



Appeal Decision

Hearing held on 13 January 2016

Site visit made on 13 January 2016

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 15 February 2016

Appeal Ref: APP/P1560/W/15/3014909

Land north of Tokely Road, Frating.

- 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 Inland Homes Plc against the decision of Tendring District Council.
 - The application Ref 14/01371/OUT, dated 16 September 2014, was refused by notice dated 24 December 2014.
 - The development proposed is an outline application with all matters reserved (except principal means of access) for residential development comprising up to 49 dwellings (including up to 40% affordable housing), open space and vehicular access from Tokely Road.
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Decision

1. The appeal is allowed and planning permission is granted for an outline application with all matters reserved (except principal means of access) for residential development comprising up to 49 dwellings (including up to 40% affordable housing), open space and vehicular access from Tokely Road at land north of Tokely Road, Frating in accordance with the terms of the application, Ref 14/01371/OUT, dated 16 September 2014, subject to the conditions in the attached schedule.

Procedural Matters

2. The application was submitted in outline, with all matters reserved for future consideration save for access. The application masterplan and landscaping strategy were marked as illustrative but the appellant confirmed these are only indicative of the way in which the site may be developed. However the composite parameter plan and proposed access plan show the extent of the public open space, landscaped areas and residential development on the site and the means of access. I have therefore taken these into consideration in my determination of the appeal.
3. The appellant submitted a unilateral undertaking, relating to affordable housing, open space, education and health contributions. The Council has confirmed that the contributions would address the second reason for refusal. I shall return to the provisions in the undertaking in more detail below.

Main Issue

4. The main issue is therefore whether the proposal would represent sustainable development, in the context of national and local planning policy.
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Reasons

5. The appeal site is a field enclosed by the rear gardens of residential properties to the west fronting Bromley Road, and to the south on Tokely Road are houses and a children's playground. Commercial premises are located to the east of the site and there is farmland to the north. The site is accessed from Bromley Road.
6. Policy QL1 of the Tendring District Local Plan (LP) (2007) sets out the settlement hierarchy for the district. It seeks to concentrate most development in the larger urban areas of Clacton and Harwich, with limited development in the smaller towns and villages. It goes on to say that development will be concentrated within the settlement boundaries of named towns and villages.
7. The site lies outside, but directly adjacent to the settlement boundary of Frating and Balls Green, included as one of the named settlements in LP Policy QL1. The appellant contends that the Council has only 2.20 to 2.55 years housing supply, whereas the Council avers there is 3.48 years supply, but the parties agree the Council cannot demonstrate a 5 year supply of deliverable housing sites, and thus its policies relevant to the supply of housing cannot be considered up to date, as set out in paragraph 49 of the National Planning Policy Framework (the Framework). As a result, development proposals cannot be refused solely on the basis that a site is outside the development boundary, and paragraph 14 states that there should be a presumption in favour of sustainable development, unless any adverse effects of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
8. The proposal would provide up to 49 dwellings and public open space that would be linked to the existing children's playground abutting the site. Vehicular access would be taken from Tokely Road, and the access from Bromley Road would be for pedestrian and cycle use only.
9. Paragraph 7 of the Framework sets out the three dimensions to sustainable development by which proposals are to be assessed. The social dimension requires planning to support strong, vibrant and healthy communities by providing a supply of housing to meet the needs of present and future generations, with a high quality built environment, and accessible local services.
10. The provision of up to 49 new dwellings within a district with an acknowledged shortfall would boost significantly the supply of housing, as required by paragraph 47 of the Framework, and I have given this significant weight. In addition, 40% of the units would be affordable housing, secured by a legal agreement. I am aware that some residents, with reference to surveys undertaken including by the Parish Council, consider that affordable housing is not needed in the village. Nonetheless, the Council is clear there is a need for affordable housing within the district as a whole, and the scheme would make a contribution to meeting that need.
11. The village itself has relatively limited day to day facilities, with a village hall, two pubs, a tile shop and a car garage. Future occupants of the proposed dwellings would need to travel to Elmstead Market, approximately 4km away, or Great Bentley, about the same distance away, to access day to day shopping and services. This would be beyond a reasonable walking distance of the site.

