



Appeal Decision

Site visit made on 18 September 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd October 2024

Appeal Ref: APP/P1560/W/23/3334680

Springfield House, Brightlingsea Road, Thorrington, Essex CO7 8JL

- 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 H Gilders on behalf of M Gilders Roofing Contracts Limited against the decision of Tendring District Council.
 - The application Ref is 22/02001/FUL.
 - The development proposed is construction of two storey house following demolition of existing garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Subsequent to the Council issuing its decision the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Both parties, within their respective submissions, had an opportunity to comment on the revised Framework. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the 20 December 2023 version.
3. On 30 July 2024 the Government published a consultation on proposed reforms to the Framework and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration of very significant weight, the weight I give to the changes in the draft Framework is limited given that no final document has been published and it is subject to potential change in the future.
4. In any event, the policies that are material to this decision are not subject to any fundamental changes, and I am satisfied that this has not prejudiced any party. Consequently, in reaching my decision I have therefore had regard to the Framework published in December 2023.
5. The Council's second reason for refusal articulated its concern that, in the absence of any mechanism to secure mitigation by way of a financial contribution, the proposed development would result in recreational activity which would, in combination with other developments in the area, adversely affect the integrity of nearby Habitat Sites.

6. Within their Statement of Case the Council has however stated that it is now considered acceptable to impose an appropriately worded condition on the grant of any permission to secure this mitigation by way of a financial contribution. As such the Council has confirmed that it does not seek to defend its second reason for refusal. I consider this matter later in my decision.

Main Issue

7. The main issue is whether the appeal site is an appropriate location for the proposed development, having particular regard to the development plan's spatial strategy.

Reasons

8. The appeal relates to land associated with the detached dwelling known as Springfield House, which sits within a linear row of residential properties on the eastern side of Brightlingsea Road.
9. The development plan for the area comprises the Tendring District Local Plan 2013-2033 and Beyond, Section 1 - North Essex Authorities' Shared Strategic Section 1 Plan (2021) (TDLP1) and the Tendring District Local Plan 2013-2033 and Beyond, Section 2 (2022) (TDLP2).
10. Policy SP3 of the TDLP1 sets out the broad spatial strategy for development within North Essex. This policy states that existing settlements will be the principal focus for additional growth and that development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role within the district.
11. Policy SPL1 of the TDLP2 establishes a settlement hierarchy within the district, with the supporting text stating that all settlements which may experience growth have a development settlement boundary and those without a settlement development boundary are considered to be part of the countryside.
12. Policy SPL2 of the TDLP2 relates to the settlement development boundaries and states that there is a general presumption in favour of new development within these settlement development boundaries, subject to detailed consideration against other relevant development plan policies. Policy SPL2 also states that outside the settlement development boundaries, the Council will consider any 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 development plan.
13. There is no dispute between the parties that the appeal site is located outside of any settlement development boundary and thus is located in the countryside. To the north of the appeal site is the settlement of Thorrington, which is defined as a "Smaller Rural Settlement" within Policy SPL1, and to the south is Brightlingsea which is defined as a "Smaller Urban Settlement" within this same policy.
14. The appeal site is separated from both the settlement development boundaries of Thorrington and Brightlingsea, and therefore does not 'adjoin' either of these settlements. Furthermore, whilst the appeal site is situated within a linear row of existing dwellings, there are significant gaps of undeveloped land, on both sides of the highway, between this linear row of properties and these settlements. As a result I find that the appeal site is also poorly related to the pattern of built development within both of these settlements.

