



Appeal Decision

Site visit made on 28 January 2025

by **L Francis BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25th April 2025

Appeal Ref: APP/P1560/W/24/3343955

Land at Tenpenny Farm, North of St Osyth Road, Alresford CO7 8DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr N Sibbons against the decision of Tendring District Council.
 - The application Ref is 23/01277/OUT.
 - The development proposed is application for outline planning permission for new commercial units.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted an outline application with detailed plans in relation to access, appearance, layout and scale. I have therefore determined the appeal on the basis that only landscaping would be a reserved matter.
3. The planning application form specifies commercial units. The accompanying planning statement states “residential friendly E Class use where the commercial operation of office and controlled light industrial may operate alongside residential”. Whilst I appreciate the Council’s description of development referred to Class E(c) and (g), there is no evidence before me that the appellant had provided written confirmation of their agreement to this description. In the appeal submission, the appellant has refined the proposal to Class E(c)(e) and (g). This would mean that the buildings could be used for the purposes of financial and professional services, health services, offices, research and development, and some industrial processes.
4. What is considered at appeal should be essentially the same scheme that was considered by the local planning authority. I am satisfied that the clarification of the proposed uses would not result in a substantially different scheme to that originally considered and that no party has been prejudiced giving rise to any procedural unfairness. I therefore proceed to determine the appeal on the basis of the proposed commercial uses as being within Class E(c)(e) and (g).
5. The National Planning Policy Framework (the Framework) was updated in December 2024, during the consideration of this appeal. Insofar as is directly relevant to the appeal, there are no substantive changes. Neither main party were asked for their views and no parties have been prejudiced as a result.

Main Issues

6. The main issues are:

- whether the appeal site would be a suitable location for the proposed development with regard to the Council's strategy for the location of development;
- the effect of the proposal on the character and appearance of the area including the effect on the protected oak trees;
- the effect of the proposal on the living conditions of neighbouring residents with regard to noise and disturbance, and light pollution; and,
- the effect of the proposal on the ecology and biodiversity of the site and its surroundings.

Reasons

Location

7. Policy SP3 of the Tendring District Local Plan 2013-2033 and Beyond Section 1, adopted 2021 (TLP1) sets out the strategic spatial strategy for North Essex. It states that existing settlements will be the principal focus for additional growth. It also states that it will be accommodated within or adjoining settlements according to their scale, sustainability and existing role within the district and North Essex. It then goes on to suggest support for diversification of the rural economy beyond main settlements. However, both aims are delivered to maintain the distinctive character and role of settlements and the conservation and enhancement of the natural environment.
8. The Tendring District Local Plan 2013-2033 and Beyond Section 2, adopted 2022 (TLP2) Policy SPL1 sets out the settlement hierarchy in with a view to directing growth so as to avoid unsustainable developments in poorly accessible locations. Alresford is categorised as a Rural Service Centre in the District's settlement hierarchy. Settlements identified by Policy SPL1 all have a Settlement Development Boundary (SDB). The appeal site lies outside of the Alresford SDB. Policy SPL2 states 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 Policy SPL1 and any other relevant policies in the plan. The supporting text to Policy SPL1 explains how the policy will be implemented, reiterating the point that development will be of a scale that is proportionate, achievable and sustainable for each of the settlements concerned having regard to the existing size and character of each settlement; their more limited range of jobs, shops, services and facilities and any physical, environmental or infrastructure constraints.
9. Regarding the Council's approach to employment allocations, TLP2 Policy PP7 states that proposals for employment related development on land outside of these allocations will be considered having regard to their potential to support economic growth in the district and the requirements of other policies in the plan. TLP2 Policy PP3 primarily directs retail development to village and neighbourhood centres.
10. Within Alresford, there is a defined village centre located next to the train station which contains a small selection of shops and services. There is a second commercial centre near the appeal site, which contains several small shop units, a restaurant and take aways and is within the SDB. The appellant indicates there is also commercial

office space above the shop units. I have no detail before me regarding the occupancy level of the first-floor commercial units, or any substantive evidence regarding the demand for additional commercial floorspace in this location.

