at. In addition, the costs include 16 double garages whereas the scheme drawing provided at Appendix 6 shows 4 double garages (with two of those shared between properties) and the remainder as single garages.
28. I therefore find, based on the evidence before me, that it has not been demonstrated that the scheme would be unviable if an affordable housing contribution is sought. The proposal is contrary to Policy LP5 of LPS2 which seeks to promote a mix of housing tenure and address the housing needs of people and families with lower incomes who cannot afford to buy or rent housing on the open market. The proposal is also contrary to section 5 of the Framework which, amongst other things, seeks to provide the different types and tenure of housing that is needed for different groups in the community.

Other Matters

29. Concerns have been raised about highway safety. However, based on the revised layout with access from the adjacent development, the Highways Authority removed its initial objection subject to a range of planning conditions. I have no substantive evidence before me to suggest that the proposal would be likely to be harmful to highway safety.
30. The appellant asserts that the proposal would provide good levels of garden space and policy compliant off street parking. A lack of harm in these respects is a neutral consideration.

⁵ Paragraph: 011 Reference ID: 10-011-20180724

31. I have been made aware by both main parties that a separate application has been submitted to the Council for the same scheme, but including the FVA. Be that as it may, I must deal with the appeal before me.
32. The appeal site lies within the Zone of Influence of the Hamford Water Special Area of Conservation, Special Protection Area and Ramsar designated European Sites which are protected under the Habitats Regulations. I have been provided with a copy of a UU in relation to a financial contribution towards a Recreational Disturbance, Avoidance and Mitigation scheme in this regard. If I were minded to allow the appeal, I would be required to carry out an appropriate assessment under the Habitats Regulations. However, I have already found conflict in relation to a main issue. Therefore, undertaking an appropriate assessment would not alter the outcome of the appeal. On that basis, there is no need to examine this matter further for the purposes of making my decision.
33. The Council has identified a deficit of 2.43 hectares of play and formal open space in Thorpe Le Soken. A UU has been submitted which seeks to provide a financial contribution in this regard, which the Council have not raised any objection to. However, as I have found conflict with the main issue, I have not considered this matter further.

Conclusion

34. For the reasons given above, I conclude that the conflict with the development plan as a whole is not outweighed by other considerations, including the Framework. The appeal is therefore dismissed.

G Dring

INSPECTOR