



Appeal Decision

Site visit made on 19 July 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2023

Appeal Ref: APP/P1560/W/22/3291996

Land off Connaught Road, Weeley Heath, Essex CO16 9EL

- 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 Ms Charlotte Bennett (DAG Properties) against the decision of Tendring District Council.
 - The application Ref 21/02014/FUL, dated 23 November 2021, was refused by notice dated 19 January 2022.
 - The development proposed is described as 'erection of seven dwellings and three garage buildings'.
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Decision

1. The appeal is allowed and planning permission is granted for erection of seven dwellings and three garage buildings at Land off Connaught Road, Weeley Heath, Essex CO16 9EL in accordance with the terms of the application, Ref 21/02014/FUL, dated 23 November 2021, and the plans submitted with it, subject to the conditions in the schedule below.

Preliminary Matters

2. The Tendring District Local Plan 2013-2033 and Beyond Section 2 (Section 2 LP) was adopted on 25 January 2022, shortly after the application was determined. The reasons for refusal highlighted relevant emerging policies of the Section 2 LP. The Council's Statement of Case provided an update on adoption of the Section 2 LP and which saved policies of the previous Local Plan have now been superseded. The appellant has had the opportunity to comment. I have had regard to the adopted Development Plan when considering the appeal.
3. In the fourth reason for refusal, the Council has confirmed that the reference to emerging Policy LP5 was an error and that the relevant policy is Policy HP5 of the now adopted Section 2 LP. I have considered the appeal on that basis.
4. A Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 has been provided by the appellant. Its terms were updated during consideration of the appeal in response to matters raised through consultation with Natural England. The updated, signed Deed is dated 2 October 2023 and I have had regard to this completed Planning Obligation when considering the appeal, as described below.

Main Issues

5. The main issues are:

- whether the proposed development would provide a suitable location for housing in principle, based on the spatial strategy in the Tendring District Local Plan,
- the effect of the proposal on the character and appearance of the area,
- the effect on the integrity of Essex Coastal Habitats Sites, and
- whether the proposal makes adequate provision for any additional need for recreational public open space arising from the development.

Reasons

Spatial Strategy

6. In the Section 1 Local Plan¹, Policy SP3 sets out a spatial strategy for North Essex, which includes that development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role. The Section 2 LP sets out a settlement hierarchy in Policy SPL1, in which Little Clacton is defined as a Rural Service Centre, while Weeley Heath is defined as a Smaller Rural Settlement.
7. Policy SPL2 of the Section 2 LP defines Settlement Development Boundaries (SDBs) for settlements listed in Policy SPL1. Outside SDBs, Policy SPL2 says that the Council will consider any planning application 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. Although the supporting text indicates that development outside SDBs will be subject to strict control to protect and enhance the character and openness of the countryside, Policy SPL2 does not explicitly preclude the development of housing outside SDBs as a matter of principle. Furthermore, the supporting text indicates that Rural Service Centres are expected to contribute to housing delivery during the plan period, at a scale which is proportionate, achievable and sustainable for each settlement.
8. The site is at the junction of Connaught Road and Clacton Road (B1441), which is known as Weeley Road as it continues into Little Clacton. The appeal site lies outside but adjacent to the SDB of Little Clacton, which wraps around the site on three sides. There is existing housing adjacent to three of the four site boundaries, including new housing further along Connaught Road, which is included within the SDB. The fourth boundary adjoins the small open field of which the appeal site is currently a part.
9. Little Clacton provides a range of local services and facilities consistent with its status as a Rural Service Centre. A convenience shop and recreation ground are available within walking distance of the appeal site. There is a bus route along the B1441, easily accessible from the appeal site, providing public transport into the larger urban area of Clacton-on-Sea.
10. The Council has indicated that previous developments within Little Clacton have already delivered the level of housing anticipated by the development plan.

¹ North Essex Authorities' Shared Strategic Section 1 Plan adopted January 2021

However, the policies outlined above do not place an upper limit on housing delivery, nor would any such limit be consistent with the focus of national planning policy on boosting the supply of housing. Development at the modest scale proposed would not undermine Little Clacton's role as a Rural Service Centre and there is no clear evidence that it would compromise the Council's strategic approach to housing delivery. Future occupiers would have access to services and facilities, without being excessively reliant on travel by car. There is no evidence that the proposed development would be unachievable.

