
Appeal Decision

Site visit made on 3 January 2025

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12th February 2025

Appeal Ref: APP/P1560/W/24/3344547

The Oaks, Clacton Road, Weeley, Essex, CO16 9EF

- 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 LNT Care Developments against the decision of Tendring District Council.
 - The application Ref is 23/01287/FUL.
 - The development proposed is Demolition of existing dwelling and erection of a two storey 66no. bedroom care home for the elderly with ancillary buildings, landscaping and car parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Government published a revised version of the National Planning Policy Framework ('the Framework') on 12 December 2024. I have considered its amendments against the December 2023 version before the parties for their appeal evidence, and updated their cited paragraph numbers where necessary. However, I have not gone back to the parties for comment, as the Framework changes are not substantive or determinative to the outcome of this appeal.

Main Issues

3. The main issues are the effect of the proposal on:
 - the character and appearance of the area;
 - protected species, with particular regard to Great Crested Newts; and
 - highway safety, with particular regard to the provision of a financial contribution towards a waiting restriction scheme to prevent on-street car parking.

Reasons

Character and appearance

4. The appeal site contains two detached two storey dwellings, 'Cuckoos Nest' and 'The Oaks'. Together, they are set within expansive and deep grounds, which adjoin open fields to the rear of the site. The site's frontage onto Clacton Road is formed with a low post and rail fence as well as a mix of hedgerow and trees, whilst the site's side and rear boundaries generally consist of mature vegetation. The appeal site is located outside any designated settlement boundary.

5. This part of Clacton Road has a semi-rural character formed by a pattern of ribbon residential development, interspersed with occasional residential cul-de-sacs and areas of open countryside. There is variation in the design and external materials used in dwellings, which are a mix of bungalows, semi-detached and detached dwellings, set back varying distances from the highway with either landscaping or ornamental walls and fences separating the front gardens from the highway.
6. The proposal would have a very large footprint which would spread across much of the width of the site and project noticeably further rearwards than the built form on adjoining sites. The appellant indicates that the scale of the proposed building is necessary for optimum operational requirements and financial viability. I also acknowledge that the H shape footprint would enable a courtyard recess which would provide some relief to the overall mass of the building. However, when viewed from Clacton Road, its elongated width would be at odds to the much finer grain of development found within nearby plots. Whilst various features, including the central gabled entrance, would be employed to visually break the mass of the building, its stretched form across the site would be a prominent and uncharacteristic feature given the local pattern of development.
7. The large expanse of car parking would spread across much of the width of the site. Whilst the boundary wall, hedgerow and tree coverage on the site's boundary would filter views, it would be a dominant and urbanising feature which would be at odds to the semi-rural character of the area. Whilst other nearby properties may also have wide areas of hardstanding within their frontages, the sheer amount of hardstanding, when combined with the proposal's large footprint, would cover a substantial area of the plot. I find that the proportion of the site which would be covered by built form and hardstanding would create a cramped form of development which is indicative of overdevelopment.
8. An appeal¹ was previously allowed at the appeal site for the erection of four self-build or custom-built houses. A subsequent planning permission² at the site was granted for the erection of seven dwellings, garage buildings and associated development following demolition of two existing dwellings. An appeal³ was also recently allowed for a backland scheme of five detached houses at land to the rear of The Gables and The Towers. However, from the submitted evidence, each of those developments involved detached properties, which better fit with the prevailing pattern of development, than the somewhat monolithic proposal before me.
9. The Council has no objection to the materials proposed or the architectural detailing, including the focal front elevation, gable element and canopy areas. However, the impact of the development, when viewed in its context, due to its size and bulk, combined with the quantum of hardstanding would cause harm to the semi-rural character and appearance of the area.
10. Views from the open countryside to the rear of the site would be limited given the boundary landscaping and proposed planting, and I do not find harm in this regard.
11. However, for the reasons outlined above, the proposal's built form would cause harm to the character and appearance of the area. For this reason, it would not

¹ APP/P1560/W/20/3246370

² 22/00620/FUL

³ APP/P1560/W/24/3338036

comply with Policy SP7 of the Tendring District Local Plan 2013-2033 and Beyond - North Essex Authorities' Shared Strategic Section 1 Plan (2021) (TDLP1) and Policies SPL3 Part A and PPL 3 of the Tendring District Local Plan 2013-2033 and Beyond – Section 2 (2022) (TDLP2). Amongst other things, the policies require development to meet high standards of architectural design whilst responding positively to local character.