- These facilities would be within a practical distance for cycling, along relatively quiet roads, although I accept this would not be suitable for all.
12. The village has been identified by the Council¹ as having good accessibility, based on its location along the Colchester to Clacton bus corridor, and Bus stops with shelters and signage are less than 200m from the site. The centres of Colchester and Clacton are approximately 30 minutes away by bus, via the No 76 and No 77 services. This would provide access to job opportunities and travel for school, shopping and leisure. There was some discussion at the hearing of the future operation of the bus network in the county given that Essex County Council (ECC) is reviewing the routes. The No 76 commercial route has been cancelled, but is subsidised by ECC until April 2016. It is fair to say that there is a level of uncertainty as to the future of the existing routes, but as it is a key public transport corridor for the district there is no reason to suggest that both routes would be removed. Consequently, although most journeys for convenience shopping and local services would be likely to be made by the private car, there are options for travel by cycle or bus.
 13. A core principle of the Framework is for development to make the fullest possible use of walking, cycling and public transport, focussing significant development in locations which are or can be made sustainable. However, I am mindful that the Framework also indicates at paragraphs 29 and 55 that opportunities to maximise sustainable transport solutions will vary from urban to rural areas, and a higher proportion of journeys by car may be expected within rural areas. Furthermore, development in one village may support services in nearby centres.
 14. Towns or villages in the context of Uttlesford are defined in the supporting text² to LP Policy QL1 as a geographically compact group of 30 or more dwellings that, within the group, also has one or more of either a primary school, a village hall or a convenience shop. Frating meets that definition, in that it has in the region of 280 homes and a village hall. The LP indicates at paragraph 13.4 that the settlement boundaries were drawn around villages that met the above criteria, to encourage development only in villages that, with a certain range of facilities, could support some further development without significantly increasing unsustainable travel. This, together with the location of the site directly abutting the settlement boundary, and the good transport accessibility of the site suggests that the site is therefore relatively sustainable in the context of the district as a whole.
 15. The appellant has agreed through the unilateral undertaking to make a financial contribution towards education and health facilities and school transport. This would meet identified deficiencies in the provision of these services. In addition, at the hearing residents noted that there used to be a shop within the village some years ago, and that the landlord of the Kings Arms public house has considered the possibility of opening a shop. An increase in the population of the village would lend support to such initiatives. Drawing all these elements together, I consider that overall the proposal would meet the social dimension of sustainable development.
 16. The proposal would have short term economic benefits during the construction of the dwellings, and would also have some economic benefit by way of

¹ Establishing a Settlement Hierarchy – Tendring District Council (July 2014)

² Paragraph 13.4 – LP

supporting shops and facilities in nearby villages. In addition, its location adjacent to a Large Employment Area as designated in the LP means that there could also be some economic opportunities locally for future residents, albeit this may be somewhat limited due to the specialised nature of the businesses located there.

17. Turning to the environmental dimension, there are local concerns regarding the capacity of the existing sewerage network and surface water drainage within the vicinity of the site. There are ditches along three sides of the site, some of which appear to be poorly maintained and filled with debris. A foul water pipeline runs within the site and along the access to Bromley Road. The appellant has proposed mitigation measures including improvements to the sewerage network, and sustainable drainage measures within the site itself. I am satisfied that with the appropriate mitigation measures in place, secured by condition, foul and surface water drainage within the site and its environs would be no worse if the appeal were allowed, and potentially could be enhanced.
18. A Landscaping and Visual Impact Assessment has been submitted in support of the proposal. Due to the enclosure of the site on three sides by residential and commercial development, and the limited views from the north along Bromley Road, there would be no harm to the wider landscape. There would be some localised impact in terms of views from the rear of properties adjacent to the site, but there is no right to a private view, and the Council has agreed there would be a low impact. Part of the site in the south west corner adjacent to existing residential properties would be retained as public open space, and the detailed design of the dwellings would be reserved for future consideration.
19. The site is considered to have limited ecological value due to its composition primarily of arable land and scattered scrubland around the edges. A mitigation scheme is to be prepared to include a number of biodiversity enhancements, and trees and hedgerows along the boundaries are to be largely retained, with additional planting as part of a landscaping scheme. These measures can be secured by condition. Accordingly, there would be no adverse effects on the ecology of the site.
20. There is no public open space within the village, and although there is a play area there is a shortfall against the LP requirement. The proposal would provide for an area of public open space adjacent to the existing playground, and would contribute to both the formal open space and play deficit. The proposal would therefore satisfy the environmental dimension of sustainable development.
21. The Council has put it to me that if this scheme were allowed it would result in pressure to permit other proposals of a similar scale that would alter the rural character of the district. Whilst each proposal should be considered on its own merits, the adopted LP indicates that Frating could support some further development without significantly increasing unsustainable travel. The scheme would represent an increase of the housing stock in the village by about 25%, but the Council accepts that this could be done without any significant harm to its character. The limited harm caused by the lack of shops and services within the village itself or within a reasonable walking distance would be outweighed by its good public transport accessibility, relative to the rural context of the district, and the pressing need for new housing.