11. TLP2 Policy PP4 sets out the criteria under which an impact assessment would be required for office, retail and leisure development. In this location, any proposal for these uses of 250 square metres or more would need an impact assessment. The appellant does not consider this policy to be in line with the Framework. Whilst the 2012 Framework set out a requirement for impact assessments for retail, office and leisure development, the current Framework does not include office use in this requirement. The Framework, at paragraph 94, states that *“when assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate locally set floorspace threshold”* (if there is no locally set threshold, the default threshold is 2,500sqm of gross floorspace). Nevertheless, Policy PP4, due to the proposed commercial floorspace, requires an impact assessment to support a planning application for commercial use in this location.
12. Whilst I accept PP4 does not reflect the exact wording of the Framework, it clearly sets out a threshold at which, in this location, the Council considers would potentially give rise to impacts on the viability of other commercial development within other settlements. As such, I consider this presents a reasonable benchmark for gauging the scale and potential effect of commercial development in this location. Given the 741sqm proposed floorspace, along with the site area and extensive parking, I do not regard the proposal to be small scale in the context of the village.
13. In terms of its accessibility as a location, although close to a main road, the appeal site is over 500m from Alresford railway station. I do not consider an ‘as the crow flies’ measurement of distance would be a reasonable interpretation in this context, given that in practical terms, people would have to travel to the appeal site along existing streets. As the Council indicates, this would result in a distance travelled of over 500m. The appeal site, due to its location outside the SDB and location over 500m from the railway station, would not comprise an ‘edge of centre’ or ‘out of centre’ location as defined by Policy PP4.
14. The appellant states there is a lack of space allocated in the local plan for small local commercial uses, including in Alresford. My attention has been drawn to paragraph 93 of the Framework which states that the sequential approach should not be applied to applications for small scale rural offices or other small scale rural development. The TLP1 and TLP2 would have been subject to examination against the Framework which would have contained the policy regarding small scale rural development. I cannot therefore conclude that the development plan diverges from the Framework in this respect.
15. It is clear there is support on a case-by-case basis for economic development in the district, but this is subject to compliance with other policies in the plan. In terms of the proposal before me, the Council sets out clear reasons for not allocating land for employment within Alresford in terms of the aims of its position in the settlement hierarchy and its size, character and facilities within the settlement, in order to maintain the distinctive character and role of settlements in the district. In any event, I have found that the scheme would not equate to small scale rural development.

16. The development plan presents a clear spatial strategy for the location of new development in rural areas, focusing on growth within existing settlements. There is limited evidence before me of a need for commercial floorspace of this scale beyond the SDB and not in a location which is identified by the Council's strategy for the location of development. I conclude therefore that the appeal proposal would conflict with the Council's strategy for the location of development as set out in Policy SP3 of TLP1, Policies SPL1, SPL2 and PP4 of TLP2 and ALRES1 (A) of the Alresford Neighbourhood Plan 2018-2033 (ANP). Taken together, these policies set out the spatial strategy for North Essex, identify a settlement hierarchy and SDBs, along with setting out the criteria for assessment of schemes involving office, retail and leisure uses in terms of their potential effect upon town centres.

Character and Appearance

i) Character

17. The appeal site is located at the outer reaches of Alresford and comprises part of a maintained grass field. There is commercial development to the east and south-east of the site, with open countryside beyond. There are some residential dwellings to the south and south-west, along with a commercial nursery further west beyond the line of protected oak trees. The proposed commercial use would be analogous with the character of the area in terms of its location nearby other commercial uses. Whilst there would be some encroachment into the countryside it would be between two similar forms of development. What would remain of the field beyond the appeal proposal would ensure that the characteristic of built form being surrounded by countryside would remain.

