



Appeal Decision

Site visit made on 4 December 2024

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2024

Appeal Ref: APP/P1560/W/24/3342836

Land at 82 Jaywick Lane, Clacton-On-Sea CO16 8BB

- 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 Thompson of CTF Care Ltd against the decision of Tendring District Council.
 - The application Ref is 19/01915/FUL.
 - The development proposed is the erection of 9 bungalows with associated access, car parking, landscaping and other associated development.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by Mr Thompson of CTF Care Ltd against Tendring District Council. This is the subject of a separate Decision.

Preliminary Matters

3. The proposal was submitted in 2019, with its original description being for 9 bungalows and 12 assisted living apartments. The application form before me is dated 18th February 2022, with the description being 'erection of 15 bungalows with associated access, car parking, landscaping and other associated development.' That proposal was further amended in February 2023, for the erection of 9 bungalows as in the header above. This was the proposal before the Council at the time of its decision and cited on the decision notice, and I have therefore used the same description.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the area; and
 - whether the proposed development should provide for affordable housing.

Reasons

Character

5. The site comprises a broadly level rectangle alongside the western edge of a series of bungalow developments built in the past few years. Its access comes

off Jaywick Lane through one of these sites, 'the 2016 permission'¹. Arable fields surround its other sides, forming the majority of an allocated site known as Rouses Farm, a residential led mixed use development for up to 950 dwellings and a school². The appeal site also lies within this allocation, within the Clacton Settlement Development Boundary. The principle of residential development on the appeal site is therefore supported by Policies SPL 1 and SPL 2 of the 'Tendring District Local Plan 2013-2033 and Beyond' Section 2 (TDLPS2).

6. The main view of the proposal on arrival to the site would be of a long and dominant expanse of built form and hardstanding, incorporating up to 10 parked cars in stretches of 2 or 4. The 5 detached bungalows would be of identical design (with mirror image orientations), and thus would be monotonous with limited points of interest in the streetscene. This poor visual relationship would be exacerbated by the lack of front doors on their frontages, and the lack of depth to their uniform set-back. Indeed, I noted this arrangement on the adjacent row of 4 existing bungalows, which I found limited in character for this reason.
7. It would thus be a restricted and stark layout. The landscaping strip on the northern side of the access road would be a positive element in acting to soften the overall view somewhat, but would not mitigate the hard expanse opposite it. Only minimal landscaping could be achieved in the narrow strip in front of each dwelling as they would be set so close to the road, and because of the cumulative width of the driveways. Viewpoints along this stretch of the site have particular importance because a pedestrian link is proposed through to the larger site beyond, once constructed. It may therefore become a highly used route.
8. The appeal scheme design takes clear cues from the existing adjacent series of bungalow developments, which would create consistency. There are positive elements to the design, layout, and traditional materials palette and detailing of those bungalows. However, they also present limited frontage set-back and vegetation to break up the high proportion of hardstanding, fencing, and built form massing, notwithstanding that some vegetation will mature further. This does not reflect the layout of the wider area with evident set-backs, albeit often also lacking significant soft landscaping.
9. The parties disagree as the extent to which the development plan policies and the National Planning Policy Framework ('the Framework') and other guidance has changed since those bungalows were approved between 2017 and 2020³, in considering whether the same design parameters are justified. In particular, the Tendring District Local Plan 2013-2033 and Beyond' Section 1 (TDLPS1) was adopted in January 2021, and the TDLPS2 was adopted in January 2022, but the appellant submits that its policy content is similar to that in place prior.
10. However, I agree with the Council that the existence of a permitted scheme does not necessarily indicate its design standards to be suitably high such that subsequent developments should follow similar parameters. Moreover, the existing bungalows provide more visual relief than would those proposed, including having more variations in individual design and orientation, front

¹ 16/01520/FUL: 48 supported living apartments and 21 bungalows

² 17/01229/OUT approved in January 2024

³ 17/02148/FUL and 20/00780/FUL

doors predominantly facing the street, and driveway parking being only single or double width, not quadruple. I thus find the appeal proposal to be sufficiently different to the existing bungalow schemes, with its own specific design issues, that I do not find it necessary to consider this policy comparison in any further depth.