22. In assessing the proposal against the three strands of sustainable development I have found that there would be no significant and demonstrable harm arising from the proposal. Taking all of the above into account, I conclude that the proposal would constitute sustainable development. It would therefore accord with national policy.

Other Matters

23. The Council requires contributions to expand primary school provision in accordance with LP Policy COM26, and to contribute to primary and secondary school transport and GP services, and for the provision of public open space. Evidence has been provided by the Council as to the deficits in local provision, and the contributions would be used to mitigate the impacts of the development. A unilateral undertaking has been signed and executed, agreeing to provide the specified contributions, and provides for the delivery, on-going management and maintenance of the public open space.
24. The unilateral undertaking also provides for 40% of the units within the scheme to be affordable housing. Whilst the Council did not refer to LP Policy HSG4 on the decision notice, which requires developments of more than 10 units to provide 40% AH, the appellant has agreed to provide this, and the Council has confirmed that the development would meet a need for affordable housing in the district.
25. I am therefore satisfied that the contributions sought would be necessary to make the development acceptable in planning terms, are directly related to the development and fairly and reasonably related in scale and kind, and that the scheme would make adequate provision for affordable housing and infrastructure. As such it would comply with the aforementioned policies, the Community Infrastructure Levy Regulations 2010 and paragraph 204 of the Framework.
26. There are concerns regarding highway safety in the vicinity of the site due to the perceived narrowness of Tokely road and on-street parking close to a bend in the road. However, that section of the road is not subject to parking restrictions and inconsiderate parking is outside the remit of planning control. The Council do not consider that there would be any adverse impact on highway safety and there is no objection from the Highway Authority on either highway safety or road capacity. Based on the evidence before me I have no reason to disagree.
27. The Council is in the process of preparing a new local plan which it anticipates will reach examination stage towards the end of 2016, with adoption in early 2017. Consequently the draft policies in the Tendring District Local Plan Proposed Submission Draft (2012) as amended by the Tendring District Plan: Focussed Changes (2014), referred to in the Decision Notice, may be subject to change, and thus I can give them only very limited weight in determining this appeal.
28. I have had regard to all other matters raised, including broadband speeds in the locality and property values, but none of these matters, either individually or cumulatively, alter my conclusions on the main issue.

Conditions

29. I have found that the development would be acceptable subject to the imposition of the certain conditions. All of the conditions imposed are required to ensure the implementation of the development without unacceptable planning impacts and meet the tests in paragraph 206 of the Framework.
30. I have attached conditions setting out requirements for the reserved matters in accordance with the requirements of the Act (1), limiting the life of the planning permission (3), and setting a time limit on the submission of reserved matters (2). For the avoidance of doubt I shall also require compliance with the approved plans (4), including the composite parameter plan and proposed access plan, which show the means of access, building heights, and delineation between residential development and public open space.
31. A condition is required to limit the development to up to 49 dwellings (5), and requiring details of landscaping (6) to safeguard the character and appearance of the area. A condition requiring archaeological investigations (7) is necessary to protect any heritage assets in the locality due to evidence that the site contains multi-period archaeological deposits.
32. Conditions to secure mitigation measures relating to foul and surface drainage (8 and 9) are required to ensure no surface water run-off beyond the site and that the sewerage network has sufficient capacity to support the development.
33. Conditions to agree the details of the vehicular and pedestrian access (10), the highway and footway width (11), pedestrian and vehicular visibility splays (12), bicycle storage (13), and car parking and garaging (14) are required in the interests of highway safety, and a travel plan (15) is necessary in the interests of encouraging more sustainable forms of travel.
34. A construction management plan (16) is necessary to safeguard the amenity of adjacent occupiers, and in the interests of highway safety. Details of ecological mitigation measures (17) are required to protect biodiversity interests.

Conclusion

35. For the reasons set out above, and having due regard to all other matters raised, I conclude that the appeal should be allowed.

Claire Victory

INSPECTOR

APPEARANCES

For the Council:

Mr Gary Guiver	Planning Development Manager, Tendring District Council
Ms Leanne Nicholas	Senior Development Technician, Tendring District Council

For the Appellant:

Mr Oliver Bell	Nexus Planning
Mr Cullan Riley	Phil Jones Associates
Mr Adam Ross	Nexus Planning

Interested Parties:

Mr John Bartington	Local resident
Ms Paula Bland	Vice-Chair, Frating Parish Council and Local resident
Mr Derek Byatt	Employee, Inland Homes Plc
Mr Terry Cuthbert	Chair, Frating Parish Council
Mr Colin Walls	Local resident
Mrs Marion Walls	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Extract from Local Plan (2007), submitted by the Council (paragraph 13.4)
2. Statement of Common Ground
3. Revised list of suggested conditions
4. Unilateral undertaking

