



Appeal Decision

Site visit made on 23 April 2024

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2024

Appeal Ref: APP/P1560/W/23/3332275

Mount View, Fox Street, Ardleigh, Colchester CO7 7PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr David Marshall of Wambugu Limited against the decision of Tendring District Council.
 - The application Ref is 23/01004/FUL.
 - The development proposed is 3 bed detached eco bungalow and detached garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The fourth reason for the Council refusing planning permission was in regard to the lack of a financial contribution towards the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). A completed planning obligation in the form of a Unilateral Undertaking (UU) has been submitted with the appeal. Whilst the Council has subsequently not defended this reason for refusal going forwards, I shall return to it later.
3. The Procedural Guide: Planning appeals – England as updated in January 2024 sets out, amongst other things, that within their final comments the appellant can provide a response on the Council's statement of case and any third-party representations. No new evidence is allowed. It goes on to say that comments should be concise and not introduce new material or technical evidence. I note that the appellant's ecologist could not prepare the Preliminary Ecological Assessment (PEA) earlier due to their capacity. However, I do not consider this to be an exceptional circumstance that would clearly indicate that information outside of the normal time limits and type should be accepted. To accept this late evidence could potentially cause prejudice to the proper administration of the system, and thus ultimately to other parties wishing to comment thereon. Accordingly, I have not taken the PEA into account.
4. The National Planning Policy Framework (the Framework) was updated in December 2023. The main parties have had the opportunity to comment. I have proceeded to refer to the 2023 iteration of the Framework in my decision.

Main Issues

5. The main issues are a) whether the appeal site would be in a suitable location for new housing; the effect of the proposed development on b) ecology and biodiversity and c) the character and appearance of the area; and d) whether the Council can demonstrate the required supply of housing sites.

Reasons

Site Location

6. Policy SP3 of the North Essex Authorities' Shared Strategic Section 1 Plan 2021 (Section 1 LP) set out the Council's spatial strategy for new housing. Whilst it seeks to focus the majority of new development to existing settlements, development will be accommodated within or adjoining settlements subject to their scale, sustainability, and existing role within their district and, where relevant, across the wider strategic area. Policy SPL1 of the Tendring District Local Plan 2013-2033 and Beyond Section 2 2022 (Section 2 LP) identifies a hierarchy of settlements where new development will be directed. In doing so, it seeks to prioritise locations with access to the strategic road network, public transport, and those with potential to offer the widest range of services. The policy states that all settlements which may experience growth have a Settlement Development Boundary (SDB). Areas outside thereof are considered to be countryside.
7. Section 2 LP Policy SPL2 reaffirms that outside of SDBs, the Council will consider any planning application in relation to the pattern and scales of growth promoted through the Settlement Hierarchy in Section 2 LP Policy SPL1 and any other relevant policies. Policy LP2 of the Section 2 LP sets out that the Council will support, among other things bungalows and self-build development.
8. Section 2 LP Policy LP7 requires that all new self-build and custom homes must either be safely accessible on foot within 600 metres(m) of the edge of the SDB of one of the District's 'strategic urban settlements' or 'smaller urban settlements', or 400m of the edge of the SDB of one of the District's 'rural service centres', or involve the redevelopment of vacant or redundant previously developed land that is unviable for employment use.
9. Whilst the appeal site is in the hamlet of Fox Street, Ardleigh is the nearest settlement identified by the hierarchy. It is identified as a 'smaller rural settlement' where development is limited to smaller scale, within the SDB consistent with local community needs. That said, and with the above in mind, the appeal site is in the countryside where development is restricted to particular types. The 'smaller rural settlements' that includes Ardleigh is not one of the identified groups of settlements.
10. An appeal was dismissed on this site in 2023¹ for '4 No self building eco bungalows with associated access road.' Since that appeal was determined the Framework has been updated but in terms of the development plan, it remains the same. Whilst the previous appeal was for four bungalows the site remains in the same general location.
11. The Inspector in that appeal concluded that the site's accessibility on foot to the nearest 'strategic urban centre' of Colchester would not be safely accessible on foot.
12. Whilst the Tendring/Colchester District boundary is adjacent to the appeal site, the Council states that Colchester is located at a distance of approximately 3km which would fall a considerable distance short of the requirements of the policy.

¹ Appeal Reference: APP/P1560/W/22/3295162

Whilst the appellant contends that Colchester is around 2km from the site, this would still fall short of the requirements of the policy.

