
Appeal Decisions

Inquiry held on 13, 14 and 15 December 2016

Site visit made on 15 December 2016

by K H Child BSc (Hons) MA MRTPI

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

Decision date: 20 February 2017

Appeal A Ref: APP/P1560/W/16/3145531

Land north of Rush Green Road, Clacton-on-Sea, Essex CO16 7BQ

- 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 Bloor Homes Eastern against the decision of Tendring District Council.
 - The application Ref 15/00904/OUT, dated 15 June 2015, was refused by notice dated 3 November 2015.
 - The development proposed is described as 'outline planning permission for up to 240 dwellings and areas of landscaping and open space and associated infrastructure'.
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Appeal B Ref: APP/P1560/W/16/3156451

Land north of Rush Green Road, Clacton-on-Sea, Essex CO16 7BQ

- 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 Bloor Homes Eastern against the decision of Tendring District Council.
 - The application Ref 16/00208/OUT, dated 10 February 2016, was refused by notice dated 20 June 2016.
 - The development proposed is described as 'outline planning permission for up to 220 dwellings and areas of landscaping and open space and associated infrastructure'.
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Appeal C Ref: APP/P1560/W/16/3156452

Land north of Rush Green Road, Clacton-on-Sea, Essex CO16 7BQ

- 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 Bloor Homes Eastern against the decision of Tendring District Council.
 - The application Ref 16/00209/OUT, dated 10 February 2016, was refused by notice dated 20 June 2016.
 - The development proposed is described as 'outline planning permission for up to 276 dwellings and areas of landscaping and open space and associated infrastructure'.
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Decision

1. Appeal A – The appeal is dismissed.
2. Appeal B – The appeal is dismissed.
3. Appeal C – The appeal is dismissed.

Procedural Matters

4. The applications were made in outline with all matters reserved except means of access. I have considered the appeals on this basis, although I note the indicative framework plans for each scheme which demonstrate how the appellants envisage the development being carried out.
5. The three schemes differ principally in terms of the number of dwellings proposed. I have considered each on its individual merits, but to avoid duplication I have dealt with the schemes together in this document, except where otherwise indicated.
6. The Inquiry sat for three days, and I held an accompanied site visit on 15 December 2016. I also conducted an unaccompanied site visit on 13 December 2016.
7. There is a discrepancy between the appellant and applicant names, as recorded on the appeal forms and application forms. However, the same company name appears on all sets, and I have therefore referred to this in the banner headings above.
8. There is a slight discrepancy between the application reference number for Appeal B, as recorded on the decision notice and the appeal form. I have used the reference from the decision notice in the above banner heading, as it appears elsewhere in the appeal documentation.
9. The application relating to Appeal A was refused by the Council for four reasons: loss of a local green gap, impact on health provision, impact on education provision, and lack of public transport. The subsequent applications relating to Appeals B and C were refused on the first ground only. The Statement of Common Ground confirms that the Council has formally resolved to withdraw reasons for refusal numbers 2 to 4 in respect of Appeal A. The Council is satisfied that reasons 2 and 3 can be overcome through the submitted planning obligations. This matter is dealt with below. In relation to the fourth reason the parties agree that the site offers transport options and is located on the edge of a sustainable settlement, and I see no reason to dispute this position.
10. The Council's decision notice for Appeal A refers to the impact of the scheme on the operation of Clacton airfield in the context of the first reason for refusal. This was omitted from the decision notice in respect of schemes B and C, and the Council confirmed at the Inquiry that it no longer wishes to defend this matter.

Main Issues

11. In light of the procedural matters, I consider the main issues for all three appeals are:
 - Whether the Council is able to demonstrate a five year supply of deliverable housing sites.
 - The effect of the proposals on the function of the Local Green Gap and the character and appearance of the area.
 - Whether, having regard to the housing land supply position and all other relevant considerations, the proposals would be sustainable development.