ii) Appearance

18. Layout and access are subject to detailed consideration, with only landscaping as a reserved matter. The planning application did not state that the layout plans were indicative only. I also note the Planning Practice Guidance¹ (PPG) states that "where details have been submitted as part of an outline application, they must be treated by the LPA as forming part of the development for which the application is being made".
19. I note the appellant's view regarding potential amendments to the extent of car parking, along with the form and width of the road. However, that is not what is proposed. I shall therefore treat the layout, including the car parking and internal road, as fixed, and determine the appeal on the details before me.
20. Given that landscaping would be a reserved matter, there would be opportunities to soften the boundaries of the site, even though the indicative areas for landscaping around the road, buildings and car park shown on the plans would be restricted to small strips of land. Whilst there would be a degree of visual screening resulting from a landscaping and planting scheme, it would potentially take several years to establish.
21. The extent of hardstanding introduced by the proposal in the form of the wide access road and 64 car parking spaces set in front of the commercial buildings would be a dominant feature with a regimented layout. Even though it would be set back from St Osyth Road, the development would be visible through the access adjacent to High Elms. Whilst I agree with the Council that the appearance of buildings themselves

¹ Ref 21a-005-20190723

would be acceptable, this would not overcome the harm to the appearance of the area caused by the dominance and scale of the car park and access road.

22. The western boundary of the site contains a row of oak trees which are protected by a Tree Preservation Order (TPO). The oaks are of substantial size and contribute significantly to the landscape of the area. Although the appeal proposal would not involve the removal of any of the trees, the drawings show that there would be a building, hardstanding and the cycle store reasonably close to the western boundary. This would have the potential to encroach into root protection areas or beneath canopies.
23. No arboricultural assessment has been provided with the appeal. I have no detail before me to show the canopy spread, root protection areas and any necessary incursions, construction methodology or detail of any necessary pruning or other work. Given the significant contribution the trees make to the character and appearance of the area, it would be necessary to understand any potential effect upon the trees prior to any planning permission being granted. However, given the degree of uncertainty as to the magnitude of risk to the trees or potential mitigation, I do not consider the matter can reasonably be dealt with by planning condition.
24. Notwithstanding my conclusions regarding the effect of the proposal on the character of the area and the detailed design of the buildings, I conclude that it would have a harmful effect on appearance of the area due to the extent of the access road and car park. The proposed landscaping would not mitigate the harm identified. In the absence of sufficient detail regarding the effect of the proposals upon the protected oak trees, I cannot conclude that the long-term viability of the trees would not be harmed.
25. The proposal would conflict with TLP1 Policy SP7, TLP2 Policies SPL3 and PPL3 and Alresford Neighbourhood Plan (ANP) Policy ALRES7. Taken together, and amongst other things, these policies seek to protect trees and woodlands, maintain or enhance local character and site features of landscape, ecological and amenity value, and protect existing habitats. They require new development to respect or enhance local landscape character and state that the Council will refuse planning permission for any proposed development which would cause overriding harm to the character and appearance of the rural landscape.

Living Conditions

26. The row of dwellings along High Elms has rear gardens which abut the southern boundary of the appeal site. There would be clear views of the appeal site from the rear upper floors of the dwellings, although the rear boundary wall would screen the proposals from the dwellings at street level. The drawings show tree planting along the southern boundary, along with a bin store and rows of car parking spaces either side of the access road. Whilst I note the appellant's comments regarding potential changes to the layout of the car parking, as set out above, I have determined the appeal on the basis of the detailed drawings before me.
27. Given the scale and number of commercial units, along with the large car park, there would be the potential for significant noise from everyday comings and goings in connection with the proposal. Taken together, the additional activity, through the manoeuvring and parking of cars, slamming doors, the comings and goings of users of the commercial units, along with servicing, would introduce an unacceptable level

of everyday noise and disturbance which would be harmful to the living conditions of the occupiers of the dwellings along High Elms.