13. There is a footpath from the appeal site to the A137 which would make access to that road easier for pedestrians. However, the site is in the same general location and as far as I have been made aware improvements to the A137 have not been made to make connections between this site and Colchester safer for pedestrians along the A137. Consequently, I see no reason to come to a different conclusion on this matter than the previous Inspector.
14. Furthermore, it was determined in the dismissed appeal that the site was not previously developed land, and the appellant has not made that case in this instance. As such, based on the evidence before me I see no reason to disagree.
15. The scheme is proposed to deliver a self-build dwelling. The benefits of custom or self-build housing are recognised by the Planning Practice Guidance finding that it helps to diversify the housing market and increase customer choice. The Framework also states that local planning authorities should seek opportunities, through policies and decisions, to support small sites to come forward for community-led development for housing and self-build and custom-build housing.
16. A section 106 obligation is likely to be the most appropriate method to secure matters relating to the ownership of the self-build dwelling for a period of three years as well as bind the requirement to successors in title should the property be sold in the future. However, the UU submitted with this appeal would not secure these matters. Accordingly, in the absence of evidence to require the proposal to be self-built, there would be no restriction preventing the scheme from evolving into a different type of development. A similar conclusion was made by the previous Inspector and for the reasons given above, these matters have not been suitably addressed by this new proposal.
17. Whilst planning permission for a dwelling may have been granted in 1965² this was a considerable time ago and both local and national planning policy has changed since that time. While that development may have complied with planning policy at the time, for the reasons given above, a dwelling in this location would not accord with the relevant adopted development plan policies.
18. Therefore, the appeal site is not in a suitable location for new housing. Consequently, the proposal would conflict with Section 1 LP Policy SP3 and Policies SPL1 and SPL2 of the Section 2 LP which seeks to ensure development is delivered in accordance with the settlement strategy.

Ecology

19. The appeal site itself is a modest parcel of grassland with a static caravan on it. The site is bound by trees and hedges to the rear and there are open fields beyond the wider site. Furthermore, the Ardleigh Reservoir is located close to the site, which is a large water body, and, in this context, it is possible that protected species could be present.
20. No ecological appraisal of the site and the surroundings was submitted with the application and there is no other substantive evidence before me to suggest

² Application Reference: Papp 667/64/OUT

that protected or priority species, or habitats would not be harmed by the proposed development. This includes the potential of the site to be used by such species for foraging and commuting.

21. I have had due regard to the guidance on the conservation of protected species given in ODPM Circular 06/2005. Paragraph 99 of the Circular advises that the presence or otherwise of protected species, and the extent to which they might be affected by the proposed development, must be established before planning permission is granted. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place before the permission is granted. While the Circular states surveys should only be required where there is a reasonable likelihood of species being present, it advises they should be carried out before planning permission is granted.
22. In light of the above, I conclude that the proposed development has the potential to cause unacceptable harm to the ecology and biodiversity of the site and its surroundings. Accordingly, the proposal would offend the requirements of the Circular and be in conflict with the aims regarding the natural environment outlined in paragraph 186 of the Framework. The information before me does not therefore enable me to exercise my duty to have regard for biodiversity under Section 40 of the Natural Environment and Rural Communities Act 2006. Consequently, the proposal would conflict with Section 2 LP Policy PPL4 which states that development should be supported by an appropriate ecological assessment. Any proposed development on sites which may support protected species will require a relevant survey(s), undertaken by a suitably qualified ecologist.

Character and Appearance

23. The site is a parcel of land comprising of open grassland that is in the corner of a wider parcel of land that is bound by trees and hedges with open countryside to the rear. The site is located at the end of a private road that is accessed via the A137 and the land rises from this road to the appeal site. There are dwellings located either side of this private road and the land where the dwelling is proposed is situated between two bungalows, one of which is currently under construction.
24. The dwellings along this private road vary in scale and appearance and whilst they do not follow a common building line, the area is characterised by ribbon development with the main elevation of these properties generally addressing the road. Given the size of the gaps between the dwellings, there are views out towards the open countryside beyond them and this, alongside the low density of the development along this road positively contributes to the open and generally semi-rural character and appearance of the area.
25. The undeveloped appearance of the site and the trees and hedges that bound it also positively contributes towards the semi-rural character and appearance of the area. Whilst there is a caravan on site, the limited scale of this ensures it does not significantly detract from the existing semi-rural appearance of the site, nor harmfully screen views of the open countryside to the rear.
26. The previous appeal for four dwellings was determined to be at odds with the prevailing pattern of linear development with highway frontage. The layout and extent of built form was considered to create the appearance of a suburban estate-like development that would be unsympathetic to local distinctiveness.