Reasons

12. The site consists of approximately 9.76 hectares of open farmland located between the settlements of Clacton and Jaywick. The northern boundary of the site abuts a school site, recreational ground and recycling centre, whilst the southern edge adjoins a number of residential properties. The site is bounded to the west and east by Jaywick Lane and Rush Green Road respectively.

The policy background

13. The development plan includes saved policies from the Tendring District Local Plan (2007) (the Local Plan). Policy QL1 requires that development should be concentrated within the larger towns and villages and within identified settlement boundaries. For the purposes of this policy, the town of Clacton includes the smaller settlement of Jaywick. The appeal site is located outside the defined settlement boundaries established in the Local Plan.
14. The appeal site is identified on the Local Plan Proposals Map as part of a Local Green Gap (LGG). Its purpose, as defined in Policy EN2, is to maintain clear separation between West Clacton and Jaywick in order to safeguard their separate identities and character. The policy also seeks to protect views from these areas over the open countryside, and protect the amenity of the area for formal and informal recreational uses.
15. At the Inquiry the Council confirmed that the appeal site is not formally designated as a Local Green Space in the Local Plan, as provided for in paragraphs 76 to 78 of the National Planning Policy Framework (the Framework).
16. The emerging Local Plan for Tendring has undergone a number of iterations. The appeal site was included in the 2012 Proposed Submission Draft Plan and 2014 amended version¹ as a housing allocation. However, the site is identified in the Preferred Options Consultation Document (July 2016) as a Strategic Green Gap, notwithstanding some mapping errors which have been corrected. This document was produced after the appeal proposals had been refused by the Council.
17. The emerging Plan has not been subject to examination. Accordingly, only limited weight can be attached to the policies and proposals in the July 2016 document which may be subject to change. Previous iterations of the emerging Plan have been formally withdrawn by the Council. Accordingly, although I note the length of time these were in place, I have also attached limited weight to the policies and proposals in these documents.
18. Paragraph 49 of the Framework states that an authority's policies for the supply of housing should not be considered up to date if a five year supply of deliverable housing land cannot be demonstrated. For decision-making this means, by reference to the fourth bullet point of paragraph 14 of the Framework, granting permission unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

¹ Pre-Submission Focused Changes January 2014.

Housing land supply

19. The main parties agree that the Council cannot currently demonstrate a five year supply of deliverable housing land. However, the exact extent of housing under-supply is disputed. The Council's final position, as confirmed at the Inquiry, is that it has 4.84 years of supply, whilst the appellant's view is that supply amounts to some 3.85 to 4.04 years.
20. In terms of housing requirements, the Council has applied an objectively assessed need (OAN) requirement of 550 dwellings per annum (dpa) in its five year supply calculations. This figure is recommended in the latest update of the OAN Study produced in November 2016 on behalf of authorities in the Housing Market Area². It is lower than the 2014-based DCLG household projections for Tendring of 675 dpa. However, the evidence indicates that the official demographic projections for Tendring are not robust, due to an error known as Unattributable Population Change (UPC). The Council's November 2016 OAN Study uses an alternative demographic starting projection of 480 dpa, and applies a market signal based uplift to obtain an OAN figure.
21. The appellant's position is that an OAN figure of 550-600 dpa should be applied. This range was identified in the latest draft of the emerging Plan. I also note that a range of 500-600 dpa was identified in a previous version of the OAN Study (January 2016), albeit with a recommendation that 550 dpa should be used where a single figure is required.
22. The Council's OAN figure of 550 dpa has not been tested through the development plan process. There is also some uncertainty regarding the Tendring projections due to UPC which may be resolved through forthcoming ONS updates in 2017. Nevertheless, in the interim I consider the Council's application of 550 dpa represents a broadly reasonable and pragmatic approach. The Council has worked in conjunction with neighbouring authorities to establish housing need and there is no substantive evidence before me to refute the Strategic Housing Market Area (SHMA) methodology or the Council's latest position on OAN as established in the November 2016 OAN Study.
23. The Council's updated large specific site schedule takes account of permissions granted since April 2016. The appellant has questioned whether the five year housing requirement figure should be similarly adjusted to take account of any shortfall between April and December 2016. At the inquiry the Council confirmed that they were unable to provide such data. Furthermore, as any shortfall over an 8 month or so period would amount to a relatively small proportion of the overall housing requirement, it would not be sufficient to significantly alter the Council's overall five year supply position. Accordingly, and having regard to the fact that the trajectory can be reviewed in 2017, I consider that the Council's approach to calculating the overall five year housing requirement is reasonable in this regard.
24. In terms of estimated housing supply there were several contested issues between the parties. The Council's updated supply schedule includes a large specific site in Lawford which has a resolution to grant permission subject to a Section 106 agreement. However, the Council's evidence indicates that reasonable progress has been achieved in Section 106 negotiations, and there