15. The appellant contends that the appeal site is well connected to the settlements of Thorrington and Brightlingsea, and residents would not be reliant on the car. To support this claim the appellant states that the appeal site is within walking and cycling distance, along existing footways, of shops and services within Thorrington and Brightlingsea.
16. I have not been provided with specific details by way of maps showing the appeal site in relation to shops and services within the settlements of Thorrington and Brightlingsea, or information relating to the specific walking distances. However, I do note that there are continuous footways, on at least one side of the highway, from the appeal site to both these settlements.
17. Nevertheless, I observed on site that the walk from the appeal site to the edges of both these settlements was considerable in distance. Furthermore, due to the natural undulating topography of the wider area, long sections of the walks to both these settlements were uphill. Whilst I appreciate that conversely this means that walking back to the appeal site from these settlements involves long downhill sections, I find that the combination of the distance and the undulating topography would not make walking to either of these settlements an attractive option for future residents.
18. I acknowledge that cycling to these settlements would potentially be an option for some future residents. However, limited information has been provided in respect of the locations of designated cycle lanes to these settlements and the aforementioned undulating topography would also limit the appeal of cycling. Additionally, not everyone has access to a bike or the ability to ride a bike. Thus, whilst the appeal site may be within cycling distance of services within these settlements, I have limited information that it is a realistic alternative to the car for regular journeys.
19. The appellant has also made reference to bus stops within 250m of the appeal site, as well as what appears to be an extract from a bus timetable within their submitted Design and Access Statement. Whilst this submitted extract from the bus timetable is limited in detail, I acknowledge the Council's submission that future residents would be able to access services within the nearby settlements by bus. Notwithstanding this however, I have not been provided with the full bus routes and timetables, or any details on bus fares and the quality of the waiting facilities at these bus stops.
20. As such, whilst I acknowledge that residents would have the option to access services and facilities within Thorrington and Brightlingsea by bus, there is limited evidence before me in respect of the bus service, including a lack of detail of the quality of the waiting facilities at these bus stops, to enable a full assessment of how attractive the bus would be for use all-year round and during adverse weather conditions.
21. Additionally, I note the Design and Access Statement also refers to the Thorrington Cross railway station being located 0.48km from the appeal site, however very limited information has been provided in respect of the location of this station, the frequency of trains and where they connect to.
22. Overall, it has not been adequately demonstrated that the appeal site is well connected to the settlements of Thorrington and Brightlingsea by sustainable modes of transport, including walking, that provide a realistic alternative to the car.

Consequently, I find that future residents of the appeal site would be reliant upon the use of a private car to access services and facilities, and the appeal site does not therefore represent a sustainable location for the proposed development.

23. My attention has been drawn to case law¹ relating to isolated homes. Given that the proposed dwelling would be located within a gap between dwellings that form part of a linear formation along this side of Brightlingsea Road, I find that the proposal would not result in an isolated dwelling. To that effect the appellant has suggested that the proposal would represent an infill development as it would be surrounded by built development. However, my attention has not been drawn to any specific policy which allows for infill development outside of the development settlement boundaries.
24. Furthermore, the appellant also states that the appeal site represents previously developed land. However, again my attention has not been drawn to any policy which allows for residential development on previously developed land within the countryside. I acknowledge that Policy SP3 of the TDLP1 states that the re-use of previously developed land within settlements is an important objective. However, this is not relevant to the appeal site as it is located in the countryside and not within a settlement.
25. My attention has been drawn to three appeals² that have been allowed for residential development outside the development settlement boundaries in this district. However, I have been provided with limited information in respect of the wider context of these appeal decisions in relation to matters such as the sustainability of these sites; their relationship to the development settlement boundaries; public transport links; and walking distances to services and facilities.
26. Nevertheless, having reviewed these appeal decisions I note that the Inspector for appeal ref: 3292186 concluded that the site adjoins the settlement of Frating, and thus that proposal complied with the relevant development plan policies. Similarly, the Inspector for appeal ref: 3291996 found that this appeal site was adjacent to the settlement boundary of Little Clacton which provides a range of facilities within walking distance. Furthermore, with regard to appeal ref: 3281960, the Inspector states that *'The appeal site lies within an established settlement and is a "sustainable" location, in planning terms'*.
27. As detailed earlier, I have found that the appeal site before me does not adjoin, nor is it well related or connected to, either of the settlements of Brightlingsea and Thorrington, and does not represent a sustainable location. Thus, these cases referred to by the appellant are not directly comparable to the appeal scheme before me, which I have considered on its own merits and with regard to the site-specific circumstances.
28. In view of all the above, the appeal site is not within, does not adjoin, nor is it well connected to, either of the settlements of Brightlingsea and Thorrington and therefore the appeal site would not represent a sustainable location for residential development. I therefore conclude that the appeal site would not be an appropriate location for the development having regard to the development plan's spatial strategy and conflicts with Policy SP3 of the TDLP1 and Policies SPL1 and SPL2 of TDLP2, which together seek to encourage sustainable patterns of growth and direct

¹ *Braintree District Council v Secretary of State & Ors* [2017] EWHC 2743 (Admin)

² APP/1560/W/21/3281960; APP/P1560/W/3292186 and APP/P1560/W/22/3291996

development to the most appropriate locations. The proposal's conflict with these policies causes significant harm as it undermines the aims of the spatial strategy set out within the development plan. The proposal would also conflict with the Framework where it seeks to achieve sustainable development and its emphasis that the planning system should be plan-led.