11. Given the above, the proposal would contribute new housing at a scale which is proportionate, achievable and sustainable in relation to the scale of Little Clacton and its role within the settlement hierarchy. I therefore conclude that the proposed development would provide a suitable location for housing in principle, based on the spatial strategy in the Tendring District Local Plan, as articulated in the policies outlined above.

Character and Appearance

12. The appeal site is part of an open field on the edge of Little Clacton. There is existing housing to the southeast, which includes continuous and well-established housing along Weeley Road and Connaught Road. There are also several new bungalows further along Connaught Road, of similar design to the appeal proposal. The evidence indicates that these have been recently delivered as a result of planning permissions granted prior to adoption of the Section 2 LP.
13. To the northwest, built development is more sporadic. The rest of the field where the appeal site is located surrounds a single detached dwelling fronting Clacton Road. There is another small field opposite. This pattern of intermittent dwellings separated by parcels of open land continues along either side of Clacton Road, towards Weeley Heath. There is a continuous scattering of dwellings between the settlements, with no substantial expanse of open countryside. But the looser knit pattern of development provides an increased level of spaciousness and a sense of connection with the wider countryside, as well as a sense of separation between the more intensively developed parts of both villages.
14. The proposed dwellings would be at this transitional location between housing within the settlement and the more sporadic housing beyond. They would intrude into the open field to some extent, as have the existing dwellings recently constructed further along Connaught Road. However, there would still be a clearly-defined gap between the outer boundary of the development and the nearest neighbouring dwelling. Views into the open field would continue to be available. There would be sufficient remaining space between the proposed dwellings and the scattered dwellings to the northwest to maintain the existing sense of spaciousness and separation between the villages.
15. The proposed dwellings would be single storey in height, fronting Connaught Road. When approaching from the northwest, they would be seen in the context of the existing dwellings on the opposite side of Connaught Road. As such, while the additional built development would be clearly visible, it would not be harmfully prominent or intrusive. The development would also be compatible with the prevailing level of built development on this outer edge of Little Clacton and the existing character of the village edge.

16. The proposed layout indicates additional tree planting along the frontage to Clacton Road, but the rear gardens would be somewhat exposed to view. The appellant has indicated that a revised landscaping scheme could be secured by means of a condition, to provide for a softer edge to the site boundaries along Clacton Road and the adjacent field. This would help to soften the outer edge of the development and would also establish a clearly defined and appropriately landscaped boundary, thereby maintaining a clear visual distinction between the houses and the adjacent open land.
17. Subject to the imposition of a condition to that effect, I conclude that the proposal would not harm the character and appearance of the area. It would not conflict with Policy SP7 of the Section 1 LP and Policy PPL3 of the Section 2 LP or relevant paragraphs of the National Planning Policy Framework (the Framework). These policies, amongst other things, require that development responds to local character and avoids harm to the rural landscape, including settlement settings.
18. The second reason for refusal also refers to Policy LP7 of the Section 2 LP. However, Policy LP7 relates specifically to self-build and custom-built homes, which are not proposed in this case. Therefore, while I note that the policy is broadly supportive of this form of housing outside SDBs, it is otherwise not relevant to the appeal proposal.

Effect on Habitats Sites

19. The appeal site lies within a defined Zone of Influence for Essex Coastal Habitats Sites, as defined in the Habitats Regulations². Advice from Natural England confirms that the site falls within the Zones of Influence of the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site, Hamford Water SPA and Ramsar, Colne Estuary SPA and Ramsar, Blackwater Estuary SPA and Ramsar, Dengie SPA and Ramsar, and The Essex Estuaries Special Area of Conservation. These are among several sites along the Essex Coast, which are recognised for their value as coastal habitats and support internationally important populations of breeding and non-breeding bird species.
20. The Essex Coastal Habitats Sites have been identified by Natural England as being vulnerable to harm as a result of recreational disturbance. Such disturbance would be exacerbated by an increase in the local population resulting from new residential development, including through the cumulative effect of small-scale developments.
21. The appeal proposal would provide seven new dwellings, with an associated increase in local residents living within the Zones of Influence. This would be likely, in turn, to increase recreational pressure. It is therefore likely that the proposal, both alone and in combination with other development, would adversely affect the integrity of Essex Coastal Habitats Sites, notably those identified above. As such, it is necessary for me, as the competent authority, to conduct an appropriate assessment in relation to the effect of granting permission on the integrity of Habitats Sites.
22. The Essex Coastal Habitats Sites are covered by the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). In partnership with

² Conservation of Habitats and Species Regulations 2017

other affected local planning authorities, the Council has adopted a RAMS SPD³, which sets out measures for the avoidance and mitigation of recreational disturbance. These comprise measures to enhance habitat and divert activity away from the most vulnerable locations, alongside education and communication with recreational users.