² Objectively Assessed Housing Need Study – November 2016 Update by Peter Brett Associates on behalf of Braintree District Council, Chelmsford City Council, Colchester Borough Council and Tendring District Council.

is no substantive evidence before me to indicate the site is incapable of delivery within a five year period.

25. An interested party has indicated that additional large specific sites, including those which gained resolution to grant in November 2016 and sites allocated in the emerging Plan, should be included. However, the schemes with resolution to grant are outline only and Section 106 negotiations are at an relatively early stage, and I therefore consider the Council's exclusion of these sites to be a pragmatic approach. Furthermore, the suggested allocation sites do not have planning permission and the emerging Plan is at an early stage of preparation. I have had regard to the St Modwen Developments ³ High Court judgement, but there is no firm evidence before me to show that the sites are likely to be deliverable within a five year period.
26. Overall I consider the Council's assessment of supply from large specific sites is realistic⁴ and in accordance with the Planning Practice Guidance (PPG) and footnote 11 in the Framework. The Council has not applied a discount or non-implementation rate to the source of large specific sites. However, I have seen no firm evidence that the Council's updated list of identified sites would not come forward. The majority of the identified sites have gained planning permission within the last four years, whilst those dating further back are currently under construction. I am therefore satisfied that this approach is consistent with national policy.
27. The Council's estimated windfall supply from small sites is higher in the early years of the Plan period. The rate is informed by completions evidence in the Council's Strategic Housing Land Availability Assessment (SHLAA) 2014 which shows that the level of windfall delivery is decreasing each year. There is no evidence before me that the rate has been 'front loaded' or is too high. I therefore consider that the Council has taken a suitably cautious approach to windfall estimates which takes account of historical completions evidence and declining site availability.
28. In summary, I consider that the Council's estimate of deliverable housing land is broadly reasonable. I note that the projected annual delivery rates would exceed those identified in the Council's SHLAA 2014. Nonetheless, evidence relating to significant recent number of planning approvals indicates that the current market is active and total completions also rose in 2014/15. Accordingly, this has not led me to alter my conclusions above.
29. In conclusion on this issue, I consider the Council's estimate of 4.84 years represents a reasonable assessment of capacity, based on the evidence before me.

Local green gap

30. The appeal site is an agricultural field which forms part of a larger strategic green gap between Clacton and Jaywick. The site is located at the narrowest gap between the two settlements. The south-west edge of the appeal site is close to the settlement boundary of Jaywick, being separated only by a road. To the north the site adjoins a school, recreation ground and recycling centre

³ [2016] EWHC 968 (Admin) St Modwen Developments Limited v SoS for Communities and Local Government, East Rising of Yorkshire Council and Save our Ferriby Action Group.

⁴ Taking into account the judgement referenced in the above footnote.

on the edge of Clacton. These uses are located outside the current settlement boundary of the town, as identified on the Local Plan Proposals Map. However, they provide essential facilities for the town and contain a number of buildings. On this basis, and having regard to their proximity to the main-built up part of Clacton, I consider that in both functional and visual terms they form part of the town.