27. In comparison, the bungalow would infill a gap between two existing buildings at the end of a residential road and would be a continuation of the prevailing pattern of linear development with highway frontage. Given that it would be a single dwelling and garage located between two existing bungalows, the scheme would not encroach well into the countryside. The limited scale of the proposal and the gaps maintained between it and the dwellings either side would ensure views of the countryside to the rear would be retained. Additionally, the wider site would be left mostly undeveloped which would ensure the proposal would not harmfully urbanise it. This alongside the limited height of the development and its siting would ensure the proposal would maintain the semi-rural character and distinctiveness of the area.
28. Therefore, the proposal would not harm the character and appearance of the area and would accord with Policies SPL3 and PPL3 of the Section 2 LP. These expect development, amongst other matters, to provide new development which is well designed and maintains or enhances local character and distinctiveness. It would also accord with the Framework insofar as it states that planning decisions should ensure developments are sympathetic to local character and history, including built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.

5-Year Supply of Deliverable Housing Land

29. The Council adopted the Section 2 LP in 2022 and paragraph 76 of the Framework identifies that local planning authorities are not required to identify and update annually their 5-year housing land supply position in circumstances when it has an adopted plan that is less than five years old and that adopted plan identified at least a five year supply of specific, deliverable sites at the time that its examination concluded.
30. However, footnote 79 of the Framework states that as an exception to this, the policy contained in paragraph 76 and the related reference in footnote 8 of this Framework should only be taken into account as a material consideration when dealing with applications made on or after the date of publication of this version of the Framework. The application was made before the date of publication of this version of the Framework and as such the policy contained in paragraph 76 of the Framework should not be taken into account in this instance.
31. Following the update to the Framework the 10% buffer is no longer applied and given the Councils housing delivery to date the 5% buffer should be applied. With the 5% buffer applied the Councils total housing requirement is 2,888 dwellings over the 2023/2024 – 2027/2028 period.
32. Based on the 2023 Strategic Housing Land Availability Assessment (SHLAA) the Council states that it can identify a 6.44 years supply of housing land. However, the appellant disputes that the Council can identify a 5-year housing land supply.
33. The appellant identified that several large housebuilders expect housing sales to drop due to extenuating circumstances that are occurring at a national level. This is also supported by market analysis from the Construction Products Association.

34. The updated housing trajectory identified in the 2023 SHLAA shows that in the period 2022/2023 that housing completions were significantly higher than they were expected to be in the 2022 SHLAA. Whilst completions are expected to be lower in the 2023/2024 period, given the significant over delivery in the 2022/2023 period this is not surprising as completions have likely occurred earlier than expected. The differences between the two monitoring periods does include a drop in projected completions not explained by the existing completions which does support the appellants case that there may be a downturn in housing completions.
35. However, the 2023 SHLAA incorporates the responses from housebuilders into its calculations and these include the expected delivery on the housebuilder's sites, and these would likely have considered their expected drop off in sales. This evidence included correspondence from housebuilders on sites identified by the appellant where they expect there would be a drop in housing completions. However, these sites were still expected to deliver completions over the next 5 years and the drop in completions was not expected to be significant.
36. Whilst this correspondence did correlate with the appellants case that there would be a drop in completions on some sites, the SHLAA provides a robust consideration of circumstances affecting housebuilding in this district. This took into account correspondence from housebuilders identifying a reduction in expected completions and even then, the completions are still expected to be significantly above the DPA requirement over the next 5-year period. The SHLAA provides clear evidence about deliverability and a realistic prospect that the completions will occur within 5 years.
37. There may be evidence that there could be a downturn in house sales and completions in the future at a national level. However, based on the evidence before me, it is not evident that this would lead to a significant drop in house completions in this district. There has been a historic oversupply for a prolonged period of time, and it is not clear that this predicted national downturn would be evenly dispersed across the country. I am not satisfied that there is substantive evidence, at this time, to confidently state that housing completions in this district would significantly decrease over the next 5 years to the level purported by the appellant. The responses from the housebuilders to the 2023 SHLAA do not support the appellants case that the downturn would occur to the degree the appellant alleges.
38. Consequently, I am satisfied that the Council can demonstrate a 5-year supply of deliverable housing land sufficient to meet the up-to-date requirement. Taking into consideration the date the development plan was adopted and in light of the above conclusion, paragraph 11d) of the Framework is not engaged and the proposed development must be determined in accordance with the development plan unless material considerations indicate otherwise.