23. Pursuant to the RAMS, arrangements are in place for financial contributions to be sought in connection with new residential development, to fund avoidance and mitigation measures on a strategic basis. The appellant has provided a Unilateral Undertaking (UU) dated 2 October 2023, which undertakes to make the required RAMS payment based on the fee payable in the 2023/24 financial year, with index linking to take account of inflationary increases.
24. The UU has been signed by four landowners and evidence has been provided that this encompasses all those holding legal title to the parcel of land where the dwellings would be constructed. The title evidence does not confirm ownership of the short section of Connaught Road which is also within the red line defining the application site. However, the appellant has confirmed, and the Council has accepted, that the correct ownership certificate was provided with the application. The ownership certificate in turn confirmed that the appeal site does not include land owned by other third parties.
25. The development does not propose any physical changes to the layout or surfacing of Connaught Road and the obligations contained in the UU would be triggered by commencement of development within the parcel of land owned by the signing landowners. On that basis, I am satisfied that the UU would be effective in securing payment of the required contributions. I am furthermore satisfied that the undertaking to pay the required RAMS fee meets the relevant tests for planning obligations as set out in the Framework.
26. Natural England has been consulted as part of this appropriate assessment and has confirmed that the above financial contribution would be sufficient to avoid an adverse effect on the integrity of the Habitats Sites and their relevant features. Consequently, I am satisfied that, with the mitigation measures in place, the proposal would not adversely affect the integrity of Habitats Sites, either alone or in combination with other development.
27. For the above reasons, taking into account the planning obligations set out in the UU, the proposal would not conflict with Policy SP2 of the Section 1 LP which requires that contributions are secured towards mitigation measures in accordance with the RAMS. It would likewise be in accordance with relevant provisions in the Framework regarding application of the Habitats Regulations to ensure that development does not adversely affect the integrity of habitats sites.

Recreational Public Open Space

28. In response to the fourth reason for refusal, the UU makes provision for a Public Open Space contribution, based on a tariff set out in a 2021 update to the Council's Provision of Recreational Open Space for New Development SPD. The UU specifies that the financial contribution would be paid prior to commencement of the development and is to be used by the Council for improvements to The Parish Playing Fields at Plough Corner.

³ Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document adopted May 2020

29. The Council's Officer Report identified a deficit in equipped play and formal open space in both Little Clacton and Weeley. The Parish Playing Fields at Plough Corner is the closest play area to the appeal site and I saw during my site visit that this existing public open space is readily accessible on foot from the appeal site.
30. Since the proposal would materially increase the number of local residents likely to seek out local facilities for play and recreation, I am satisfied that the Public Open Space contribution is directly related to the proposed development. It is also necessary to make the development acceptable in planning terms, given the identified local deficit in play facilities and open space. Evidence has been provided to justify the required financial contribution, which is based on an adopted tariff and as such is fairly and reasonably related in scale and kind to the development. The Council has confirmed that the basis for calculation as specified in the UU is correct.
31. Taking account of the planning obligations set out in the UU, I conclude that the proposal makes adequate provision for any additional need for recreational public open space arising from the development. On that basis, it would not conflict with relevant requirements in Policies DI1 and HP5 of the Section 2 LP or with relevant paragraphs in the Framework. These policies, amongst other things, set out requirements for necessary infrastructure to support new development, including open space and recreation facilities, through contributions towards improvements to existing facilities where appropriate.

Other Matters

32. I have noted that the appeal decision relating to land adjacent to Batemans Lane pre-dates adoption of the Section 2 LP and that it related to infill development fronting Weeley Road which differs from the layout proposed in this case. I have considered the proposed development on its own merits.
33. While the proposed dwellings will be visible from the existing housing on Connaught Road, they would be on the opposite side of the road and single storey in height. They would not be excessively intrusive in the outlook from the adjacent dwellings, nor would they compromise privacy or otherwise have a harmful effect on the living conditions of neighbouring occupiers.
34. Some existing vegetation would be removed, but additional soft landscaping would be secured by means of the conditions below, as would measures for the protection and enhancement of biodiversity. Sufficient drainage details are provided in the application and implementation would be secured through other regulatory regimes, notably the Building Regulations.
35. The dwellings would be accessed by means of an existing private road, with a metalled surface and adequate visibility at the junction with the public highway. The Council did not raise any traffic generation or highway safety concerns and based on the evidence before me, including my observations on site, I have no reason to reach a different view. Any proposed introduction of street lighting would be a private matter for landowners of the private road.
36. While some degree of disruption during construction would be unavoidable, and this may include disruption due to relocation of services, the consequent disturbance can be adequately mitigated by means of a Construction Method Statement, to be secured by means of the conditions below.