31. The existing properties on Rush Green Road to the south of the appeal site are separated from Clacton by the large open agricultural appeal site, and are outside the settlement boundary. Notwithstanding postal addresses, I consider that in physical and visual terms the properties do not lie within the main built-up area of the town.
32. The appeal site, by virtue of its extensive, undeveloped and open character, provides a clear physical and visual separation between Jaywick and Clacton. When travelling along Jaywick Lane and Rush Green Road there is a clear sense of this divide, with views across open countryside on both sides of the road. The site has an attractive tree belt on its eastern edge, but overall does not have a particularly noteworthy landscape character. Nevertheless, its openness and rural appearance contributes to the setting of Clacton and Jaywick.
33. The illustrative framework plans and submitted evidence indicate that development would fill the majority of the appeal site. An element of open space is shown on the indicative plans, amounting to about 1 hectare in the case of Appeals A and C, and some 2.46 hectares in the case of Appeal B. Whilst the amount of open space is greater for Appeal B, in all three cases I consider that the proposed amount of open space provision would be insufficient to maintain a clear physical and visual gap between Clacton and Jaywick. I recognise that the applications are for outline permission with matters including layout and landscaping reserved, and that the signed Section 106 agreements include reference to provision of open space equating to 'at least 10% of the site.' However, there is no firm evidence before me to suggest that, having regard to the number of dwellings proposed and the site configuration, the amount of open space feasibly delivered would be capable of providing substantial clear separation.
34. I note that the emerging Plan⁵ proposes a mixed use allocation at Rouses Farm immediately to the west of the appeal site, with the settlement boundaries of Clacton and Jaywick adjoining in this locality. The Council has indicated its intention to make alterations to the final submission Plan to seek open space in the southern section of Rouses Farm as shown on Indicative Framework Plan⁶, in order to maintain separation between Clacton and Jaywick and link the appeal site with open countryside to the west. Although deliverability of this open space is contested by the appellant, there is no substantive evidence before me to demonstrate that suitable landowner agreements could not be achieved and that delivery is unfeasible. Nonetheless, on the basis that the Plan is emerging and subject to change I have attached limited weight to the proposed allocation at Rouses Farm in my determination of these appeals.
35. Jaywick is identified as part of Clacton in Policy QL1 in the Local Plan. Nevertheless, Jaywick and Clacton are separate communities with different

⁵ Preferred Options Consultation Document July 2016.

⁶ Appendix 5 to Alison Hutchinson's proof of evidence.

functions and characters, and Policy EN2 seeks to prevent the coalescence of the two areas. It is also noted that the function of Policy EN2, as stated in paragraph 6.9 is to *'maintain separation between urban areas and free standing smaller settlements that surround them, or between physically separate built-up neighbourhoods.'* Accordingly, I do not consider the categorisation of Jaywick as part of Clacton in Policy QL1 to be a determinative factor that weighs in favour of the coalescence of the two settlements. There is also no firm evidence before me to demonstrate that coalescence in this locality and in the form of a housing-led scheme would significantly aid the regeneration of Jaywick.

36. In summary, the proposed schemes would, by introducing built development in the LGG, be contrary to Policy EN2. Although the main bulk of the green gap between Clacton and Jaywick would remain further to the south-east, the schemes would fail to maintain separation between Clacton and Jaywick in this locality, and would effectively close the countryside gap between the settlements in this area. The proposed development would thereby detract from the setting of Clacton and Jaywick and affect the character and appearance of the area.
37. The Council's SHLAA 2014 concludes that the appeal site could be developed without significant environmental harm. I also note that the site was identified for housing development in various versions of the emerging Local Plan for several years, including at the point the applications were determined by the Council. Nonetheless, the Council's latest position is outlined in their appeal statement, and I have reached my conclusion on the issue based on the evidence before me and my observations during the site visits.
38. The site is an arable field and does not have a current recreation function. In this regard the schemes would not be contrary to the recreational aims and function of the West Clacton/Jaywick gap.

