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## Appeal Decision

Site visit made on 2 February 2016

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 17 February 2016

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**Appeal Ref: APP/P1560/W/15/3136692**

**Land off Clacton Road, Elmstead Market, Colchester, Essex CO7 7DB**

- 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 Go Homes against the decision of Tendring District Council.
  - The application Ref 15/00675/OUT, dated 5 May 2015, was refused by the Council by notice dated 5 August 2015.
  - The development proposed is residential development of up to 32 dwellings (incorporating 25% affordable housing) with associated open space and infrastructure.
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### Decision

1. I allow the appeal and grant planning permission for residential development of up to 32 dwellings (incorporating 25% affordable housing) with associated open space and infrastructure at Land off Clacton Road, Elmstead Market, Colchester, Essex CO7 7DB in accordance with the terms of the application, Ref 15/00675/OUT, dated 5 May 2015, subject to conditions 1) to 19) on the attached schedule.

### Main Issues

2. The application is in outline with access only to be determined at this stage, and there is no objection to this aspect of the proposal. Having mind to the agreed Statement of Common Ground and the reasons for refusal, the main issues in this appeal are;
  - The effect of the proposed development on the character and appearance of the Clacton Road area of Elmstead Market, with particular regard to plot size.
  - Whether the proposal represents a disproportionate increase in the housing stock for Elmstead Market.
  - Whether the proposal should be regarded as sustainable development.

### Reasons

#### *Policy Background*

3. The Refusal Notice and the agreed Statement of Common Ground set out numerous policies that are relevant, and many are accorded with. The areas of dispute centre around saved policy QL1 of the Tendring Local Plan 2007 which seeks to concentrate most new development at the larger urban areas of Clacton and Harwich, whilst in the smaller towns and villages limited
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development will occur, consistent with local community needs. Elmstead Market is listed as a place where development will be permitted within settlement boundaries. Policy QL9 on the design of new development requires proposals to make a positive contribution of the quality of the local environment, setting out criteria. Policy QL11 requires development to be compatible with surrounding land uses and to minimise any adverse environmental impacts, with the scale and nature of development being appropriate to the locality. Landscape character is the subject of Policy EN1, seeking to conserve the settings and character of settlements among other things.

4. There is emerging policy in the Tendring District Local Plan, Proposed Submission Draft (2012) as amended by Pre-Submission Focused Changes (2014). Policy SD2 identifies urban settlements as being the focus for most development as they have the range of services to be sustainable places for new development. Policy SD3 provides for Elmstead Market as a Key Rural Service Centre to accommodate a sustainable, fair and proportionate increase in housing stock that will support the overall growth proposed for the District. Policy SD9 sets criteria for new development and Policy PLA5 seeks to protect the countryside landscape.
5. The National Planning Policy Framework states at paragraph 47 the aims of boosting significantly the supply of housing and requires Councils to be able to demonstrate a five year supply of specific deliverable sites, with a buffer to allow choice. Where there has been a record of persistent under delivery of housing, the buffer should be 20%. It is a matter of agreement that the Council cannot demonstrate a five year supply and that a 20% buffer should apply. Paragraph 14 sets out the presumption in favour of sustainable development and where the relevant policies of the Development Plan are out of date, permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits. As a result of the land supply situation, the relevant policies are out of date and the site is not in an area listed in the footnote to indicate that the alternative part of paragraph 14 should apply instead.

#### *Character and Appearance*

6. The site is located at the eastern end of the village and just outside the settlement boundary of the emerging Local Plan but some way outside that of the adopted Plan. The proposed change is stated to better reflect the delineation of the built-up area. In reality the site is adjacent to built form that extends from the village centre on the north side of the main road, and opposite more sporadic development on the south side, that being caused by gaps such as the public car park and open land, but on that side of the road development does extend beyond the appeal site and includes a substantial new dwelling, as a replacement. There is however development beyond the appeal site to the east. In addition, development extends along Bromley Road on the south side close to the site, albeit that the site and proposed development does not extend to that road. As a result of all of these considerations, the site is not visually isolated from the settlement, and the narrow frontage would not appear as a significant addition of built form along Clacton Road, much of this being on the wider part of the site to the rear.

