



Appeal Decision

Site visit made on 9 October 2023

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2023

Appeal Ref: APP/P1560/W/22/3311892

Land rear of 1-4 Council Houses Colchester Road, Wix, MANNINGTREE CO11 2RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by De Roy Tool Co. Ltd against Tendring District Council.
- The application Ref 22/01247/OUT, is dated 20 July 2022.
- The development proposed is up to 8 dwellings.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal proposal is made in outline form with all matters reserved. This shows how eight dwellings could be arranged on site (plan ref 200.01). This illustrates a housing configuration of two linear rows. The site would connect to a track that would in turn provide access onto Colchester Road. The indicative layout plan provides a useful illustration of one way the site might be developed. However, the submitted site layout plan is indicative only. Consequently, as all matters are reserved, I have afforded only limited weight to these details and shall consider this appeal in those terms.
3. A S106 Legal Agreement, in the form of a Unilateral Undertaking¹, has been submitted in support of the proposal. This would make a payment of a Recreation Disturbance, Avoidance & Mitigation (RAMS) contribution to offset the effect of disturbance otherwise deemed by the Council to be caused to the Special Protection Areas (SPA), Special Areas of Conservation (SAC) and Ramsar site(s) at Hamford Water Ramsar, designated primarily to protect waders and wildfowl.

Main Issue

4. The application was not determined by the Council within the statutorily prescribed 8-week timeframe. As such, following the submission of an appeal it falls to me to determine whether planning permission should be given.
5. The site lies within the zone of influence of European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended. Although not forming part of the Council's reasons for refusal, it is incumbent upon me as competent authority to consider whether the proposal

¹ Unilateral Undertaking, by Deroy Tool Company Limited, dated 15 November 2022

would be likely to have a significant effect on the integrity of the protected site. Consequently, it is necessary to consider this matter as a main issue.

6. In consideration of the Council's Statement of Case, officer report, and the evidence before me, I conclude that the main issues in dispute are:
- the effect of the proposed development on the operation of the access, with particular regard to the available visibility splays, and
 - whether the proposed development would affect the integrity of the SPA, SAC and Ramsar site(s) at Hamford Water Ramsar.

Reasons

Highway safety

7. The appeal site is to the rear of houses that define the edge of the small village of Wix. The village is subject to a 30mph speed restriction, which commences at a sign placed in front of the side boundary of Oak View (formerly 1 Council House). As such, whilst the site is within the village, the site's access would be outside the village limits and would enter Colchester Road at a point that is subject to the national speed limit. The access track is an unmade road and is currently used to access allotments, a field and the A120. Also, it would have previously served traffic servicing the former use of the site by Anglian Water. Nonetheless, even if relatively well used, I would anticipate its use to be greatly reduced in the winter months, whereas the proposed residential scheme would substantially intensify the use of the access year-round.
8. The site layout plan shows an access onto Colchester Road that would be 5.5m wide for the first 6m, allowing a vehicle to enter the side road whilst another waits to exit. The submitted visibility splay drawing (appendix PLG7 of the Appellant's evidence) demonstrates how a visibility splay of 2.4m (x axis) and 43m (Y-axis) could be provided. The access connects to the highway at a point where the speed restriction is 60mph, albeit adjacent to a point in the highway where the speed limit reduces to 30mph. Accordingly, the access is at a transitional point where vehicles should be either decelerating or accelerating as they enter or exit the village respectively.
9. A field boundary hedge is to the north of Colchester Road, to the immediate west of the proposed access, and a low embankment can be seen both sides of the access. The Highway Authority's Statement (HAS) demonstrates through a photograph the absence of clear visibility to the west of the access, at a 2.4m setback position. Nonetheless, during my visit I observed that the hedge and grassed embankment had been substantially cut back enabling improved visibility. This provides a view to the west that appears to be comparable to the visibility splay of 43m, shown by the Appellant, although the visibility would be unlikely to accommodate a longer y-distance.
10. Manual for Streets² requires a visibility splay of 2.4m (y distance) by 43m (x distance) for a highway subject to a 30mph speed restriction. Nonetheless, the Design Manual for Roads and Bridges³ (DMRB) requires a larger y distance of 215m to be applied for roads with a speed limit of 60mph. Therefore, whilst the speed limit sign is within the bellmouth radii of the access, the proposal should

² Table 7.1, Manual for Streets, Department for Transport, 2007

³ CD123, Design Manual for Roads and Bridges

demonstrate that the access would be safe for a 60mph highway. The Appellant has not plotted the wider visibility splay of 2.4m by 215m and has not therefore demonstrated that the site access can provide suitable visibility splays.

