
Appeal Decision

Site visit made on 23 April 2025

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

an Inspector appointed by the Secretary of State

Decision date: 13th May 2025

Appeal Ref: APP/P1560/W/24/3349586

Land adjacent Church Lane, Weeley Heath CO16 9DN

- 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 Akers against the decision of Tendring District Council.
 - The application Ref is 23/01289/OUT.
 - The development proposed is the erection of one dwelling.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs was made by Mr Akers against Tendring District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appellant has submitted an outline application with detailed plans in relation to access and layout. I have therefore determined the appeal on the basis that appearance, scale and landscaping would be reserved matters.
4. The Council has indicated it no longer wishes to defend its reason for refusal relating to the effect of the appeal proposal on the integrity of the European Designated Sites. As such, it does not form a main issue in this appeal.

Main Issues

5. The main issues are:
 - the effect of the appeal proposal on the character of the area, including the effect on the group of protected trees;
 - whether the appeal site would be a suitable location for the proposed dwelling with regard to the Council's strategy for the location of development;
 - the effect of the appeal proposal on ecology and biodiversity; and,
 - the effect of the appeal proposal on the living conditions of future occupiers with particular regard to the outdoor space.

Reasons

Character

6. The appeal site comprises part of a small woodland located on the corner of Clacton Road and Church Lane. The woodland is protected by a Tree Preservation Order (TPO) covering the mixed-species woodland in its entirety. The woodland has a high amenity value in terms of its contribution to the verdant, rural setting of this area of Weeley Heath, where the linear development along Clacton Road becomes more sporadic and interspersed with fields. It is contiguous to the rural setting of Church Lane, a tree lined lane with very little built development before it runs through open countryside beyond. I consider the group value of the trees in the woodland as a whole is significant in terms of its contribution to the character of the area and rural setting of Weeley Heath.
7. The appellant indicates that circumstances have changed since the 2021 appeal decision (ref APP/P1560/W/21/3271526) as several trees have received consent to be felled (ref 21/01215/TPO, 22/01307/TPO, 22/00405/TPO and 22/00567/TPO). The Arboricultural Impact Assessment (AIA) indicates 2 'U' graded trees (Spruce and Scotts Pine) would also be removed due to their poor health. In addition to this, the appeal scheme would see the removal of a further 10 trees as listed on the tree survey recommendations (5 category B and 5 category C) and a group of shrubs.
8. The proposed tree removals to accommodate the dwelling would effectively clear the centre of the wooded area, as well as the area in the location of the proposed driveway leading off Church Lane. I note that several individual specimens to be removed are not category 'A' or 'B' in terms of their amenity value. It is, however, the woodland as a whole that contributes to the setting of Weeley Heath rather than the value derived from individual trees. Even though the area of woodland located around the perimeter would be retained, the character of the woodland and the contribution it makes to the rural character of the area would be harmfully eroded. I consider this to be the case even taking into account the consents for tree removal already granted by the Council.
9. I agree with the assessment of the Inspector in the 2021 appeal decision that as a result of the 'hollowing out' of the woodland, it would not make the same contribution to the intrinsic beauty of the countryside and verdant setting of the settlement. Any screening effect of the remaining woodland would be significantly less effective from winter to spring. Even with the consents for tree removal granted by the Council, I do not consider circumstances have changed so significantly as to enable me to reach a different conclusion on this matter.
10. The appellant indicates that as mitigation, replacement trees could form part of a landscaping scheme to be dealt with as a reserved matter. The AIA details various other landscape enhancements including the planting of a native hedgerow, planting native bulbs within the retained woodland and creating a swale with native planting. This would not address the loss of the taller, established and mature specimens. Any replacement planting would take several years to establish and far longer to come close to a genuine replacement in visual terms. This would not provide appropriate mitigation. I do not consider that the harm I have identified to the character of the area would be overcome through the provision of a landscaping scheme at reserved matters stage.

11. In conclusion on this main issue therefore, the appeal proposal would have an unacceptable effect upon the character of the area due to the removal of protected trees from the small woodland, which significantly contributes to the rural setting of Weeley Heath. This would be contrary to Policies PPL3 and SPL3 of Tendring District Local Plan 2013-2033 and Beyond Section 2, adopted 2022 (TLP2). Taken together, and amongst other things, these policies seek to protect the rural landscape and ensure that new development makes a positive contribution to the quality of the local environment and protects or enhances local character.