7. There would be development adjacent to the open land between Clacton Road and Bromley Road that enlarges as the roads diverge away from the village, that land the rear gardens or associated land to frontage development. However, in principle, development of the site would be visually contained and acceptable in its effect on the streetscene and the countryside.
8. The concern is over plot sizes and a perceived break in the 'regimental flow' of larger dwellings on larger plots. That is the case adjacent to the site on Clacton Road and nearby on Bromley Road, with the immediately adjacent *Havenbrook* on the former being a large dwelling on a wide plot. However, whilst this is true of the present end of built development along Clacton Road, there are smaller plots with smaller dwellings only a short distance further west. This is not a matter of an established rhythm of large plots, but rather of a limited lessening of the density approaching the site boundary.
9. The indicative layout shows a large dwelling on a corner plot being, with its garage, the only built form on the roadside, the remaining space being taken by the access road. It is the case that other plots within the development are shown to be smaller and the overall density is higher than immediately adjacent. Within the overall desirability of making best use of land and preventing sprawl into the countryside, the higher density would be capable of being designed for, and accommodated successfully, since appearance, landscaping, layout, and scale would remain as reserved matters for which permission would be sought, and consideration could be given to the actual effect.
10. On the information presented, there is no reason why the site would not be able to accommodate up to 32 dwellings as proposed whilst safeguarding the character and appearance of the area and not unduly affecting the perception of having reached the end of the village at this point. Subject to the detailed design and landscaping, the development could be successfully assimilated into the streetscene, being compatible with surrounding land uses and not adversely affecting the grain of development so as to appear out of place or disruptive. The proposal would therefore accord with adopted Policies QL9 and QL11, which are still applicable, being broadly in line with the aims of Framework paragraph 56 which states that the Government attaches great importance to the design of the built environment; good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.

#### *Housing Stock*

11. Paragraph 2.14 of the Council's Appeal Statement says '*the Council's case in respect of the first reason for refusal has changed as the potential percentage increase in housing stock in the village has reduced following the refusal of the scheme at Charity Field, nonetheless the amount of development proposed is considered to be disproportionately large for a rural location*'. The preceding paragraph set out the equation resulting now in committed schemes and the appeal scheme adding 10% to the local stock, below the 15% level considered to be the limit of proportionality. That figure stems from the overall increase envisaged for the District as being 15%, and therefore a similar figure in any one settlement would be reasonable.
12. The appellant points to this 15% figure for the District being the lowest figure in a range from the Objectively Assessed Housing Needs Study (2015), the

highest being 18%. The Examination of the emerging Local Plan will fix this figure, but on the information available now, 15% appears a reasonable minimum on which to base considerations. The appellant also sets out the situation on two other sites where there appears to be some delay in finalising obligations or details. The view is expressed that the Council should have considered withdrawing this objection, particularly since the already lower than 15% figure allows for the two schemes proceeding.

13. The test of whether this is sustainable development and the planning balance follow, but the proposed development would not appear disproportionate in numbers, being below the percentage increase needed throughout the District in order to meet the objectively assessed housing need.

#### *Sustainable Development and Planning Balance*

14. Being proportionate to the overall District-wide need could still be a cause of harm, particularly seen against the aim of focussing development on places that are suitable to receive it. The lack of a five-year housing land supply however means that those housing policies are out-of-date, and the impacts of placing development on the site at Elmstead Market needs to be tested as to whether it is sustainable development so that paragraph 14 comes into play.
15. The village has a good range of facilities and regular bus services, a bus stop being on Clacton Road near the site. There could be the need for travel to Colchester, Clacton or other places, but the site and the village is not remote and that does not imply of necessity the use of the private car.
16. The Framework sets out at paragraph 7 the three dimensions of sustainable development;
  - The economic role would be furthered through the activity of the development work and through introducing new residents, many of which are likely to be economically active. The land is available now to support growth and innovation, and new residents would assist in ensuring services remain viable.
  - The social role would be assisted by the provision of affordable housing which would meet the needs of present and future generations, supporting health, social and cultural wellbeing.
  - The environmental role would not be jeopardised by the development, as previously concluded, and there is the opportunity for enhancement of what is an unused and un-tended field. The plot sizes likely, whilst not found to be harmful, would make better use of natural resources than if the adjacent grain of development had been followed, and development in this location would allow use of public transport, assisting in its viability.
17. It is concluded that the development is sustainable and hence the provisions of paragraph 14 of the Framework apply. In the planning balance, the benefits of assisting the supply of housing in a sustainable location, together with the provision of affordable housing are set against limited adverse effects, in building on green-field land outside the settlement boundary. In this case the limited adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