37. While I have noted concerns raised about the potential for further development in the field, it is highly unlikely that any subsequent proposal would replicate the particular circumstances of the appeal proposal, in terms of layout, the physical relationship with the settlement boundary or other relevant factors. It is furthermore a well-founded principle that each application should be considered on its merits and therefore I have given concerns about precedent for further development limited weight.

Conditions

38. The Council has suggested a number of conditions which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency and clarity and have omitted others. The parties have had the opportunity to comment on any material amendments to the wording of conditions and the appellant's consent to the imposition of pre-commencement conditions has been obtained.
39. I have imposed a condition specifying the approved plans as this provides certainty. I have also imposed a separate condition to secure use of external materials as detailed on the application drawings, for the avoidance of doubt.
40. Conditions controlling hours of work and approval of a Construction Method Statement (CMS) are required to control pollution and mitigate any noise and disturbance for occupiers of neighbouring properties. The CMS requires approval prior to the commencement of development, in order to secure good management of the works from the outset. I have not, however, included a specific restriction on burning materials, since the CMS would include arrangements for recycling and disposal of waste.
41. For the reasons explained above, I have imposed two conditions relating to submission of a revised landscaping scheme, to include additional soft landscaping along the boundary with Clacton Road and between the dwellings and the adjacent field. The conditions include arrangements for implementation, retention and subsequent management of the landscaping scheme, to ensure that new planting can become established, in the interests of the character and appearance of the area. The landscaping scheme would include approval by the Council of any hard surface materials, so no separate condition is required to ensure that these are permeable or porous in nature.
42. A condition requiring confirmation of measures for biodiversity enhancement is justified, given that the Framework supports measures for net gain in biodiversity and there would be some removal of existing vegetation along Connaught Road. I have also included a condition preventing removal of existing vegetation during the bird nesting season, to mitigate the effects of development on wildlife.
43. In response to issues raised by the Highways Authority, I have imposed conditions to maintain visibility at the junction between Connaught Road and Clacton Road, to prevent discharge of surface water onto the highway, and to prevent obstruction of Connaught Road with gates. These conditions are reasonable in the interests of maintaining highway safety for the lifetime of the development. I have omitted any reference to visibility splays, since none are shown on the approved drawings. I have also clarified the wording in relation to gates, since there is no evidence that gates across the vehicular access to any individual dwelling would be harmful to highway safety or otherwise.

44. A condition ensuring that driveways and garages are available prior to occupation of the dwellings is required to ensure that adequate parking is available clear of the highway. I have omitted reference to turning facilities or alterations to the road, since none are shown on the plans. I have not imposed a condition requiring provision of cycle parking, since all the proposed dwellings would have garages which could be used for storage of bicycles and no separate cycle parking is shown on the plans. I have also not included a requirement for electric vehicle charging facilities, since this is now covered under the Building Regulations.
45. I am mindful that the Framework states that planning conditions should not be used to restrict permitted development rights unless there is clear justification to do so. In this case, the subsequent introduction of alternative means of enclosure along the boundary with the adjacent field could undermine the effectiveness of the approved landscaping scheme and harm the character and appearance of the area. Therefore, a restriction on permitted development rights for fences, walls or other means of enclosure in this specific location is justified.
46. The removal of permitted development rights for extensions, roof alterations and ancillary structures at the rear of the dwellings is also justified, since these would be visually exposed given the relationship between the rear boundaries of the residential plots and the adjacent field. Therefore, maintaining planning control over future additions would be justified, in order to maintain the character and appearance of the area.
47. There is no similar justification to prevent the exercise of permitted development rights for boundary treatment along the elevations fronting Connaught Road or the introduction of swimming or other pools since these would not have a similar effect on public views of the site. I have therefore modified the Council's suggested conditions to omit these elements.
48. The site is not previously developed land and the Council's Officer Report states that there is no site-specific history. As such, there is no clear evidence of any historic use likely to have resulted in ground contamination and a condition requiring investigations to be undertaken prior to the commencement of development would be unduly onerous.

