
Appeal Decision

Hearing held on 7 December 2016

Site visit made on 7 December 2016

by D. M. Young BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 04 January 2017

Appeal Ref: APP/P1560/W/16/3156070

Land West of The Street, Little Clacton, Essex CO16 9LT.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr N & J Barrington-Fuller against the decision of Tendring District Council.
 - The application Ref 15/01550/OUT, dated 7 October 2015, was refused by notice dated 25 May 2016.
 - The development proposed is a residential development of up to 98 dwellings.
-

Decision

1. The appeal is allowed and planning permission is granted for a residential development of up to 98 dwellings at land West of The Street, Little Clacton, Essex CO16 9LT in accordance with the terms of the application, Ref 15/01550/OUT, dated 7 October 2015, subject to the conditions set out in the schedule to this decision.

Preliminary Matters

2. The application was submitted in outline with all matters reserved for future approval. Nevertheless, it was accompanied by supporting information including, amongst other things, a planning statement, transport, flood risk and arboricultural assessments, a preliminary ecological appraisal and an illustrative site plan. It was agreed at the Hearing that the latter shows the probable layout. I have therefore had regard to it insofar as it is relevant to my consideration of the appeal.
3. The Council confirmed before the Hearing that it no longer intends to contest its second reason for refusal which relied on conflict with Policy SD3 of the now withdrawn replacement Local Plan¹.
4. A Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 was submitted prior to the Hearing. The UU would provide for the transfer of the public open space to the Council, the provision of affordable housing as well as financial contributions towards health and education. As such the proposed contributions would need to be assessed against the statutory tests set out in the Community Infrastructure Levy (CIL) Regulations 2010.

¹ Full Title: "Proposed Submission Draft (2012) as amended by Pre-Submission Focussed Changes (2014)"

5. Finally, a signed Statement of Common Ground (SOCG) was submitted at the Hearing and I have had regard to this in reaching my decision.

Main Issue

6. The main issue is whether the development would be acceptable with regards to the social, economic and environmental strands of sustainable development.

Policy Context

7. The Development Plan comprises the "*Tendring District Local Plan 2007*" (the LP). Whilst the plan period has time expired these policies remain extant and the weight to be attached to them depends on the degree of consistency with the "*National Planning Policy Framework*" (the Framework).
8. The Framework sets out the national planning policy context in relation to housing. Amongst other matters it seeks to significantly boost the supply of housing and deliver a wide choice of high quality homes. Paragraph 49 advises that policies relevant to the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable sites. Although it is commendable that the Council is taking positive steps to address the situation, as it currently stands, the Council cannot demonstrate a 5 year supply of housing². In these circumstances planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. This approach is reflected in the SOCG which states: '*in judging whether a residential scheme should be granted, it would be necessary to set out the weight attributed to the planning benefits which the proposal offers in making up the current housing land supply shortfall against the harm identified arising from the proposed development*'.
9. The appeal site is located outside the settlement boundary of Little Clacton. However the approach of seeking to control the principle of development beyond settlement boundaries is inconsistent with advice in paragraph 55 of the Framework. The site is within an area defined as a 'Local Green Gap' by Policy EN2 of the LP. Whilst the underlying environmental aims of the policy are generally consistent with those of the Framework, the policy as a whole has the effect of constraining the supply of housing land. Consequently and with regard to the Cheshire East judgement³, EN2 is a policy for the supply of housing. It is therefore 'out of date' and this reduces the weight I attach to it.
10. The Council's refusal reasoning also refers to Local Green Space and paragraphs 76-78 of the Framework. However, the site is not allocated as Local Green Space nor is there any proposed allocation in the replacement Local Plan (the emerging LP)⁴. Consequently, I am not persuaded that those sections of the Framework are relevant to the scheme before me.
11. Both parties have referred to policies in the emerging LP. However, this is at a formative stage and has not been subject to Examination. Accordingly and with cognisance to advice in paragraph 216 of the Framework, I attach only limited weight to it.

² The Council's figure of 4.5 years was not challenged by the appellant.

³ Richborough Estates Partnership LLP v Cheshire East, SSCLG [2016] EWCA Civ 168.