Location

12. 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. This policy is delivered, amongst other reasons, to maintain the distinctive character and role of settlements and the conservation and enhancement of the natural environment.
13. TLP2 Policy SPL1 sets out the settlement hierarchy in the District with a view to directing growth so as to avoid unsustainable developments in poorly accessible locations. 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 and associated services and other constraints.
14. Weeley Heath is categorised as a Smaller Rural Settlement in the District's settlement hierarchy. Settlements identified by Policy SPL1 all have a Settlement Development Boundary (SDB). The appeal site lies outside, but adjacent to, the Weeley Heath 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 SPL2 states that in general terms, development outside of defined SDBs will be the subject of strict control to protect and enhance the character and openness of the countryside.
15. Although the appeal site is adjacent to the SDB which effectively surrounds the site on three sides, it is nevertheless located outside it and is considered as countryside for the purposes of planning policy. The wooded character of the appeal site and adjacent woodland contributes to the verdant setting of Weeley Heath and to the rural character of Church Lane and the fields and small areas of woodland to the east.
16. The development plan presents a clear spatial strategy for the location of new development in rural areas. It is delivered with the aim of, amongst other things, the conservation and enhancement of the natural environment and the character and role of settlements. Therefore, although the accessibility of the proposal's location is not in dispute, there would nevertheless be harm to the wooded setting of this part of Weeley Heath through the location of the proposal on a site outside the SDB which positively contributes to the natural environment surrounding the settlement.

17. I acknowledge however that the part of the appeal site containing the existing outbuilding is previously developed land. TLP1 Policy SP3 states that the re-use of previously developed land is an important objective and this would be assessed within the broader context of sustainable development principles. The support set out in Policy SP3 for the use of previously developed land in this context does not outweigh the harm I have identified in regard to the proposal's conflict with the aims of the policy regarding the character of settlements and conservation of the natural environment.
18. In conclusion on this main issue therefore, the proposal would conflict with the Council's strategy for the location of development as set out in TLP1 Policies SP3 and SP7. Taken together, these policies set out the spatial strategy for North Essex, directing future growth so as to maintain the distinctive character and role of existing settlements, avoiding coalescence and maintaining their setting, along with setting out strategic place shaping principles including the aims of protecting natural value and responding positively to local character.

Ecology and Biodiversity

19. A copy of the Preliminary Ecological Appraisal and Ecological Action Plan by Hybrid Ecology Ltd dated April 2020 (PEA) was provided with the appeal. The report states it is "valid for 12 months, after which point habitats are reasonably expected to have changed to warrant a re-survey". No updated PEA has been provided.
20. The PEA originally accompanied planning application reference 20/00513/FUL. The application was refused, but not on the grounds of the effect of the proposal on ecology or biodiversity. Consequently, this did not form a main issue considered by the Inspector in the subsequent appeal decision of 8 November 2021, reference APP/P1560/W/21/3271526.
21. In the intervening 5 years since the original PEA was carried out, it would be reasonable to expect that baseline conditions may have changed with regard to the potential for the presence or otherwise of protected species and their habitats. Without an updated PEA, the ecological effect of the proposal cannot be fully understood, along with the level of any necessary mitigation to offset any harm.
22. I accept that several trees have been felled pursuant to various consents for tree works, and that some site clearance has taken place. The appellant indicates that the location of the proposed dwelling is now devoid of any vegetation, whether trees or overgrowth. I noted on my site visit that the area of the proposed house was covered with some vegetation, and there are areas within the red line of the site including trees and shrubs which would potentially form habitats.
23. I conclude therefore that there is insufficient information before me to provide any certainty over how ecology and biodiversity of the site and surroundings, including protected species, may be affected by the proposal. The appeal proposal conflicts with TLP2 Policy PPL4 insofar as it requires 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.

Living Conditions

24. The appeal proposal is supported by a shadow study which indicates that sufficient light would be capable of reaching the garden throughout the year. I note some trees that would have been close to the house and garden have been removed (under the recent TPO consents) since the 2021 appeal decision.
25. I accept there would be leaf litter and associated maintenance as a result of the location of the house and there would be a degree of enclosure from the remaining trees. Given the set-back of the retained trees from the outline of the house shown on the submitted layout plan, in my judgement, the garden would provide an appropriate recreation space and the living conditions of future occupiers would not be unduly harmed as a result of the proposed arrangement.
26. Whilst I note the Council's view that there would potentially be pressure for works to be undertaken to the remaining trees surrounding the garden, this would be a matter which could reasonably be controlled by the Council due to the protected status of the trees. In this respect the proposal is consistent with the aims of Policy SPL3 of the TLP2 insofar as it requires buildings to be designed and orientated to ensure adequate daylight, outlook and privacy for future residents.