Schedule of Conditions

- 1) Details of the internal access, appearance, 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 development shall be constructed in accordance with the approved drawings: site plan A-02-001 P; proposed access 1260-01; composite parameter plan A-02-002 P.
- 5) The number of dwellings constructed on the site shall not exceed 49 (forty nine) in number.
- 6) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of soft landscaping. This should accurately identify the spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection. The development shall be carried out in accordance with the approved details.
- 7) No development or preliminary ground works can commence until a programme of archaeological trial trenching has been secured and undertaken in accordance with a Written Scheme of Investigation, which has been submitted to and approved in writing by the local planning authority. Following the completion of this initial phase, a summary report will be prepared and a mitigation strategy (if required), detailing the approach to further archaeological excavation and/or preservation in situ through re-design of the development, shall be submitted to the local planning authority. No development or preliminary ground work can commence on those areas of the development site containing archaeological deposits, until the satisfactory completion of the archaeological fieldwork, as detailed in the mitigation strategy, has been agreed in writing by the local planning authority. Following completion of the archaeological fieldwork, the applicant will submit to the local planning authority a post-excavation assessment (within six months of the completion date of the development) which shall include post-excavation analysis, preparation of a full site archive, report ready for deposition at the local museum and a publication report.
- 8) 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.
- 9) Prior to the commencement of development, a scheme for the provision and implementation of surface water drainage, incorporating sustainable drainage principles and an assessment of the hydrological and

hydrogeological context of the district shall be submitted to and approved in writing by the local planning authority. The scheme shall be constructed and completed in accordance with the approved scheme prior to the occupation of any part of the proposed development.

- 10) The principal means of vehicular access shall be from Tokely Road. The existing vehicular access to Bromley Road shall be provided as a shared pedestrian and cycleway together with safe and suitable pedestrian facilities at the junction with Bromley Road with measures to prevent vehicular access.
- 11) The proposed means of access (carriageway) from Tokely Road shall be provided at a minimum width of 6.0 metres throughout, and all footways shall be provided at a minimum width of 2.0 metres.
- 12) Internal road junctions shall be provided with minimum vehicular visibility splays of 33 metres x 2.4 metres x 33 metres. Each domestic vehicular access shall be provided at a maximum width of 3.7 metres together with 1.5 metre x 1.5 metre pedestrian visibility splay.
- 13) No development shall take place until details of bicycle storage to serve each dwelling has been submitted to and approved in writing by the local planning authority. The development shall be provided with the facilities in accordance with the approved details.
- 14) All off-street car parking shall be provided in accordance with Parking Standards Design and Good Practice (2009). Any garages provided with their doors facing the proposed highway shall be set back a minimum of 6 metres from the proposed highway.
- 15) Prior to the occupation of the approved development, the developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport (in consultation with Essex County Council) that shall be submitted to and approved in writing by the local planning authority.
- 16) No development shall take place, including any ground works or demolition, until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The approved CMS shall be adhered to throughout the construction period, and shall address the following: the use of barriers to mitigate the impact of noisy operations where possible; no vehicle connected with the works to arrive on site before 07:00 or leave after 19:00 (except in the case of emergency); working hours shall only be between 08:00 and 18:00 Monday to Friday, and 08:00 to 13:00 on Saturday with no working of any kind on Sundays or Public/Bank Holidays; mobile plant to be resident on site during extended works shall be fitted with non-audible reversing alarms (subject to HSE agreement); prior to the commencement of any piling works which may be necessary, a full method statement shall be agreed in writing with the local planning authority in consultation with Pollution and Environmental Control. This will contain a rationale for the piling method chosen and details of the techniques to be employed which minimise noise and vibration to nearby residents; all waste arising from the ground clearance and construction processes to be recycled or removed from the site; no materials produced as a result of the site development or clearance shall be burned on site and no fires to be lit at any time; all reasonable steps shall be taken to minimise dust and litter

emissions from the site during construction and demolition phase, including damping down site roads; all bulk carrying vehicles accessing the site shall be suitably sheeted to prevent nuisance from dust in transit; a wheel-wash facility shall be provided for the duration of the works to ensure levels of soil on roadways near the site are minimised.

- 17) No development shall take place, including any ground works or demolition, until a Ecological Mitigation Scheme has been submitted to and approved by the local planning authority that addresses the recommendations in the Ecological Appraisal dated August 2014 from Aspect Ecology. The scheme shall be constructed and completed in accordance with the approved Ecological Mitigation Scheme and prior to the occupation of any part of the development.

Richborough Estates