
Appeal Decision

Site visit made on 2 August 2016

by Nick Palmer BA (Hons) BPI MRTPI

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

Decision date: 1 September 2016

Appeal Ref: APP/P1560/W/16/3150967

171 Thorpe Road and land to the rear of 121-183 Thorpe Road and 4-20 Chapel Lane, Kirby Cross, Frinton-on-Sea, Essex CO13 0NH

- 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 Mark Pickett of EMP Kirby Limited against the decision of Tendring District Council.
 - The application Ref 15/01710/OUT, dated 6 November 2015, was refused by notice dated 12 April 2016.
 - The development proposed is demolition of one dwelling and up to 110 N^o residential units.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of one dwelling and up to 110 N^o residential units at 171 Thorpe Road and land to the rear of 121 – 183 Thorpe Road and 4 – 20 Chapel Lane, Kirby Cross, Frinton-on-Sea, Essex CO13 0NH in accordance with the terms of the application, Ref 15/01710/OUT, dated 6 November 2015, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The application is for outline planning permission with the means of access submitted for approval and all other detailed matters reserved. An illustrative layout plan has been submitted which shows a possible layout and I shall consider that plan on this basis.
3. The appellants have submitted a Unilateral Undertaking (UU) which would secure the provision of affordable housing and contributions towards infrastructure. The site location plan¹ attached to the UU indicates the site as shown on the title plans to be slightly smaller than that shown on the plan submitted with the application. The differences are minor and relate to a boundary of the south-western part of the site which is proposed as public open space and the part of the site which would form the footpath between 127 and 129 Thorpe Road which would be slightly shorter in length than that shown on the application plan. The plan attached to the UU does not compromise the ability to achieve the proposed development or the obligations contained in the UU or materially affect the proposal. I am satisfied that parties' interests would not be prejudiced by the amended plan.

¹ 1370-SLP-01 Rev A

Main Issues

4. The main issue in the appeal is the effect of the proposed development on the character and appearance of the area.

Reasons

Character and Appearance

5. The appeal site forms open land which is to the rear of frontage development along Thorpe Road and between that development and the nearby railway line. Much of the site is in use for the keeping of horses and I saw on my visit that there are stables and other structures there. The site also includes 171 Thorpe Road which is a detached bungalow that would be demolished to provide the vehicular access to the site. A further dwelling (Nº 157) is located within the site. There is an existing drive to that property, a further access from Thorpe Road and an access from Chapel Lane all of which would be used for pedestrian access. The site adjoins the settlement development boundary for Kirby Cross as defined in the Tendring District Local Plan (LP) (2007). Kirby Cross forms part of the urban area of Frinton which is defined in saved policy QL1 of the LP as a town. Nonetheless, Kirby Cross is identified as having a village character in paragraph 6.11 of the LP. This arises from its linear form along Thorpe Road and the close proximity of open countryside to the settlement.
6. Saved policy QL1 requires that development will be concentrated within the settlement development boundaries of the towns and villages. The Council has advised that its housing supply policies are out of date on the basis that the LP period expired in 2011. Furthermore the Council states that its current supply of housing land stands at 3.8 years. This does not accord with paragraph 47 of the National Planning Policy Framework (the Framework) which requires a five-year supply. Paragraph 49 of the Framework states that policies for the supply of housing should not be considered up-to-date if there is not a five-year supply. Although the proposal does not accord with saved policy QL1 of the LP, this conflict carries reduced weight because the policy is out-of-date.
7. The site is within a Local Green Gap as defined in the LP. Saved policy EN2 of the LP requires that these areas are kept open and free from development and reinforces saved policy QL1 in restricting development in the countryside. The purposes of the Local Green Gap in relation to Kirby Cross are to maintain the character and setting of the settlement and the nearby villages of Kirby-le-Soken and Great Holland. In this respect the policy aims to ensure that the open settings of those villages are maintained and that there is no coalescence.
8. The site is bounded by the rear gardens of dwellings on Thorpe Road, a small area of open land to the rear of properties on Chapel Lane and by the railway line. To the west of the site is a wooded area beyond which is farmland. Other development has taken place between Thorpe Road and the railway line further to the east and this forms part of the established layout of the settlement. There is also further built development along Thorpe Road to the west of the site and permission has recently been granted for development to the north of the road. The site does provide an open setting to part of the settlement but its value in this respect is limited and the development would follow the existing pattern of development to the east whereby development extends up to the railway line.