Other Matters

27. My attention has been drawn to a planning permission for a dwelling on land south-east of 'Forres', Clacton Road, Elmstead (ref 23/00794/FUL) and I have been directed to a committee report dated 31 August 2023. The report concluded that although the site was outside the SDB it was in an accessible location and the proposal was acceptable in all other respects. In contrast to the appeal scheme, there was no indication in the committee report that the site in question made a significant contribution to the rural setting of the settlement. I do not therefore consider the circumstances are comparable.
28. I have also been referred to an appeal dated 23 October 2023 (ref APP/P1560/W/22/3291996) which allowed 7 dwellings and 3 garage buildings in land off Connaught Road near Little Clacton. Although the Inspector found that the location outside the SDB was appropriate in terms of the scale of development in relation to Little Clacton and its role within the settlement hierarchy, I note that the appeal site was described as being part of an open field and close to other dwellings that had been granted permission prior to the adoption of the TLP2. The appeal scheme before me has different site characteristics in terms of its location and the contribution it makes to the rural setting of Weeley Heath.
29. I do not consider that either of the above decisions are sufficiently similar to the appeal proposal to indicate that I should reach a different conclusion regarding the location of development.
30. There are 3 listed buildings in proximity to the appeal site. On the opposite side of Church Lane lies the Grade II listed building of Pond Farmhouse which dates from the 17th Century with later additions. The significance of the building is derived from its timber frame, decorative features and vernacular domestic architecture, along with its verdant, rural setting. It is principally experienced in views from Clacton Road.

31. The Weeley War Memorial, listed Grade II and dating from the 1920s with later additions following the Second World War, is located on the opposite side of Clacton Road. Its significance is derived from its historic association with both world wars and from its prominent location within the settlement.
32. Finally, there is a Grade II listed house to the rear of the appeal site, known as Hillside House, accessed from Clacton Road. This is a red-brick, 3-4 storey gothic style house dating from the mid-19th Century. Its significance is derived from the use of highly decorative gable ended facades, with steeply pitched roof forms.
33. 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 Pond Farmhouse, the Weeley War Memorial and Hillside House. There would be some intervisibility between the appeal site and Pond Farmhouse, but far less so in relation to the war memorial and Hillside House. Given the location of the appeal proposal within the woodland and the distance from both listed houses and the war memorial, I consider the proposal would preserve the setting of the listed structures and the contribution their setting makes to their significance. A lack of harm in this respect, however, does not alter my overall conclusions
34. Insofar as it relates to access and layout, the Council considers the scheme acceptable with respect to its effect on the living conditions of neighbouring residents, access, parking and highway safety, sustainability and drainage. 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 falls within the Zone of Influence of several European designated sites scoped into the Essex Coast Recreational disturbance Avoidance Mitigation Strategy (Essex Coast RAMS). Any new residential development has the potential to cause disturbance to European designated sites and must therefore provide appropriate mitigation. The Council is satisfied that had the proposal been considered acceptable in other respects, appropriate mitigation could have been secured by planning condition. As I am dismissing the appeal for other reasons, I shall not pursue this matter further because it would not lead me to a different conclusion.
36. Whilst I note the matters raised by the appellant with regard to the means of assessment by the County Council ecologist, this is a matter between the parties and has no bearing on my consideration of the appeal.

Planning Balance and Conclusion

37. The proposal would deliver a single new dwelling. It would support the Government's aim of significantly boosting the supply of homes. However, the addition of a single home would provide a limited contribution in this context and I attach limited weight to this benefit. The house would be energy efficient and would also benefit from solar photovoltaic panels and an electric vehicle charging point. There would also be temporary and ongoing economic benefits from the development through construction and future residents' use of local shops and services. However, given the small scale of development, those benefits would be limited.

38. Whilst the proposal would occupy an area of previously developed land, the Framework is clear that previously developed land should be made use of except where this would conflict with other policies within the Framework. The proposals would conflict with the Framework's aims with regard to conserving and enhancing the natural environment, making effective use of land and ensuring development is sympathetic to local character.
39. Although spatial strategy does not place an upper limit on housing delivery, the Council has demonstrated a 5-year housing land supply. I note the appellant's point that this is not a cap on development and neither does it diminish the scheme's benefits. However, for the reasons outlined above, the proposal would be contrary to the aims of the Council's spatial strategy.
40. Despite my conclusions on the appeal proposal's effect on the living conditions of future occupiers, I have found that there would be harm to the character of the area including the protected woodland. The appeal site would not be an appropriate location for housing development due to its location outside the SDB, which would conflict with the Council's strategy for the location of development insofar as the strategy seeks to protect the character of the countryside. 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.
41. The material considerations do not indicate that a decision should be made other than in accordance with the development plan. For the reasons given above, the appeal should be dismissed.

L Francis

INSPECTOR