Planning Balance

39. The Inspector for the previous appeal concluded that the site would be reasonably well located and connected to services and facilities to avoid an undue reliance on the use of a private motor vehicle. Given that the site is in essentially the same location and based on the evidence before me I see no reason to disagree. As such, the proposal would accord with paragraph 83 of the Framework which states development in one village may support services

- and facilities in a village nearby. I attribute moderate weight to the delivery of a dwelling in this location in favour of the scheme.
40. Notwithstanding my conclusion above, even if I were to conclude that there is a shortfall in the 5-year housing land supply, the delivery of a single dwelling would make a modest contribution regardless of the shortfall. Consequently, this attracts modest weight in favour of the proposal.
41. The Framework does identify that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are more often built out relatively quickly. Given that this scheme would deliver a single dwelling on a small site I attribute limited weight to this in favour of the development.
42. There would be limited benefits to the local economy during the construction of the dwelling as well as through continued spending by the future occupants. The household would also contribute towards the social aspect of the area using services and facilities. Given that this relates to a single dwelling I attribute limited weight to this in favour of the development.
43. There would be limited environmental benefits through additional landscaping and tree planting given the limited scale of the scheme. As such, I attribute limited weight to this in favour of the scheme.
44. The proposed dwelling would incorporate Nudura ICF and Thermo Roof and an Air Source Heat Pump. However, Policy PPL10 of the Section 2 LP sets out the requirement for measures to be incorporated into the design, layout and construction which are aimed at maximising energy efficiency in the use of renewable energy. While such matters are supported by the Framework, these measures are necessary to make the development acceptable in planning terms.
45. Reference has been made to several Judgments³. These identified that previous decisions on similar sites are material considerations and provided clarity on consistency in decision making to avoid arbitrariness and unreasonable decisions.
46. Several similar developments have been identified within the area⁴. A number of the schemes related to the locational suitability of the sites and as already established by the previous Inspector, with regard to the Framework, the site is well located and connected to services and facilities. The suitability of the site with regard to local policies has already been considered above. Regarding the development in Fox Street, this was granted permission before the adoption of the Section 1 and 2 LP and when the Council could not identify a 5-year housing land supply. As such, the policy position was different, and the weight applied to any conflict with the development plan would also have been different.
47. The site at Elmstead was located close to Elmstead Market which is defined as a 'rural service centre' that will accommodate a 'modest increase in housing stock, where appropriate, within the plan period.' Section 2 LP Policy SPL2

³ *Pertemps Investments Ltd v Secretary of State for Communities and Local Government & Solihull Metropolitan Borough Council* [2015] EWHC 2308 (Admin)
Baroness Cumberlege of Newick & Patrick Cumberlege v Secretary of State for Communities and Local Government & DLA Delivery Limited [2017] EWHC 2057 (Admin)

⁴ Application Reference: 16/00751/FUL; Ref: 21/01481; and Ref: 23/00794/FUL.

indicates that outside of the SDB planning applications will be considered in relation to the pattern and scales of growth promoted through the settlement hierarchy. The site also broadly encompassed a portion of land previously approved for a single unit as part of a wider development of nine houses. In comparison the appeal site is located further from any settlement that has a SDB and whilst planning permission was granted for a dwelling on the site in 1965, this appears to have lapsed.

48. The development permitted on Land North of Bromley Road was located near to a site that had been approved for 145 dwellings. This affects how that scheme is viewed alongside such a significant quantum of development, compared to the appeal site located at the end of a small group of dwellings. Furthermore, the Officer's Report acknowledged the conflict with the development plan, but identified the material considerations that weighed in favour of the development and the officer made a balanced judgement.
49. Importantly, the other schemes were not considered to have an adverse impact on ecology. I have therefore assessed the appeal on its own merits based on the evidence before me and my own observations.
50. Matters related to highway safety, heritage, contaminated land, or the living conditions of neighbouring occupiers were not identified by the Council as having an adverse impact. However, the absence of harm weighs neither for nor against the development.
51. The Framework states that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. There is insufficient information before me to determine that significant harm to biodiversity cannot be avoided. This would lead to a conflict with policies in the development plan that seek to protect protected species, and this is a matter that counts significantly against allowing the appeal.
52. Furthermore, the site would not be in a suitable location with regard to development plan policies concerned with the distribution of housing outside of settlement boundaries. Accordingly, I attribute substantial weight to this conflict with the fundamental spatial strategy of the development plan.
53. Taking into consideration the evidence before me, the stated benefits of the proposal would not be sufficient to outweigh the identified harm. Consequently, the proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.

Essex Coast Recreational disturbance Avoidance and Mitigation Strategy

54. The appeal site lies within the zone of influence of the RAMS. The Conservation of Habitats and Species Regulations 2017 requires that a competent authority makes an Appropriate Assessment (AA) of the implications of the plan or project on the integrity of the sites in view of their conservation objectives. The appellant has sought to make a financial contribution under the Council's mitigation scheme. Given my findings on the main issues in this appeal, the RAMS contribution is aimed at mitigating the adverse effects of the scheme,

and is not an overall benefit of the proposal, I have not therefore carried out an AA or considered the matter in detail.

Conclusion

55. Therefore, for the reasons give above, I conclude that the appeal should be dismissed.

G Sibley

INSPECTOR