## Conditions and Undertaking

18. The Council Officers had put forward conditions in the Report to Committee recommending approval, in an abbreviated form. Full conditions were provided with the appeal documentation and the appellant has commented on them.
19. In addition to the standard commencement conditions for an outline permission, which should make clear that access is not a reserved matter, there is a need for conditions now to limit the number of dwellings. Whilst other matters are reserved, the proposed conditions setting out the nature of the information required on materials, boundary treatment, refuse storage and collection, lighting, do not appear unreasonable to be attached at this stage.
20. Conditions on highways and internal roadway matters including parking, drainage, energy conservation, play areas, ecological mitigation, landscape management and the provision of broadband access are all reasonable and necessary to be added now in order to control the standard of the detailed design. Similarly, the proposed requirement for a construction method statement and local recruitment strategy should be attached now to provide for control over matters affecting the local community.
21. The appellant objected to part vii) of the highway condition, which stated a requirement for detail and implementation of 'bus stop provision or improvements to bus stops on Clacton Road'. This off-site work is not suitable for securing by a condition worded as this one is, and whilst a Grampian condition could be devised preventing development until the works are carried out, and not just the detail provided, there is no firm evidence of this being a highway requirement. In any event, since there is already a bus stop close-by, the lack of improvement does not call into question the acceptability of the scheme.
22. Lastly a condition is required naming the drawings, because otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning. This was not included in the list from the Council, possibly as they appear to have dealt with condition on the basis of all matters being reserved, in which case this condition would not be needed. Since access is not reserved, it is required for that aspect of the proposal.
23. A completed Unilateral Undertaking has been submitted making provision for an 'Early Years and Childcare' contribution and a 'Primary School Contribution' for need that would be generated by the development. Similarly the 'Open Space' provision would respond to the needs of the new occupiers with open space, with trigger points to ensure that the provision is available at the correct time. Affordable housing is the subject of the third schedule and provides for 25% of the dwellings to be constructed in accordance with an affordable housing plan which is to be agreed with the Council. This schedule contains in additional obligations over the tenure and transfer.
24. It is understood that the Council are in agreement with the terms of the Undertaking, and it satisfies the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 being 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. As a result, full weight can be accorded each of the provisions in this Decision.

### **Conclusions**

25. The development would not cause harm to the character and appearance of the area and the detailed design to be submitted as a reserved matter would be able to accord with Development Plan policies and national guidance on good design. With the lack of a five year supply of housing land, the housing policies are out-of-date and the adverse effects of the development do not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. For the reasons given above it is concluded that the appeal should be allowed.

*S J Papworth*

INSPECTOR

### Schedule of Conditions

- 1) Details of the 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 number of dwellings constructed on site shall not exceed 32 (thirty-two).
- 5) The development hereby permitted shall be carried out in accordance with the following approved plan: 2014-489-HWY-01 insofar as it relates to the unreserved matter of access.
- 6) No phase of residential development shall commence until precise details of the manufacturer and types and colours of the external facing and roofing materials to be used in the construction of that phase have been submitted to and approved in writing by the Local Planning Authority. Such materials so approved shall be those used in that particular phase of development.
- 7) No development shall take place until precise details of the provision, siting, height, design and materials of all boundary walls and fences which face onto public spaces/highways or private drives have been submitted to and approved in writing by the Local Planning Authority. The boundary walls and fences so approved shall be erected prior to the building/s to which they relate being first occupied and shall thereafter be retained in their approved form.
- 8) Prior to commencement of any phase of residential development, details of all refuse/recycling storage and collection points required to serve that phase of development shall be submitted to and approved in writing by the Local Planning Authority. Each refuse/recycling storage and collection point so

approved shall be provided prior to first occupation of any dwelling to which it relates and shall be retained thereafter as approved.