Sustainable development

39. The Council is unable to demonstrate a five year supply of housing land, as required in paragraph 47 of the Framework. In accordance with paragraph 49 of the Framework, relevant policies for the supply of housing should not be considered up-to-date and applications should be considered in the context of the presumption in favour of sustainable development. In this case I consider that Policy QL1 is relevant to the supply of housing. Policy EN2 is also a relevant policy for the supply of housing as it effectively seeks to restrict housing development within LGGs. On this basis I consider they are 'out of date' in terms of housing supply.
40. However, Policy EN2 also seeks to prevent the coalescence of settlements and to protect their setting. As established above this purpose is supported by the Framework. The Council also has a limited degree of identified five year housing supply shortfall, and can point to recent improvements in their supply position linked to a substantial number of recent permissions. Accordingly, I consider that significant weight should be attached to Policy EN2⁷. I also note that this position is consistent with a recent appeal decision at Thorpe Road in

⁷ Taking account of [2016] EWCA 168, Suffolk Coastal District Council v Hopkins Homes and Richborough Estates v Cheshire East.

Kirby Cross⁸ and the Secretary of State's decision on the recent Hamble appeal in Eastleigh⁹. Whilst the Boorley Green decision¹⁰ arrives at a different conclusion in respect of the weight to be given to green gap policies I have arrived at my decision based on the evidence given to me before and during the Inquiry in relation to this specific case.

41. Policy EN2 refers to a four year period of 2007 to 2011. However, its fundamental objective to restrict coalescence and protect setting is consistent with the core principle in the Framework to recognise the role and character of different areas. Accordingly I consider there is no justification to substantially reduce the weight attached to Policy EN2 on the basis of the specified time-limitation or age per se¹¹. In relation to this issue the appellant has drawn my attention to two recent appeal decisions in the district at Halstead Road Kirby Cross¹² and Alresford¹³. However, the former decision letter refers to the time-limited nature of Policy EN2 in the context of housing supply, whilst the latter decision letter refers to Policy QL1 only. Accordingly, they have not led me to alter my conclusions on this matter.
42. The scheme would provide additional housing, including affordable housing, to help meet identified needs. Notwithstanding the relatively limited five year supply shortfall, this is a matter to which I attach significant weight. The site is located on the edge of the most sustainable settlement in the district, with access to public transport and other facilities. There could also be some modest benefits to the local economy, arising from construction and sales, increased revenues to the Council, and additional spending by local residents on local services and facilities. Additional recreational land and play space provided as part of the scheme would also provide a modest social benefit.
43. Other matters put forward in favour of the development include an absence of harm to archaeological remains or Listed Buildings, the site's lack of recreational value and an ability to be accessed safely from the existing highway network. Nonetheless, I consider these to be mitigating factors rather than benefits and the weight to be given to them is therefore limited.
44. However, as established above, the development would significantly diminish the countryside gap between Clacton and Jaywick in this particular locality. It would effectively result in the coalescence of the two settlements, and detract from the character and appearance of the area. It would be contrary to Policy EN2 in the Local Plan and to the principle in the Framework of recognising the different roles and character of different areas. Overall the substantial environmental harm arising from increased coalescence and to the character and setting of Clacton and Jaywick leads me to conclude that the adverse effects of the proposals would significantly and demonstrably outweigh the benefits found. The scheme would therefore fail to represent sustainable development. In the circumstances of these appeals I conclude that the material considerations considered above do not justify making a decision other than in accordance with the development plan.

⁸ 171 Thorpe Road, Kirby Cross – APP/P1560/W/16/3150967.

⁹ Land west of Hamble Lane, Hamble – APP/W1715/A/14/2228566.

¹⁰ Land to the north-west of Boorley Green, Eastleigh – APP/W1715/W/15/3130073.