9. Great Holland is some distance to the south of the railway line and Kirby-le-Soken is to the north of the established development along Thorpe Road. The proposed development would be separated from those villages by the railway and the existing housing and for these reasons the proposal would not be prejudicial to the open settings of those settlements or lead to their coalescence.
10. In as far as saved policy EN2 restricts housing development within Local Green Gaps it is a policy for the supply of housing and this aspect of the policy is not up-to-date. However that policy also protects the open settings of settlements and it is not out-of-date in this respect. The proposal would not accord with saved policy EN2 of the LP but the degree of harm to the open setting of Kirby Cross would be limited for the above reasons.
11. The Council has referred to the site being a Local Green Space as provided for in paragraphs 76 to 78 of the Framework. The site is not formally designated in the terms set out in the Framework and the Council has advised that it is not proposed to continue the designation of the site as a Local Green Gap in the emerging Local Plan.
12. The emerging Local Plan has not been subject to examination and therefore only limited weight can be given to its policies which may be subject to change. This includes the provision in respect of housing supply. Even if the Plan were at an advanced stage in its adoption its provision in this respect would not necessarily amount to a five-year supply because to be considered deliverable sites should be available now with a realistic prospect that housing will be delivered within five years².
13. Trees on adjoining land and in the south-western part of the site are protected by a Tree Preservation Order (TPO). Following the submission of the planning application the Council made a further TPO which protects eleven of the trees within the site and along part of its eastern boundary which include ten oaks and one ash. The illustrative layout plan which was prepared before the TPO was made indicates the trees across the middle of the site to be retained within an area of open space. The illustrative layout would require the removal of three of the trees along the eastern boundary which are now protected but layout is a matter which remains for future determination.
14. A landscaping scheme would be submitted as part of the proposals. This could be designed to strengthen existing landscape features including planting around the site boundaries and existing trees within the site. Further landscape planting would help to blend the development into its setting.
15. The proposed footpath to Thorpe Road would pass Mill House (127 Thorpe Road) which is listed at Grade II. This is a two storey dwelling described in the listing as dating from the late 16th century and of a timber frame with plaster above a brick plinth. There are modern houses on either side of the building. It has a good sized rear garden which backs onto the appeal site and I saw on my visit that its garden is enclosed to a large extent by trees and hedges. The illustrative layout indicates that new dwellings would be sufficiently separated from the listed building to avoid any harm to its setting. Although these matters are not for consideration I am satisfied that an acceptable layout could be achieved in this respect. Any lighting of the proposed development could be

² NPPF footnote 11

designed to avoid undue glare or light pollution and this could be controlled by a condition. This aspect of the proposal would not harm the setting of the listed building.

16. The occupiers of the listed building have expressed concerns regarding potential effects on their building arising from drainage works and the use of the path to the side of their property. However there is no evidence before me to indicate that there would be any harm in these respects.
17. My attention has been drawn to planning policies which resist 'backland' development. This normally refers to smaller scale piecemeal development which does not have a proper road frontage. The proposal would not fall into this category because it would be a comprehensive development with frontage onto the proposed new road.
18. The site is contained by the existing built up area on two sides and by the railway line. The development would echo the pattern of development which has taken place to the east of the site and in this respect it would not be out of character. I accept that the openness of the site contributes to the setting of this part of Kirby Cross but the contained nature of the site means that the settlement would not be extended into the countryside in a harmful way. The site contains a number of trees which are of value but those trees may be retained. Other than this the site is not of particular identifiable landscape value. The generally flat topography and surrounding landscape features mean that the development would not be widely visible in the landscape. I have found that the development would not harm the setting of the adjacent listed building. For these reasons I conclude that the proposal would result in some harm to the open setting of the settlement and to the character and appearance of the area but that that harm would be limited. On this basis I give limited weight to that harm.