11. The appellant points to guidance on page 61 of the Essex Design Guide as a Supplementary Planning Document which identifies that; *"In order to enclose space effectively, buildings will normally be sited at the back edge of the public footway. This will require car parking to be sited between houses... This has the advantage of reducing the visual impact of on-site parked cars."* However, in this instance, the visual impact of the parked cars would be significant. Furthermore, page 61 goes on to state that *"one or two dwellings in a street sequence may be set back to create an incidental feeling of extra space and greenery."* This has not been achieved within the appeal site.
12. The appellant considers that the visitor parking is unnecessary and excessive, and that using those spaces to extend the landscaping would be more beneficial. However, such an amendment has not been subject to consultation, such that I have no evidence as to the resulting potential parking impact. In any event, I do not find that additional landscaping along the road's northern side would sufficiently mitigate the design issues to its south.
13. Overall therefore, I find that the proposal would cause moderate harm to the character and appearance of the area. It would conflict with the TDLPS1 Policy SP7 and the TDLPS2 SPL3, which together and amongst other matters, require that all new development must meet high standards of urban and architectural design and make a positive contribution to the quality of the local environment, with reference to siting, scale, massing, and form, include parking facilities that are well integrated as part of the overall design, and have hard and soft landscaping designed as an integral part of the development.

Affordable Housing

14. The TDLPS2 Policy LP5 states in summary, that for development proposals involving the creation of 11 or more homes, 30% should be made available for use as affordable housing subject to viability testing. The Framework paragraph 65 identifies that provision of affordable housing should not be sought for residential developments that are not major developments.
15. The Council considers that as the appeal site forms an integral part of the larger bungalow development, the cumulative number of homes provided would be more than 11, and thus the Policy LP5 threshold would be triggered. No affordable homes are offered and there has been no viability testing.
16. The Policy LP5 does not refer to aggregated sites, but also does not preclude them. This absence does not prevent me from the ability to find the site to be part of a development proposal on the wider site.
17. The Council cites the well-established 'tripartite test' from the *Westminster* case law⁴ in considering whether the appeal proposal forms phased development as part of a larger site. These tests relate to ownership, or whether the site is a single planning unit, or whether the development should be treated as a single development. The application of these tests are a useful

⁴ R (Westminster City Council) v First Secretary of State & Brandlford Limited [2003] JPL 1066

guide, albeit not definitive as I have assessed the proposal within its own context.

18. The appellant states there is no relationship between the appellant for this current appeal and the companies who developed the previous series of bungalows and/or gained the non-bungalow permissions. I accept that a developer can only develop the site under its control. However, if a wider landholding is incrementally offered for sale to different developers, then the responsibility for that strategy lies with the landowner. This does not therefore in itself, absolve the potential consideration of the site as a single entity.
19. Furthermore, the appellant states they have had no interest or control in relation to those other bungalows, but I find this inconclusive. The *Westminster* judgement suggests that such an interest can include where companies may be different in name, but may have the same registered address, the same directors, and the same shareholders. The Council states that while they have no verified details of site ownership, the appellant's personal name of Mr Thompson is the same as the 2016 permission applicant Mr David Thompson. Without the first name of the applicant for this appeal, this is somewhat circumstantial. However, the appellant did not directly refute this point, nor provide any detailed confirmation evidence, for instance through title deeds or Companies House details of key personnel.
20. I do find no evidence to suggest a deliberate intent to section up the wider site to avoid the affordable housing threshold. However, the existing 21 dwellings under the 2016 permission were part of a larger single development, albeit the part not built was for a care home and not dwellings as now proposed. The red line access into the appeal site remains through the middle of the original site. The red line also incorporates the road serving the row of 4 bungalows facing the appeal site, which cannot be accessed without this land. I thus find that the appeal site forms part of the same planning unit as the 2016 wider site.
21. The appellant suggests that if the site should be seen as one entity with those surrounding, then affordable housing provided elsewhere as part of the 950 dwelling allocation should be taken into account. However, that larger site does not have the same linked planning history as I have outlined here, and so I do not find it to be an aggregated site.
22. I have limited details before me as to why the adjacent permissions for 8 bungalows (17/02148/FUL) and for 10 bungalows (20/00780/FUL) were not required to make any contribution towards affordable housing. Nevertheless, those sites were materially different to the appeal site as they were not included within the red line of the 2016 permission, and so I do not find this to be determinative to my decision.
23. The 48 bed assisted living scheme approved within the 2016 permission, and the later care home permission⁵, are materially different uses to this proposal for individual dwellings. The lack of any affordable housing in relation to those permissions therefore does not support the principle of no affordable housing for the appeal proposal.
24. I conclude that the appeal site forms part of a larger development proposal, and thus is also a 'major development' as defined by the Framework. There is

⁵ 18/01331/FUL: 100 bedroom residential care home, approved 2019

an identified need for affordable housing in the area. The overall number of dwellings within the larger development proposal is above the TDLPS2 Policy LP5 threshold, and so the appeal proposal is required to provide affordable housing. As none has been provided and with no viability evidence to justify this approach, I find significant harm in this regard, and the proposal conflicts with Policy LP5.