Conclusion

49. For the above reasons, I conclude that the proposed development is in accordance with the development plan as a whole, and that there are no other relevant material considerations that would indicate a decision otherwise would be appropriate. Therefore the appeal should be allowed and planning permission granted subject to the conditions set out in the schedule below.

Jane Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1763 P01B Plots 2, 4 & 6 Elevations and layout. Site Plan.
 - 1763 P02B Plots 3, 5 and 7 Elevations and layout. Site Plan.
 - 1763 P03B Plot 1 Elevations and layout. Site Plan.
 - 1763 P04B Garage Elevations and layouts. Site Layout.
 - 1763 P05B Landscaping Plan
 - 1763 P06B Street Scene
 - 1763 P07B Ordnance Survey (1:1250 Location Plan)
- 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on drawing nos. 1763 P01B, 1763 P02B and 1763 P03B.
- 4) Prior to the commencement of development, a Construction Method Statement and associated site layout plan shall be submitted to and approved in writing by the local planning authority.

The Construction Method Statement shall provide for:

- safe access to/from the site;
- the parking of vehicles of site operatives and visitors;
- the loading and unloading of plant and materials;
- the storage of plant and materials used in constructing the development;
- wheel washing facilities;
- measures to control the emission of dust and dirt during demolition and construction;
- a scheme for recycling/disposing of waste resulting from demolition and construction works;
- details of hours of deliveries relating to the demolition and construction of the development;
- details of hours of site clearance or construction;
- a scheme to control noise and vibration during the demolition and construction phase, including details of any piling operations.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 5) Construction works shall take place only between the hours of 08:00 to 18:00 on Mondays to Fridays and 08:00 to 13:00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays. No vehicle connected with the works shall arrive on site before 07:30 or leave after 19:00 (except in the case of emergency).
- 6) No development shall commence above ground level until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - a scheme for soft landscaping between the southwest boundary of Plot 1 and Clacton Road (B1441) and along the rear (northwest) boundaries of Plots 1-7;

- details of all proposed trees, shrubs and/or hedges and a schedule of plants noting species, plant supply sizes and proposed numbers/densities where appropriate;
- details of all proposed means of enclosure and boundary treatments;
- earthworks showing existing and proposed finished levels or contours;
- hard surfacing materials;
- an implementation programme.

The hard and soft landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.

- 7) Before the development is first occupied a schedule of landscape maintenance for a period of 5 years shall be submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation and shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting. Maintenance shall thereafter be carried out in accordance with the approved schedule.
- 8) Prior to commencement of any development above ground level, a Biodiversity Enhancement Strategy (BES) for Protected and Priority species shall have first been submitted to and approved in writing by the local planning authority. The BES shall include the following:
- a) purpose and conservation objectives for the proposed enhancement measures;
 - b) detailed designs to achieve the stated objectives;
 - c) locations of proposed enhancement measures by appropriate maps and plans;
 - d) persons responsible for implementing the enhancement measures;
 - e) details of initial aftercare and long-term maintenance (where relevant).
- Thereafter the development shall proceed in accordance with the approved details and the approved biodiversity enhancement measures shall be retained for the lifetime of the development.
- 9) The removal of vegetation shall only be carried out outside the bird nesting season (March to August inclusive).
- 10) Any new planting, whether forming part of the approved landscaping scheme or planted at a later date, shall be planted a minimum of 1 metre back from the edges of Clacton Road (B1441) and the section of Connaught Road between Clacton Road and Plot 1.
- 11) No development shall commence until details of measures to prevent the discharge of surface water onto the highway have been submitted to and approved by the local planning authority. The development shall thereafter be implemented in accordance with the approved details.

- 12) At no point shall gates be provided obstructing vehicular access into the site from Clacton Road (B1441). The access shall remain open and free for use thereafter.
- 13) The development shall not be occupied until such time as the driveways and garages have been provided in accordance with the approved plans and shall be retained in this approved form thereafter.
- 14) Notwithstanding the provisions of Article 3, Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no fences, walls or other means of enclosure shall be erected along the rear (northwest) boundaries of Plots 1 to 7 other than any means of enclosure and boundary treatments forming part of the approved landscaping scheme.
- 15) Notwithstanding the provisions of Article 3, Schedule 2 Part 1 Classes A, B, C and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), there shall be no additions or alterations to any of the dwellings hereby permitted, including to their roofs, nor shall any buildings or enclosures be erected in the rear gardens of the dwellings.

END