Unilateral Undertaking

19. The submitted UU would secure the provision of affordable housing, contributions towards improved primary education and health service facilities and the provision and transfer to the Council of public open space within the site. The affordable housing would be provided either as 25% of the total amount of dwellings or as 8 units which would be transferred to the Council at a nominal charge. The Council would accept either of these arrangements which would be in accordance with draft policy PEO10 of the emerging local plan. The provision would be less than the 40% provision required by saved policy HG4 of the LP but the emerging draft policy is based on more up-to-date evidence regarding viability.
20. The basis for the primary education and health service contributions has been explained as has the need for those contributions as a result of the development. The public open space requirements including a sum for future maintenance would be in accordance with the Council's Supplementary Planning Guidance.
21. I am satisfied that the obligations meet the tests as set out in Regulation 122 of the CIL Regulations³ and paragraph 204 of the Framework. The Council has

³ Community Infrastructure Levy Regulations 2010

also confirmed that the pooling restriction of Regulation 123 of the CIL Regulations would not be exceeded.

Habitats Regulations

22. The site is about 2 km measured in a direct line from Hamford Water Special Protection Area (SPA) and Ramsar site. The appellants' Habitats Regulations Assessment Screening report notes that there is little car parking capacity to accommodate increased use of Hamford Water by car. The report considers that walking to the internationally designated sites from the proposed development would be unlikely given the distance involved. There are alternative destinations for recreational use at Walton on the Naze and Holland Haven Country Park. The report concludes that there would be no significant effects on the integrity of Hamford Water SPA/Ramsar site. There is no evidence to the contrary before me and I note that Natural England has no objection. I concur with the appellants' assessment in this regard.

Other Considerations

23. The proposal would be of benefit both in helping to address the identified housing shortfall and in providing affordable housing. In the context of the identified 3.8 year supply of housing land the proposal would make a significant contribution and therefore significant weight can be given to this benefit.
24. The Council's Housing Officer states that there is a high demand for housing in the Kirby Cross area and on the housing register. This would indicate that the affordable housing would also represent a significant benefit and accordingly I give additional significant weight to this.

Other Matters

25. The proposed new access road would join Thorpe Road in close proximity to the existing private drive to 169 Thorpe Road. The occupiers of that property have concerns about safety in terms of this proximity and concurrent vehicular movements to and from both accesses. However the Highway Authority was aware of this and raised no objection to the proposal. There is no other evidence before me to indicate that the proposal would not meet the relevant highway safety standards in this regard.
26. Parties have also expressed concerns about the existing volume of traffic on Thorpe Road and the additional traffic that would be generated. The appellants have demonstrated in their Transport Statement that the road has capacity to accept the additional traffic. Subject to the imposition of a condition requiring the provision of the access to the required standards the proposal would not be harmful to highway safety.
27. The Council's Environmental Health Officer had no objection to the proposal in terms of noise or pollution. While I note the concerns of adjacent residents in these regards there is no evidence of harm in these respects before me.
28. The heights and number of storeys of the proposed dwellings are not for consideration as part of the application. I have taken into account all other matters raised, including concern about drainage, ecology and lighting. These matters have been addressed by the appellants and conditions may be attached regarding these matters to ensure the details are acceptable.