Other Matters

29. The appellant states that the proposal accords with the development plan as a whole because of its compliance with the important policies for its determination, and this is consistent with the Corbett³ judgment. The appellant therefore states that in accordance with paragraph 11(c) of the Framework planning permission should be granted without delay. For the reasons given above I have found that the appeal scheme does not accord with the most important policies and thus would not accord with the development plan when taken as a whole.
30. The appellant appears to contend that the presumption in favour of sustainable development at paragraph 11(d) of the Framework applies in this case. However, the Council have confirmed that they have more than a five-years supply of housing, which has not been disputed, and I have been provided with no other evidence to suggest that paragraph 11(d) applies in relation to this appeal.
31. My attention has been drawn to an appeal⁴ decision whereby the Inspector concluded that a Council being able to demonstrate a five-year housing supply does not mean there is a cap on housing supply, and that it simply means this matter is not an issue that justifies a departure from the development plan on the basis of paragraph 11(d) of the Framework. I concur with this Inspector's findings.
32. The appellant also refers to case law⁵ in relation to how the "tilted balance" operates. However, as detailed above there is no evidence before me that the "tilted balance", as per paragraph 11(d), applies in relation to this appeal. Thus, this limits any parallels to be drawn and the weight I can give this reference in my determination of this appeal.
33. The proposed development is identified within the appeal documentation as being located within the Zone of Influence of the Colne Estuary RAMSAR and Special Protection Area (SPA) and the Essex Estuaries Special Area of Conservation (SAC), which are covered by the Essex Coast Recreational disturbance Avoidance Mitigation Strategy Supplementary Planning Document (2020).
34. Had I been minded to allow the appeal I would have carried out an appropriate assessment (AA) of the effect of the proposal on the integrity of the RAMSAR, SPA and SAC. However, as the proposed development is unacceptable for other reasons, an AA is unnecessary as doing so would not change the outcome of the appeal.

Planning Balance

35. The proposal would support the Government's objective of significantly boosting the supply of housing. There would also be economic benefits arising from the construction of the development and ongoing economic benefits from future

³ *Cornwall Council v Corbett* [2020] EWCA Civ 508.

⁴ APP/P1560/W/22/3301013

⁵ *Cheshire East vs SSCLG & Renew Ltd* [2016] EWHC 571 (Admin)

occupiers spend in the area. However, the extent of these benefits would be limited by the scale of the development for one dwelling.

36. I note the appellant has made reference to additional Council Tax revenue as a benefit of the appeal proposal. The Planning Practice Guidance is however clear that it would not be appropriate to make a decision based on the potential for a scheme to raise money for the local authority or other government body. As such, Council Tax contributions do not add weight in favour of the appeal scheme.
37. I note the appellant's comment that they intend to deliver a highly efficient and sustainable dwelling. No energy statement has been provided to demonstrate the energy efficiency level that the proposed dwelling would achieve and this limits the weight I can attribute to this matter in favour of the appeal proposal.
38. Furthermore, the proposal would provide an opportunity to increase the overall biodiversity of the site. Again however, limited details have been provided at this stage and given the scale of the development site, I attribute this matter limited weight in favour of the appeal.
39. The appellant has also referred to benefits arising from open space contributions which would be provided via a unilateral undertaking (UU). Whilst I note that the Council have not requested any contribution towards open space provision, in any case I have not been provided with a signed / completed UU. As such, I attribute very limited weight to this matter.
40. In view of the above, whilst I have found that there would be benefits arising from the appeal scheme, these benefits do not outweigh the clear conflict with the development plan in terms of its policies relating to the appropriate location of housing development within the district.

Conclusion

41. The proposal conflicts with the development plan taken as a whole and there are no material considerations, including the Framework, to suggest the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal is dismissed.

R Major

INSPECTOR