⁴ Full Title: "*The Tendring District Local Plan: 2013-2033 and Beyond – Preferred Options Consultation Document*"

Reasons

The Site

12. The site encompasses an arable field some 6.57 hectares in size located to the west of The Street between Amerells and Swains Farms to the north and south respectively. To the west are open fields which extend towards the A133 bypass. To the east is a ribbon of residential properties on the opposite side of The Street which extends away from the northern built-up section of Little Clacton. The main frontage of the site is delineated by a hedgerow which affords views across the site towards the A133. The land is relatively flat and other than the presence of several mature trees, all of which would be retained, it has few distinctive features. A public footpath traverses the site diagonally providing a link between The Street and Thorrington Road. The development would include 98 dwellings varying in size and type. Vehicular access would be taken from The Street via a new priority junction.

Environmental

13. Policy EN2 of the LP states amongst other things that Local Green Gaps will be kept open, and essentially free of development in order to prevent the coalescence of settlements, and to protect their rural settings. Specifically in terms of the appeal site, the functions of the Green Gap are threefold: 1) to preserve the remaining views into open countryside existing between the main built-up areas of the village; 2) to prevent incremental coalescence or further ribbon development between the physically separate neighbourhoods of the village which would result in an inappropriate over-extended form of settlement pattern in the countryside; and 3) to safeguard locally important visual breaks, existing village character and settlement form. These aims are generally consistent with the environmental dimension of sustainable development in the Framework in terms of the need to take account of the role and character of different areas and to protect the intrinsic character and beauty of the countryside.
14. Although, the appeal site is not protected by any specific national or local landscape designation, I heard much testimony at the Hearing from local residents about the role the site plays in sustaining the rural setting of Little Clacton. In this regard, it is clear that the site is a cherished local asset that makes a positive contribution to the character and appearance of the area.
15. In my view, the appeal site contributes to an open, rural setting to the west of The Street, albeit enclosed behind the hedgerow. Although it is not visible over a wider area, it is nonetheless a valued landscape on account of the fact that it serves an important role in providing an area of open and undeveloped land which provides meaningful separation between the two sections of the village. Although the gap is already compromised by the ribbon of development on the east side of The Street and sporadic development to the west, the value of the site is reflected in its explicit protection in the development plan and also the amenity value derived from views across it from roads and existing properties which overlook it.
16. There is no dispute between the parties that the scheme whatever its final form, would impose a considerable extent of built development on the land. Thus the appellant concedes that there would be a marked change to the

- character and appearance of the land and as a result there would be conflict with Policy EN2.
17. Particularly affected would be the views across the site from the footpath and existing residential properties on the east side of The Street. However, these are local rather than longer distance views, where the proposal would be likely seen against the general townscape of Little Clacton.
 18. It is evident that the illustrative site plan has been carefully considered taking account of advice from Council Officers. Of particular merit is the way in which significant sections of the site frontage would be left undeveloped thus helping to retain some of the site's open character. Based on the illustrative site plan, even those dwellings fronting towards The Street are likely to be a single storey in height and well set-back behind the existing hedgerow⁵. Consequently, the development is unlikely to be unduly prominent in public views from key receptor points along The Street. Nonetheless, as with any greenfield site, there would be harm arising from the development. Although its impact on the wider landscape would be limited due to the site's containment, there would still be a significant localised effect and this weighs against the proposal in terms of the balancing exercise to be undertaken.
 19. However, this harm must be considered alongside the environmental benefits arising from increased public access to the site. Policy COM6 of the LP requires development to set aside 10% of land as public open space. According to the appellant, the scheme would provide 23% which would go some way to addressing the current deficit in the village for such facilities. The existing footpath route would be retained with additional routes added to the western site boundary. As Natural England note, the scheme also has the potential to enhance the biodiversity of the area. Whilst only modest in themselves, collectively these benefits weigh in favour of the scheme.
 20. In the planning context, the Council accept that there is a need to release greenfield sites for development some which will inevitably be located outside existing settlement boundaries. Indeed, it is a significant material consideration that the emerging local plan has recommended the removal of the current green gap designation and allocation of the land for housing⁶. The Parish Council argue that it would be preferable to release sites on the edge of settlements. However, it would not be appropriate for me to comment on such matters as part of this s78 appeal.
 21. In terms of the appeal site, being located roughly equidistant between the two built-up sections of the village, it benefits from good access to local services and bus stops which are within convenient walking distance. The range of facilities in the village is reflected by the status of Little Clacton in the emerging LP as a '*key rural service centre*' where the Council envisages that there will be '*a sustainable, fair and proportionate increase in housing stock that will support the overall growth proposed for the district*'. I am therefore satisfied that the development would be sustainable in locational terms.
 22. Overall, the appeal proposal would result in harm resulting from the visual impact of the development, urbanisation of an open space and associated loss

⁵ Subject to the proposed footway being sited behind the hedge.