11. The highway boundary, as demonstrated at appendix C of the HAS, appears to generally align with the Appellant's visibility splay drawing. However, planting on the front boundary of No 1 Council House, appears to obstruct views to the east. Also, the hedgerow on the boundary of the field when looking west also obscures far views along the highway. The plotted visibility splay is substantially below that which is required by DMRB for 60mph roads. Whilst the site is at a point of transition between speed restrictions and it is unlikely that vehicles would be passing the access at 60mph, it has not been demonstrated that the reduced 30mph requirement should be applied. Furthermore, as cars are likely to be passing the access at speeds in excess of 30mph, the plotted and available visibility splays would be unlikely to be sufficient to provide adequate visibility in either direction.
12. Also, an interested party has indicated that motorists do not comply with the speed restriction both through the village and before leaving its limits. Although these comments raise issues of speed enforcement, these suggest that road users are unlikely to be travelling past the site at 30mph. Therefore, there is insufficient evidence to demonstrate that the 60mph visibility splay requirement should be adjusted due to the proximity of the access to the 30mph zone, despite the transitional position of the access. Therefore, a visibility splay of 2.4m by 215m should be provided and without this it has not been shown that safe access/egress can be provided onto the highway.
13. Accordingly, the proposal would not provide a safe access onto the highway and would therefore be likely to result in demonstrable harm to highway safety. Consequently, the proposal would conflict with policies SPL3(B) and CP2 of the Tendering District Local Plan - Section 2 [2022](LP) and the National Planning Policy Framework (the Framework). These seek, among other matters, for development to contribute to the provision of a safe and efficient transport network and to refuse development where there would be an unacceptable impact on highway safety.

Special Protection Area

14. The site lies within the Zone of Influence for Special Protection Areas, Special Areas of Conservation and Ramsar sites (SPA) for Hamford Water to protect wading birds and wildfowl. LP policies SP2 and PPL4 seek to protect the Hamford Water SPA. The appeal site is in a location where occupiers of the development would be likely to use the SPA for recreational purposes. Thus, I cannot rule out the possibility that the development would have adverse effects on the integrity of the designated area, either alone or in combination with other planned development. In those circumstances, having regard to the Habitats Regulations, planning permission should not be granted unless an Appropriate Assessment (AA) has been undertaken to assess the likely effects.
15. Potential mitigation such as offered through the UU cannot be taken into account when determining whether an AA is required. However, it may be considered if an AA has been undertaken and determined that the development would harm the integrity of the SPA. The Appellant has made an obligation to pay a financial contribution in accordance with the mitigation measures

required by the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy SPD 2020. However, as I am dismissing the appeal for other reasons it is not necessary for me to consider this matter further as it could not change the outcome of this appeal.

Other Matters

16. The Appellant states that the appeal site has been allocated for housing in the Development Plan and is included within the Council's brownfield register. However, insufficient evidence has been provided to demonstrate these assertions. Nonetheless, the site is within the village boundary and on those terms its development is supported in principle which weighs in favour of the scheme.
17. Passing bays are proposed along the access track. This would improve the general flow of traffic on the track and the scheme would introduce bollards to prevent access through onto the A120. These benefits, although limited, would weigh in favour of the scheme.
18. The proposed scheme would provide up to eight new dwellings within the village defined as a 'Small Rural Settlement' and supported for development by LP policy SPL2. The site provides good access to local goods and services. It would deliver economic benefits both during construction and future occupiers could contribute financially and socially to the local community. It could be readily assimilated into the local village context and complement the areas character and appearance.
19. Support has been given by an interested party commenting that the site would be suitable for the provision of social housing and that any deficiencies within the highway are purely for the Highway Authority to address. In noting these comments there is no legal mechanism to secure the site for social housing and any adverse highway impact of the development should be mitigated by the Appellant.

Planning balance and conclusion

20. The proposal would make efficient use of land within a village, would boost the supply of housing, and deliver other limited benefits that would garner support from the Framework. In contrast, the proposal does not adequately demonstrate that access can be achieved without causing substantial detriment to highway safety. This would result in conflict with the development plan when taken as a whole.
21. For the above reasons, the appeal does not succeed and planning permission is refused.

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INSPECTOR