- 9) Other than for external lighting within the curtilage of a dwellinghouse, within any permitted phase of development and any lighting within the public highway, details of a strategy for any external lighting shall be submitted to and approved in writing by the Local Planning Authority. The external lighting strategy shall consider how the use of such lighting will avoid, or minimise, harm caused by light pollution and the development shall be carried out in accordance with the scheme so approved.
- 10) No dwelling forming part of the development shall be first occupied until the following have been provided, in accordance with details that have first been submitted to and agreed, in writing, by the local planning authority:
  - i) A bellmouth connection to Clacton Road with 10.5m kerbed radius with 2m footways around that radius and connecting to the existing footways on Clacton Road;
  - ii) Internal footways at a minimum of 2m in width;
  - iii) Carriageways at a minimum of 5.5m in width;
  - iv) Each single residential vehicular access to be 3.7m in width, shared vehicular access at 5.5m in width together with a 1.5m x 1.5m pedestrian visibility splay on each side of that access;
  - v) Centre line bend radius to be no less than 13.6m together with sufficient forward visibility;
  - vi) Internal road junctions to be provided with a bicycle storage facility;
  - vii) Details of the construction and future maintenance of the necessary bridging or piping of the drainage ditch/watercourse fronting Clacton Road.
  - viii) Street lighting, particularly at junctions.

The development shall be completed in accordance with the approved details.

- 11) All off street parking shall be provided in precise accord with the latest Essex County Council Car Parking Standards — Design and Good Practice.
- 12) 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, with the Local Planning Authority. The scheme shall be constructed and completed in accordance with the approved scheme and prior to the occupation of any part of the proposed development.
- 13) Prior to the commencement of development, a scheme for the provision and implementation of water, energy and resource efficiency measures, during the construction and occupational phases of the development shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall include a clear timetable for the implementation of the measures in relation to the construction and occupancy of the development. The scheme shall be constructed and the measures provided and made available for use in accordance with such timetables as may be agreed.

- 14) No phase of 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; and
  - ii) Proposals to minimise harm and disruption to the adjacent local area from ground works, construction noise and site traffic.

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

- 15) At least 10% of the gross residential site area shall be laid out for use as play space and other amenity open space in accordance with a scheme submitted to and approved in writing by the Local Planning Authority before any development within the residential site area commences and such spaces shall subsequently be provided as specified in the scheme so approved and made available for use within 12 months of the occupation of any dwelling within that phase of development and thereafter retained for public use.
- 16) No development shall take place, including any ground works or demolition, until a Ecological Mitigation Scheme has been submitted to and approved in writing by the Local Planning Authority that addresses the recommendations in the Ecological Appraisal dated February 2014 from AA Environmental Ltd. 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 proposed development.
- 17) No residential development shall commence until a Landscape Management Plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas adjacent to any highway (other than for any domestic gardens which front onto an adopted estate road) and areas of public open space and play space has been submitted to and approved in writing by the Local Planning Authority. The Landscape Management Plan so approved shall be carried out in accordance with the details and timescales to be contained in that document.
- 18) The hereby permitted development shall not be occupied until a fibre optic broadband connection installed on an open access basis and directly accessed from the nearest British Telecom 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. If the applicant is unable to achieve this standard of connection, and can evidence through consultation with British Telecom, that this would not be possible, practical or economically viable an alternative superfast (i.e. will provide speeds greater than 24mbps) wireless service will be considered acceptable.
- 19) Prior to commencement or at a later date agreed in writing by the Local Planning Authority, the applicants shall submit to the Local Planning Authority in writing a Local Recruitment Strategy to include details of how the applicant/ developer shall use their reasonable endeavours to promote and encourage the recruitment of employees and other staff in the locality of the application site, for the construction of the development and for the uses of the development thereafter. The approved Local Recruitment Strategy shall be adhered to therein after.