¹¹ In line with *Gladman Developments v Daventry District Council* [2016] EWCA Civ 1146

¹² APP/P1560/W/15/3140113.

¹³ APP/P1560/W/15/3124775.

Recent appeal decisions

45. The main parties have drawn my attention to a number of recent appeal decisions in Tendring on sites outside settlement boundaries¹⁴. The Kirby Cross decisions relate to sites located in green gaps. Nevertheless, landscape and character impact need to be assessed on a case by case basis. Accordingly, I have determined the three appeals on the basis of the evidence before me and their merits.

Other Matters

46. At the Inquiry the appellant submitted signed Section 106 agreements for the three schemes. These involve contributions towards education and health infrastructure, and the provision of affordable housing and open space. I have no reason to consider that the terms of the obligations would fail to accord with Regulation 122 of the Community Infrastructure Levy Regulations. However, as I have reached the conclusion that the appeals should be dismissed there is no need for me to consider this matter in greater detail.
47. Local residents have raised other concerns, including the impact of light pollution arising from the adjoining school site, the build quality of the scheme, broadband and TV reception issues, traffic and access problems, and ecological issues. Nonetheless, they have not led me to any different overall conclusion regarding the schemes.
48. The appeal schemes were recommended for approval by Council Officers. The appellant has also indicated that positive pre-application advice was received. However, the democratic planning process in these cases involved the final decision being taken by Members. Furthermore, Councils are not bound by pre-application advice provided by officers.
49. The appellant has indicated that a formal review of options was not undertaken when the Council determined that the appeal site should be 'de-allocated' for housing in 2016. However, this is a detailed development plans matter. Furthermore, on the basis that I have attached limited weight to the emerging Plans, it is not a determinative issue in these appeals.

Conclusion

50. For the reasons given above, and having regard to all other matters raised including the low number of objections received from local residents, I conclude that the appeals should be dismissed.

Katie Child

INSPECTOR

¹⁴ Land south of Cockaynes Lane, Alresford (APP/P1560/W/15/3124775); Station Field, Plough Road, Great Bentley (APP/P1560/W/15/3141016); Land east of Halstead Road, Kirby Cross (APP/P1560/W/15/3140113); and 171 Thorpe Road, Kirby Cross (APP/P1560/W/16/3150967).

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Robert Williams of Counsel Instructed by the Council

He called

Alison Hutchinson Hutchinsons

FOR THE APPELLANT:

Thomas Hill of Queens Counsel Instructed by Barton Willmore

He called

Steven Kosky Barton Willmore

INTERESTED PERSONS

Cllr Richard Everett District Councillor

James Prior Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Opening statement by Council
- 2 Opening statement by appellant
- 3 Agreed list of plans
- 4 Notification letter confirming the date, time and place of the inquiry, and the list of persons to whom it was sent – submitted by the Council
- 5 Plans related to APP/W1715/A/14/2228566, land west of Hamble Lane, Hamble - submitted by the appellant (CDH6A)
- 6 Plan related to APP/W1715/W/15/3130073, land north-west of Boorley Green - submitted by the appellant (CDH7A)
- 7 Updated Housing Supply calculation - Appendix 1A to Alison Hutchinson's proof of evidence
- 8 Indicative framework plan for Rouses Farm - submitted by the Council (Appendix 5 to Alison Hutchinson's proof of evidence)
- 9 Saving direction to the Tendring District Local Plan 2007 - submitted by the Council
- 10 High Court judgement [2016] EWHC 968 (Admin) St. Modwen Developments Limited v Secretary of State for Communities and Local Government, East Riding Council and Save Our Ferriby Action Group – submitted by the Council
- 11 CIL Regulation Compliance Statement - submitted by the Council and the appellant
- 12 Signed and dated Section 106 agreements
- 13 Draft conditions - submitted by the Council and the appellant
- 14 Submission from James Prior
- 15 Closing submissions by the Council
- 16 Closing submissions by the appellant