Other Matters

Benefits and fallback position

25. The Framework seeks to significantly boost the supply of homes, and provides support for the development of windfall sites. Nine units of additional housing is therefore a relatively moderate scale contribution to the housing supply, although there is no dispute that the Council can demonstrate more than a 5 year supply. There would also be small-scale economic and social benefits associated with the construction and occupation of the dwellings.
26. The site is currently predominantly hardstanding, and there would thus be small-scale biodiversity benefits from the landscaping proposed, plus additional biodiversity measures could be required via condition.
27. Two fall-back positions are available to the appellant. The 2016 permission assisted living scheme is extant and so could be constructed. The care home 2019 permission is a potential further fallback in that conditions were discharged, and the appellant suggests it could easily be renewed.
28. With regard to character, the road layout of the appeal proposal is very similar to the fallbacks. They would be significantly more monolithic, and with significantly more car parking, and thus have a bigger visual impact. However, those design elements integrally relate to their function, and it has not been suggested that in isolation they would harm the character of the area or appear untoward as a result. As such, they do not indicate that the same parameters should be suitable for the appeal proposal.
29. I can infer that the fallbacks would create more traffic movements, but there is no information before me to suggest that this would cause specific harm, or that they would be more harmful than the appeal proposal in any other way. There is also no specific comparison between the benefits of care home or assisted living provision as an area of need within the local housing supply, compared to the benefits of fulfilling a need for 3 and 4 bedroom market housing bungalows. Overall therefore, I find the fallbacks to be material considerations, but with no convincing demonstration that they would cause more harm or provide fewer benefits than the appeal proposal overall. The fallbacks therefore do not lend support in favour.

Special Protection Area

30. The Colne Estuary Special Protection Area (SPA) is afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). The site is approximately 3km away from the SPA and so lies within its Zone of Influence. There are likely significant in-combination effects on this site resulting from increased recreational visitor pressure from new housing development within this zone. The Council thus requires mitigation measures to be secured for new dwellings within it. No mitigation measures have been provided.

31. Since the refusal of the application, the Council has amended its procedure relating to habitat mitigation, and now considers that the reason for refusal imposed in this regard can be addressed by suitably worded planning conditions. As the Competent Authority, I may only grant permission after having ascertained for myself that the proposed development would not affect the integrity of this and any other protected site. However, as I am dismissing the appeal on other grounds, I do not need to consider further whether a planning condition would adequately mitigate the proposal's effect.

Flood Risk

32. The 4th reason for refusal relates to a failure to demonstrate the development's suitability for infiltration of surface water and flood storage, or sufficient drainage capacity. Following submission of such information alongside the appeal, the Council also now considers that this can be addressed by suitably worded planning conditions. I see no reason to find otherwise.

Play Space Improvements

33. The 5th reason for refusal identified that no Unilateral Undertaking was provided to secure a financial contribution toward play space improvements, as required in accordance with the TDLP2 Policies HP5 and Policy DI1. The Council no longer seeks to defend this reason for refusal due to a more recent reserved matters application for 475 dwellings at Rouses Farm, which includes a large area of public open space with a locally equipped play area in reasonable proximity to the appeal site.
34. The appellant has questioned whether the required contribution would have met the provisions of the CIL Regulations 2010, the Framework, and the Planning Practice Guidance. They also reference that the appeal proposal would not meet the Policy HP5 threshold of 11 dwellings, which I have addressed above. However, as play space improvements no longer forms a reason for refusal by the Council and as I am dismissing the appeal on other grounds, I do not find it necessary to conclude on this matter.

Planning Balance and Conclusion

35. I give moderate weight to the proposal's contribution to the housing supply, and to its local economic and social benefits, and minor weight to the biodiversity benefits and to the potential fallback position on the site. In opposition I give moderate weight to the harm to the character and appearance of the area, and significant harm to the lack of affordable housing provision. Overall, the harm resulting from the proposal would not be outweighed by its benefits.
36. The proposal would conflict with the development plan taken as a whole. With no material considerations indicating otherwise, for the reasons given above I conclude that the appeal is dismissed.

L N Hughes

INSPECTOR