⁶ It was explained at the Hearing that this recommendation was only suspended following the refusal of the planning application.

of westward views out of the village. There would also be some erosion of the gap between to two sections of the village. However, this harm would be mitigated to some extent by the likely layout of the scheme and by the wider public benefits it would deliver.

Social

23. The Framework explains that the social dimension includes supporting strong vibrant and healthy communities, with accessible local services that reflect the communities needs and support its health, social and cultural well-being.
24. The appeal proposal would deliver 98 homes including affordable housing provision in an area of need. The development would deliver wider benefits to the community of Little Clacton through access to significant areas of public open space and improvements to local bus stops.
25. Concerns were expressed that the proposal would put added pressure on existing local education and health care provision. However, appropriate mitigation has been put forward by the appellants to address these concerns and I have no statutory objection from these parties to the development proposed. As such, I am unable to identify any adverse social impacts.

Economic

26. The Framework sets out that part of the role of the planning system is to support growth. In relation to this appeal, employment, albeit temporary, would be generated from the construction works as well as new household expenditure supporting local facilities and services.
27. The proposal would trigger a new Homes Bonus payment to the Council, a not insignificant sum. The financial contributions delivered through the s106 planning obligation could not be categorised as additional benefits, as they are necessary to alleviate pressures on local resources. Nonetheless, the economic benefits listed above are all factors of significant weight in favour of the proposal. Again, no adverse economic impacts have been put to me.

Other Matters

28. Local residents have expressed a wide range of concerns including but not limited to the following; the loss of wildlife habitats including bats, inadequate drainage, the effect on listed buildings, loss of agricultural land and the effect on highway safety and congestion. However, it is evident from the Committee Report that these matters were carefully considered by the Council at the application stage. Whilst I understand the concerns of local residents, there is no compelling evidence before me which would lead me to conclude differently to the Council on these matters.
29. Concerns were also voiced at the Hearing regarding the effect of the development on local drainage and watercourses. However, there has been no objection from the Statutory Consultees and this is a matter that could be dealt with by the Council's suggested condition.

Conditions

30. The Council has suggested a number of planning conditions which I have considered against the advice in the "*Planning Practice Guidance*" (PPG). In

some instances I have amended the conditions provided by the Council in the interests of brevity.

31. Those conditions suggested covering time limits, the submission and approval of the reserved matters and specifying the approved plans are all necessary in the interests of proper planning and to provide certainty. The appellant was happy to accept the suggested condition regarding conformity with the submitted site layout plan. I have imposed a condition accordingly as this is necessary to make the development acceptable.
32. I have imposed a condition to ensure the development is carried out in accordance with the submitted Arboricultural Survey and Planning Integration Report. This is necessary to protect trees on the site. I have imposed a condition in relation to the timing of the landscaping works to ensure the satisfactory appearance of the development. Conditions regarding the provision of satisfactory surface and foul water drainage systems are necessary to ensure satisfactory drainage of the site in the interests of flood prevention. A condition relating to an investigation for contamination and any necessary remedial measures is reasonable and necessary to ensure the land is suitable for the proposed residential use. Conditions relating to bus stop improvements and bus vouchers are necessary for the encouragement of sustainable travel patterns in accordance with Framework's aims to reduce the need to travel especially by car. A Construction Method Statement including appropriate restrictions on construction hours is necessary to protect the living conditions of local residents. An ecological mitigation plan is necessary to protect species that might be present. Finally, given the aims of paragraph 42 of the Framework, I have imposed a simplified condition relating to the installation of fibre optic broadband to the development. In the case of conditions 7, 8, 9, 12 and 13 the details are required prior to commencement to ensure the site can be developed in a satisfactory manner.
33. I have not imposed a condition relating to the maximum number of dwellings as this is contained in the description of development and is therefore unnecessary. I am not persuaded a phasing plan is necessary for a development of this size and I have omitted the Council's condition 7 accordingly. Given that the Council will be responsible for the public open space, a management plan relating to it is unnecessary in this instance as the land would be transferred to the Council who would then be free to implement a suitable scheme.
34. I have omitted the suggested highway condition relating to the site access as it was evident that the Council did not appreciate that the condition as drafted would necessitate the removal of the hedgerow fronting the site. As there may be alternative ways to provide a footway, it is sensible that this issue is addressed at the reserved matters stage. It is also worth pointing out that the recommended visibility splays are excessive, do not accord with the relevant standards set out in "*Manual for Streets*" and would also have a deleterious effect on the hedgerow fronting The Street. A condition relating to a single point of access is unnecessary since I have imposed a condition requiring general conformity with the submitted layout plan. A condition relating to fire hydrants is a matter which would be dealt with by the Highway Authority as part of the road adoption process. I have omitted it accordingly.