28. I acknowledge the appellant's view that Class E uses are inherently compatible with residential use. However, the scale of the proposal, including car parking, is significant and has the potential, when compared with the currently undeveloped site, to introduce a harmful level of noise and disturbance. This would be unlikely to be mitigated by the visual screening that would, in time, establish through the landscape strip beyond the rear gardens.
29. Had the proposal otherwise been considered acceptable, matters including an appropriate lighting scheme to mitigate against the effects of light pollution and the design and location of refuse storage could reasonably be controlled by planning conditions. Nevertheless, this would not overcome the harm I have identified to the living conditions of neighbouring residents in terms of noise and disturbance.
30. Despite my findings in relation to the effects of light pollution, I conclude on this issue that the proposal would cause unacceptable harm to the living conditions of neighbouring residents with regard to noise and disturbance. The appeal scheme would conflict with TLP1 Policy SP7 and TLP2 Policy SPL3 insofar as they seek to protect the amenity of existing and future residents.

Ecology and Biodiversity

31. The appeal site is a managed grass field. No assessment of the appeal scheme on the ecology and biodiversity of the site and surroundings has been provided, including in relation to any effect upon protected species. I have no information before me therefore on the baseline ecological condition of the site, the effect of the appeal proposal on current biodiversity, and the level of any mitigation required to offset any harm. There is considerable uncertainty therefore as to whether the landscaped area within the proposal would be able to offer adequate mitigation.
32. The appellant also indicates that there would also be the capacity for biodiversity improvement outside the appeal site which is within the appellant's wider landholding. Whilst this may be the case, given that there is insufficient evidence before me to be able to ascertain the effect of the proposal on biodiversity, and the potential mitigation required, I do not consider that the use of a condition would be appropriate in the absence of an understanding of the potential biodiversity effects of the proposal.
33. I conclude therefore that there is insufficient information before me to provide any certainty over how ecology and biodiversity of the site and surroundings may be affected by the proposal, including to protected species. The appeal proposal conflicts with TLP2 Policy PPL4 and ANP Policy ALRES7 insofar as they require applications to be accompanied by an appropriate ecological assessment and deliver net biodiversity gains in addition to protecting existing habitats and species. Paragraph 193(a) of the Framework is clear that where significant harm to biodiversity from a development cannot be avoided or adequately mitigated then planning permission should be refused.

Other Matters

34. The Council considers the scheme acceptable with respect to highway safety, and living conditions with regard to privacy, outlook and daylight. I do not have substantive evidence to contradict the conclusions of the Council in these matters, so I see no

reason to disagree. Nevertheless, the absence of harm means these are neutral considerations in my determination of the appeal.

35. The appeal site is proximate to the Grade II listed building of Tenpenny Farmhouse, which is located to the east of the appeal site. It comprises a 17th/18th Century house with later additions and alterations, set in a large garden with extensive tree coverage to the west. The significance of the building is derived from its domestic architecture in terms of its use of brick, its elevational composition and window pattern, along with its verdant, rural setting. It is principally experienced in views from the Public Right of Way to the south of the house.
36. I have had regard to the statutory duty set out in s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) with respect to the desirability of preserving the setting of Tenpenny Farmhouse. There would be some intervisibility between the appeal site and the listed building, particularly during the winter months when leaf cover is minimal. However, given the location of the appeal proposal and the intervening commercial buildings between the appeal site and Tenpenny Farmhouse I consider the proposal would preserve the setting of the listed building and the contribution the setting makes to its significance. A lack of harm in this respect, however, does not alter my overall conclusions.

Planning Balance and Conclusion

37. The proposal would support local economic growth through the provision of new commercial uses. There would potentially be additional employment in the form of employment in construction and subsequent operation. The scheme would be built to high environmental standards and would include the potential for the installation of solar panels and air source heat pumps.
38. However, the proposal would be located beyond the SDB, and would conflict with the District's strategy for the location of development which aims to direct growth so as to avoid unsustainable developments in poorly accessible locations. The proposal would also result in harm to the appearance of the landscape including the protected trees. The scheme would harm the living conditions of neighbouring residents due to the noise and disturbance from the proposed commercial use(s) and car parking area located close to existing dwellings. There is little evidence to suggest that harm to the ecology and biodiversity of the site and its surroundings would be avoided. The benefits identified do not outweigh this harm.
39. 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. For the reasons given above the appeal should be dismissed.

L Francis

INSPECTOR