Protected Species

12. The appellant's Preliminary Ecological Appraisal (PEA) has been produced following a site visit and field survey which include a habitat classification survey. It includes a description of the habitats on the site and provides comments on the likelihood of protected and priority species being present on the land.
13. The PEA notes that a reasonably sized, lined garden pond is located within the appeal site, and a further six ponds are present within 250 metres from the appeal site. It outlines that the appeal site supports suitable habitat for Great Crested Newts (GCN), via areas of scrub, grassland with tall herb, and lines of trees. Therefore, there is potential for GCN to be utilising these habitats within the site.
14. GCN are a European Protected Species (EPS) protected by the Regulations⁴ and a precautionary approach should be taken. The Circular⁵ is clear that it is essential the presence or absence of protected species, and the extent that they may be affected by the proposal, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
15. As the pond within the site has average suitability to support GCN, the PEA advises that it must be subject to a presence/likely absence survey, to comprise an eDNA survey. The appellant's assessment is clear that the potential impacts on GCN cannot be determined without further surveys, yet these have not been undertaken.
16. The PEA sets out that, as an alternative to surveys, the District Level Licensing scheme could be used, whereby the developer makes a financial contribution to off site habitat compensation instead of applying for a separate licence or carrying out individual surveys prior to a planning application. The evidence does not include an impact assessment and conservation payment certificate (IACPC) to indicate that the appellant has entered into the licensing scheme or that a financial contribution has been made. Natural England advice⁶ suggests that within an amber zone, the appellant should submit an assessment of the risk to GCN, and any measures which will be taken to safeguard against significant risks. The evidence does not include these details.
17. Therefore, on the basis of the evidence that is before me, I consider that the value of the appeal site for GCN has not been properly established. In particular, it is unclear whether GCN are present, what effect the development may have on them, and what mitigation measures may be needed to address any impacts.
18. The survey cannot be secured by planning conditions, as this approach would not comply with guidance set out within the Circular. The need to ensure that

⁴ Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981 (as amended).

⁵ Paragraph 99 of ODPM Circular 06/2005

⁶ Great crested newts: district level licensing for local planning authorities (2022)

ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. No such circumstances have been demonstrated in this case and it is therefore a reasonable expectation that the survey be carried out prior to any grant of planning permission.

19. Whilst the previous approval on the site may have enabled the removal of the pond, in the absence of further surveys, I have insufficient information to assess the extent of the impact on GCN and whether the need for or public benefits of the proposed development would outweigh the potential harm.
20. Consequently, I am unable to determine the effect of the proposal on GCN and cannot determine that it would not lead to significant harm. As such, I must take a precautionary approach and find the proposal would conflict with the Framework which states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. Without details of measures to avoid, mitigate or compensate for adverse effects, the proposal conflicts with Policy PPL4 of TDLP2 which requires a suitable mitigation plan prior to planning permission being granted. There would also be conflict with Policy SP7 of the TDLP1 and SPL3 of the TDLP2 insofar as they seek to conserve and enhance ecological value and biodiversity.

Highway safety

21. The main parties agree that a financial contribution of £3,500 (index linked) towards the introduction of a future waiting restriction scheme on the highway in the vicinity of the appeal site is necessary. The Council's reason for refusal refers to the absence of a planning obligation to secure the financial contribution.
22. I have considered this in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 and as set out in paragraph 58 of the Framework. These state that a planning obligation must be necessary to make the development acceptable in planning terms, directly related to and fairly and reasonably related in scale and kind to the development.
23. Following consultation with Essex Highways Authority, the Council confirm that based on the submitted evidence and data within TRICS, there is no objection to the quantum of on-site car parking proposed. Based on the evidence before me and my own observations on site, I have no reason to conclude that the quantum of car parking provided would be insufficient for the proposal, and therefore, it seems to me, unlikely that the proposal would lead to additional on-street car parking. Therefore, justification has not been provided that the contribution is necessary to make the development acceptable and I have not been directed to a relevant policy that requires a contribution for this purpose to be submitted in this case. It has not been demonstrated that the statutory tests of paragraph 58 of the Framework would be met in this regard.
24. For these reasons, the proposal would comply with Policies CP1 and SPL3 of the TDLP2, insofar as the policies require that access to the site is practicable and the highway network will, following any required mitigation, be able to safely accommodate the additional traffic the proposal will generate and not lead to severe traffic impact. The proposal would also comply with the requirements of the Framework which outline that development should only be prevented or refused on

highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Considerations

25. The Framework seeks to significantly boost the supply of homes. Paragraph 73(d) supports the development of windfall sites, and paragraph 124 supports the effective use of land.
26. The proposal would provide 66 residential care home beds for older people, providing both general purpose and dementia care. The average age of future residents of the care home would be 80+ years and each would be assessed as being in need of 24-hour care and supervision.
27. I also note that the care home would be compliant with necessary modern standards, and would provide amenity areas and services including a cinema and hairdressers. The appellant would apply for Care Quality Commission (CQC) registration, and it is stated that all of the appellant's other care facilities are highly rated by the CQC. The proposal would also provide generous, high quality external amenity areas which could be utilised by both residents and staff.
28. The appellant's Planning Need Assessment identifies a 'demonstrable need' for 489 additional standard wetroom care home beds within the market catchment area and 698 within the local authority catchment area. These shortfalls are anticipated to increase by 2036.
29. Furthermore, the appellant indicates that no sites are specifically allocated for the provision of care homes within the local plan. Suitable sites are increasingly difficult to find due to competition and demand from residential developers who, it is indicated, are able to pay higher land values. Where care homes are provided, this frees up houses within the local market, including larger houses suitable for families. Furthermore, care home provision can save on adaptation of unsuitable housing and can assist in reducing pressure on in-home care provision. Care home residency can also be positive in reducing social isolation for older people. The proposed care home will contribute to the mix of housing within the immediate area and contribute to a socially inclusive community.
30. The need to provide housing for older people nationally is critical as set out in the National Planning Practice Guidance (PPG). There is no doubt that there is a clear and pressing need for this type of development in Tendring District. Consequently, the cumulative benefits associated with the provision of a care home providing general needs and dementia care are afforded substantial weight.
31. Compliance with the development plan in relation to issues such as landscaping, amenity of neighbouring occupiers, and flooding are expectations for all development. These weigh neither for nor against the proposal and are therefore considered neutral in the planning balance.

Planning Balance

32. The proposal would provide 66 care beds, addressing a need for this type of residential accommodation in the Tendring area. Given the significant uplift resulting from the use of the revised standard method, the housing land provision may have fallen significantly. It is therefore possible that the Council may need to find more housing land dependent on changes to national policy.

33. If the Council could not show a 5 year housing land supply, paragraph 11(d) of the Framework would be engaged. This requires that planning permission be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
34. Footnote 9 explains that the policies referred to, which are relevant to this appeal are paragraphs 84, 110, 115, 129, 135 and 139. The Framework does not impose a blanket restriction on development outside defined settlements, nor does it explicitly prevent the use of such boundaries. The appeal site is located in close proximity to existing dwellings, near to the settlement boundary. It is not isolated and so the countryside location does not conflict with paragraph 84 of the Framework. I note that Policy LP 10 of the TDLP2 states that the Council will consider, on their merits, proposals for the development of new care homes on land outside of settlement development boundaries where they will still support a sustainable pattern of growth in the District. In this regard, paragraph 110 of the Framework identifies that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making. In this instance, the site connects to Weeley Heath and Little Clacton via footpaths and street lighting, and is in proximity to a number of services and facilities, in a relatively accessible location.
35. The proposal would create employment, estimated by the appellant to be between 50-60 jobs. The development would also give rise to some economic benefits during the construction phase and provide support to local services. Therefore, the economic benefits are afforded moderate weight.
36. The indicative landscape design includes the retention of the majority of trees, new hedgerow and herbaceous planting. The scheme also includes meadow grassland to the rear, flowering lawn and grassed areas within the surrounding landscaping. Due to the overall size of the proposal I afford this benefit modest weight.
37. The benefits of the proposed development would include utilising a previously developed site for care home use within a borough with limited land and resources. As outlined above, the provision of a care home within an area with an ageing population, and where there is strong unmet demand, is afforded substantial weight.
38. However, the proposal would not achieve the aims of paragraphs 129, 135 and 139 which together support development that makes efficient use of land taking into account the desirability of maintaining an area's prevailing character and setting, is visually attractive as a result of good architecture and layout and accords with the National Design Guide. The proposal would fail to maintain the area's prevailing character and setting (129d) and would not add to the overall quality of the area, failing to be sympathetic to local character. (135a, 135c).
39. In addition, Paragraphs 192 and 193 of the Framework sets out the principles for how decisions should protect and enhance biodiversity. Policies SP7 and SPL3 of the TDLP1 and Policy PPL4 of the TDLP2 are consistent with the Framework. In view of my conclusions on the effect on a protected species, the appeal proposal conflicts with both the Framework and the development plan. Having regard to the

statutory provisions protecting the species, I attach considerable weight to that potential for harm.

40. As a result of the potential ecological harm and the harm to the character and appearance of the area that I have identified, the adverse impacts of the development and the conflict with the development plan to which I have afforded considerable weight would significantly and demonstrably outweigh the benefits outlined above.
41. The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.

Conclusion

42. For the reasons given above the appeal should be dismissed.

B Pattison

INSPECTOR