Planning Obligations

35. Regulation 122 of the CIL states that obligations should only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
36. Firstly, a healthcare contribution of £30,440.00 is sought towards the improvement or provision of services at the GP surgeries in the relevant catchment area. Taking into account the evidence presented, I am satisfied that this element of the obligation is directly related and fairly and reasonably related in scale and kind to the development. It therefore passes the statutory tests.
37. Secondly, the education contribution of £339,599.00 towards primary education is supported by a response from the County Council. This identifies a potential future deficit at the local primary school⁷ which would serve the development. As there is no projected deficit at the nearest secondary school, no contributions are sought in this regard. I consider the primary school obligation, which is calculated via a standard formula, would be fairly and reasonably related to the development proposed and it would as a result pass the statutory tests.
38. At the Council's behest, the UU makes provision for the transfer of 7 houses to the Council at a nominal cost. It was explained at the Hearing that this is the preferred approach given current difficulties in securing finance to cover the cost of purchasing the standard 25% of the affordable housing provision at the discounted rate. I am therefore satisfied that this element would meet the statutory tests.

Overall Conclusions and Planning Balance

39. The starting point in weighing the various factors is that the proposal would not conform to the development plan. However, the plan has time expired and the relevant policies for the supply of housing, which includes Policy EN2, are out of date, given the Council's inability to demonstrate a 5-year supply of deliverable housing sites. Thus, the default position identified in the Framework prevails and if the development constitutes sustainable development there is a presumption in favour of the appeal scheme unless other material circumstances dictate otherwise.
40. The scheme would undoubtedly make a significant contribution towards the Council's housing stock in terms of both affordable and market provision. These benefits are indisputable and considerable and would be consistent with the *social* dimension of sustainable development. I attach significant weight to this aspect of the scheme particularly in view of the Council's housing land supply position and the aims of the Framework to significantly boost the supply of housing.
41. The development would also support the *economic* role through the purchase of materials and services in connection with the construction of the dwellings, an increase in local household expenditure as well as revenues to the Council from the New Homes Bonus. These benefits again weigh in favour of the scheme.

⁷ Engaines Primary School

42. In *environmental* terms, the scheme would incur loss of an open parcel of land which separates two parts of the village. However, the appeal site has no special designation, views of the development would be limited in the wider landscape and the Council accept that greenfield sites in the District would have to be forfeit in the future to meet its housing targets. Moreover, I have found that the harm would be mitigated by the probable site layout which would secure a significant net gain in green infrastructure and areas of public open space particularly along the site frontage. The site also occupies a sustainable location in one of the largest villages in the District where residents would have a realistic choice to walk, cycle and use public transport to access essential day-to-day services and facilities. Consequently, whilst the proposal would be harmful to the character and appearance of the area and the functions of the Local Green Gap, this harm is offset by other benefits such that the overall level of environmental harm would be moderate.
43. When considered in the round, the proposed development would contribute significantly to the economic and social dimensions of sustainability. There would be moderate harm in terms of the environmental dimension. However, relative to the scale of the benefits arising, I find that this harm would not significantly and demonstrably out-weigh the benefits, when assessed against the policies in the Framework taken as a whole. I consider this to be a significant material consideration sufficient to outweigh the development plan conflict.
44. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should succeed.