Conditions

29. In imposing conditions I have had regard to the Council's suggested conditions and to the tests in paragraph 206 of the Framework. The Council suggested a condition limiting the maximum number of dwellings but such a condition would not be necessary as my decision defines the number of dwellings as does the UU.
30. A condition requiring details of the phasing of the development is necessary in the interest of good planning and in order to ensure a good standard of living conditions for future occupiers on each phase pending the completion of works.
31. Conditions requiring details of external facing materials, landscaping and boundary treatments are necessary to ensure the appearance of the development is acceptable, that landscaping becomes established as soon as possible and acceptable living conditions are provided. Detailed measures are necessary to protect trees which are to be retained. In this respect although an Arboricultural Assessment has been provided some of the trees in that assessment which are indicated to be felled have subsequently become protected under the TPO.
32. An indicative sustainable drainage scheme has been submitted. However full details of drainage including during construction are required in order to ensure that sustainable drainage measures are used and that there is no localised risk of flooding. A condition is also necessary to ensure the future maintenance of the drainage system.
33. The Highway Authority has recommended the inclusion of conditions requiring provision of the new road and visibility splays to the required standards, car and cycle parking, upgrading local bus stops and provision of Residential Travel Information Packs to new residents. Conditions securing these matters are necessary in the interests of highway safety and encouraging the use of sustainable modes of transport.
34. Habitat surveys have been undertaken which make recommendations for mitigation. Those details would need to be updated in relation to the detailed development proposals and in this respect I have imposed a condition requiring an Ecological Mitigation Scheme.
35. Details of the method of construction would be required in order to control potential effects on the living conditions of residents and on highway safety.
36. I have imposed a condition requiring a scheme of noise mitigation for the proposed development as is set out in the submitted noise report. The Council did not request such a condition but I consider this would be necessary in order to ensure acceptable living conditions for future residents taking into account the proximity to the railway.
37. Details of refuse storage and collection provision are necessary to ensure adequate arrangements for refuse collection in terms of access and appearance. Details of external lighting are required in order to minimise potential light pollution and to avoid glare.
38. The provision of a superfast broadband connection would be necessary to provide for working from home, in the interest of minimising travel. The Council's suggested wording provides for alternative means of connection and

in this respect would be imprecise so I have imposed a general requirement for superfast broadband provision.

39. The Council suggested a condition requiring a strategy for the recruitment of employees locally for construction work and as necessary afterwards. This is intended to encourage the economic benefit arising from construction and other jobs to be concentrated in the local area but would not be necessary to secure a sustainable development. I also have concerns about the precision and enforceability of such a condition and for these reasons I find that it would not meet the tests in paragraph 206 of the Framework.

Balance and Sustainability

40. Paragraph 14 of the Framework states that where policies for the supply of housing are out-of-date, permission should be granted unless any adverse impacts from doing so would significantly and demonstrably outweigh the benefits, or specific policies in the Framework indicate that development should be restricted. I have identified limited harm in terms of the character and appearance of the area and have given limited weight to that harm. However that limited weight is not sufficient to outweigh the significant weights that I have given to the benefits of the proposal in terms of housing supply and affordable housing. There are no other Framework policies that indicate development should be restricted. The benefits of the proposal indicate that permission should be granted notwithstanding the limited harm and the conflict with policy EN2 of the LP.
41. Bus services run along Thorpe Road in both directions which provide access to the nearby urban area of Frinton. There is also a railway station which the Council's committee report advises is less than 1km from the site. I note the representations that have been made about the infrequency of the bus services. I also saw on my visit that the footpaths along Thorpe Road are quite narrow. Nevertheless the site is in a sustainable location given that there are footpaths and public transport connections and given also that there are some local shops and a primary school within walking distance. The proposal would accord with the three dimensions of sustainable development in this regard.
42. I have identified limited harm to the character and appearance of the area but this must be considered in conjunction with the environmental benefits that would arise from providing housing in a location that is accessible by means other than the car.
43. The provision of new housing in the context of the shortfall and the provision of affordable housing would both be of significant social benefit. The generation of employment during construction and the benefits to the local economy that would arise from the new residents would accord with the economic dimension. For these reasons considered as a whole the proposal would be a sustainable form of development.

Conclusion

44. For the reasons given I conclude that the appeal should be allowed.

Nick Palmer

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 takes place 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 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place until a Phasing Plan and Programme for the development have been submitted to and approved in writing by the local planning authority. The submitted details shall identify the physical extent of each proposed phase of the development and shall include an indicative timescale for the implementation of each phase.
- 5) No phase of 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. Development shall be carried out in accordance with the approved details.
- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the commencement of the development or in such other phased arrangement as may be agreed in writing by the local planning authority; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) No development shall take place until measures for the protection of trees that are to be retained have been submitted to and approved in writing by the local planning authority. Construction shall take place in accordance with the approved measures.
- 8) No development shall take place until details of the 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 before the building(s) to which they relate are occupied and shall thereafter be retained in their approved form.
- 9) No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented in accordance with the approved phasing details.
- 10) No development shall take place until details of measures to minimise the risk of off-site flooding caused by surface water run-off and groundwater

during construction have been submitted to and approved in writing by the local planning authority. Construction shall take place in accordance with the approved details.

- 11) No development shall take place until a Maintenance Plan for the surface water drainage system, including details of the maintenance activities to be carried out, their frequency and the person or body with responsibility for maintenance, has been submitted to and approved in writing by the local planning authority. The drainage system shall be maintained in accordance with the approved Plan. Records of maintenance activities carried out shall be maintained and shall be made available to the local planning authority on request.
- 12) The development shall not be occupied until the following have been provided:
 - a) a priority junction off Thorpe Road that shall include a minimum 6 metre kerbed radii, 2 No 2 metre wide footways, a 5.5 metre wide carriageway and a minimum of 90m x 2.4m x 90m clear to ground visibility splays, substantially in accordance with the approved plan ref. 1226-D-03;
 - b) upgrading of the two bus stops on Thorpe Road, west of its junction with Chapel Lane to current Essex County Council specification in accordance with details which shall have been submitted to and approved in writing by the local planning authority before commencement of development; and
 - c) the provision to the first owner of each dwelling on the site of a Residential Travel Information Pack for sustainable transport, which shall have been submitted to and approved in writing by the local planning authority and which shall include six one day travel vouchers for use with the relevant local public transport operator.
- 13) No development shall take place until details of covered and secure provision for the storage of bicycles for each dwelling have been submitted to and approved in writing by the local planning authority. The approved facilities shall be provided before the dwelling to which they relate is occupied and shall thereafter be maintained.
- 14) No development shall take place until an Ecological Mitigation Scheme and Management Plan has been submitted to and approved in writing by the local planning authority. The document shall include:
 - a) necessary survey information to establish whether any protected species would be affected by the development;
 - b) any necessary mitigation measures; and
 - c) a management plan to provide for the encouragement of biodiversity within the site.Development shall take place in accordance with the approved details.
- 15) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall include:
 - a) the proposed hours and days of working;

- b) details of methods to control fugitive dust emissions from the site;
- c) noise mitigation techniques;
- d) details of lighting during construction including measures to control light spillage to neighbouring properties; and
- e) details of a wheel washing facility.

Development shall be carried out in accordance with the approved details.

- 16) No development shall take place until a detailed scheme for noise mitigation measures to be incorporated into the development has been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved details.
- 17) No phase of development shall take place until details of all refuse/recycling storage and collection points required to serve that phase have been submitted to and approved in writing by the local planning authority. Each refuse/recycling storage and collection point so approved shall be provided before the dwelling to which it relates is occupied and shall be retained thereafter.
- 18) No development shall take place until details of external lighting have been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved details.
- 19) The development shall not be occupied until facilities for superfast broadband connection (that will provide speeds of at least 24 mbps) have been provided and made available for use, in accordance with details which shall have been submitted to and approved in writing by the local planning authority.