D. M. Young

Inspector

APPEARANCES

FOR THE APPELLANT

Mr Peter Le Grys	Appellant's Planning Consultant
Mr Nigel Barrington-Fuller	Appellant

FOR THE LOCAL PLANNING AUTHORITY

Mr Graham Nourse	Tendring District Council
Mr Gary Guiver	Tendring District Council

INTERESTED PERSONS

Cllr Jeff Bray	District Councillor
Mr Martyn Reed	Parish Councillor and local resident
Mr John Cutting	Parish Councillor and local resident
Mr John Smith-Daye	Local resident
Mr Anthony Cook	Local resident
Mr Ricky Hayes	Local resident
Mr Alan Jones	Local resident
Sally Evans	Local resident
Tracey & Demush Ismaili	Local residents
William Coles	Local resident
Jennifer Nicholson	Local resident
Mr Colin Holmes	Local resident
Mr John Davies	Local resident
Mel Wayland	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Transcript of the 18 May 2016 Committee Meeting taken from an audio recording
- 2 Housing Requirement and Supply - Report to the Head of Planning to the Local Plan Committee 12 April 2016
- 3 AMEC Landscape Impact Assessment Stage 1 Report April 2009

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, access, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The reserved matters shall be in general conformity with drawing no. 1264 Rev A (Site plan).
- 5) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the landscaping details required to be submitted and approved under condition 1 above shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority agrees in writing to a variation of the previously approved details.
- 6) The development hereby permitted shall be carried out in full accordance with the A.T. Coombes Arboricultural Method Statement dated 1 May 2015 including all measures to protect trees on site, ground protection measures and the use of a no-dig surface where indicated.
- 7) No development shall take place until a risk-based land contamination assessment to determine the nature and extent of any contamination on the site has been carried out, in accordance with a methodology that has first been submitted to and approved in writing by the local planning authority. Should any unacceptable risks be found, a remedial scheme and verification plan shall be submitted to and approved in writing by the local planning authority. The remedial scheme shall be implemented as approved before development begins.

If, during the course of development, any contamination is found which has not previously been identified, additional measures to address it shall be submitted to and approved in writing by the local planning authority and the additional measures shall be carried out as approved.

- 8) No development shall commence until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented prior to occupation and should include, but not be limited to:

- (a) Groundwater testing and infiltration testing in line with BRE 365. If infiltration is unviable on site, surface water run-off should be restricted to the 1 in 1 greenfield rate calculated from the impermeable area served by the drainage network;
 - (b) Attenuation storage for the 1 in 100+30% critical storm event plus the effect of urban creep;
 - (c) Detailed modelling of the whole drainage network on site including the outfall;
 - (d) Further detail in regards to the watercourse adjacent to the western boundary of the site. It should be demonstrated that all properties are safe in a 1 in 100 inclusive of climate change storm event;
 - (e) An appropriate amount of treatment in line with the CIRIA SuDS Manual C&53;
 - (f) Measures to minimise the risk of flooding during the construction works; and
 - (g) A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 9) No development shall commence until a foul water strategy has been submitted to and approved in writing by the local planning authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved.
- 10) Prior to occupation of the development, the Developer shall secure the upgrade of the two nearest bus stops in The Street that would serve the development in accordance with details that shall have first been approved by the Local Planning Authority, in consultation with Essex County Council, to include, but not limited to, infrastructure for the future installation of real time passenger infrastructure.
- 11) Prior to occupation of the development, the Developer shall be responsible for the provision, to the first owner of each dwelling on the site, a Residential Travel Information Pack for sustainable transport, approved by the Local Planning Authority, in consultation with Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator.
- 12) The development shall commence until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority for that particular phase. The statement shall include:
- i) the proposed hours and days of working;
 - ii) vehicle movement plans,
 - iii) waste management measures;
 - iv) methods and details of dust suppression during construction;
 - v) proposals to minimise harm and disruption to the adjacent local area from ground works, construction noise and site traffic; and
 - vi) details of a wheel washing facility.

The development shall be carried out in accordance with the statement so approved.

- 13) No phase of development shall commence until an Ecological Mitigation Scheme and Management Plan for that particular phase has been submitted to and approved, in writing, by the Local Planning Authority. The document shall include:

- i) A survey to confirm (or otherwise) the presence of protected species on the application site.

If protected species are present, the survey shall be accompanied by a scheme of appropriate mitigation measures (including precise details of the timing and method/s of protection). No development shall be undertaken except in full accordance with any such approved scheme of mitigation.

- ii) A management plan to demonstrate how biodiversity within the site will be encouraged by the development.

- 14) The dwellings hereby permitted shall not be occupied until a fibre optic broadband connection installed on an open access basis and directly accessed from the nearest exchange, incorporating the use of resistant tubing, has been installed at the site, in accordance with details that shall be submitted and approved, in writing, by the Local Planning Authority.