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## Appeal Decision

Site visit made on 4 September 2017

**by Graham Chamberlain BA (Hons) MSc MRTPI**

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

**Decision date: 14 September 2017**

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**Appeal Ref: APP/P1560/W/17/3175342**

**Land fronting Ardleigh Road and Carringtons Road, Great Bromley, Essex**

- 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 and Mrs Alan Hicks against the decision of Tendring District Council.
  - The application Ref 16/00542/OUT, dated 5 April 2016, was refused by notice dated 7 March 2017.
  - The development proposed is described as 'residential development'.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application was submitted in outline with all matters of detail reserved for future consideration. I have considered the appeal on this basis and have treated the appeal drawings as being an illustration of how the development could proceed rather than as a firm proposal.
3. It is understood that the proposal, which is described as a 'residential development' was originally for up to 30 or 40 homes<sup>1</sup>. Following discussions with the Council this was revised down to 14 homes, which is loosely shown on a revised plan. I have considered the appeal on the basis of the revision.
4. The Council has referred to draft policies in its emerging Local Plan (the 2016 'Preferred Options' draft). As this document is yet to be examined and may be the subject of further revisions and consultations, I have afforded it limited weight. As such, the draft policies have not proven to be determinative in my assessment.
5. In its submissions the Council has confirmed that Essex County Council is no longer pursuing a contribution towards education. I have taken this as confirmation from the Council that it no longer wishes to defend the second limb of its second reason for refusal, which relates to the absence of a financial contribution towards education infrastructure.

### Main Issues

6. The main issues in this appeal are: 1) Whether the appeal site would be an appropriate location for housing with particular reference to local rural housing

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<sup>1</sup> The appellant and Council have given different figures

policies and the accessibility of services and facilities; and 2) Whether the proposal would make adequate provision for affordable housing.

## Reasons

### *Whether the appeal site would be an appropriate location for housing*

7. Saved Policies QL1 and HG1 of the Tendring District Local Plan 2007 (LP) direct new development to sites within defined settlement development boundaries (SDB). The supporting text to saved Policy QL1 explains that it aims to protect the countryside from encroachment and to reduce car-borne journeys. The appeal site is currently located outside of a defined SDB and is therefore in the countryside for planning policy purposes.
8. Substantive evidence has not been provided that the proposal would adhere to the countryside policies of the LP or would amount to one of the special circumstances listed in Paragraph 55 of the National Planning Policy Framework. Nevertheless, the appellants have suggested that the field can no longer be viably farmed and this justifies a residential development. I am not persuaded by this given the interest in the site shown by a local farmer for hay production. A letter to this end was sent to the Parish Council. Moreover, I have seen nothing to suggest the site has been formally advertised as a means of gauging such interest. In any event, this is not a matter of sufficient weight in itself that would justify a residential development of the appeal site.
9. As such, a residential development would be contrary to saved Policy QL1 and would thus undermine the broad strategy for housing contained therein. Policy QL1 is broadly consistent with the Framework<sup>2</sup> and the Council are now apparently able to demonstrate a five year housing land supply. Consequently, Policy QL1, and any conflict with it, can be afforded significant weight.
10. In reaching this view I note that when the Council issued its formal decision notice it was unable to demonstrate a five year housing land supply. It has since stated in its submissions that the supply now amounts to 5.1 years. The appellant has questioned the Council's claims of having a five year supply and has cited a report by Shelter that only 1 in 3 homes with planning permission are built. Nevertheless, the Council's data factors in housing completions and the appellant has not provided technical data that robustly contradicts the Council's position. As a consequence, I prefer the Council's position and therefore its policies for the supply of housing are up to date and the tilted balance in Paragraph 14 of the Framework is not engaged as an important material consideration.
11. The Council's current ability to demonstrate a five year housing land supply is a material change in circumstances that limits the weight that can be placed on recent housing approvals in the Bromley Cross area as a matter in favour of the appeal scheme, as these homes were granted at a time when the Council did not have the necessary housing land supply and therefore the overall planning balance would have been different.

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<sup>2</sup> See Paragraphs 17, 29, 30 and 55 of the National Planning Policy Framework in particular, which encourage development that supports the vitality of rural areas whilst also recognising the intrinsic character and beauty of the countryside and the need to promote travel choices as a means of contributing towards sustainability and health objectives, including a reduction in greenhouse gas emissions

12. The nearest service centres to the appeal site, which include education, retail, leisure and employment opportunities are Ardleigh and Colchester, which are located a significant distance away. To access these facilities on foot would require future occupants of the appeal scheme to negotiate seemingly busy rural roads, which for long sections are devoid of pavements and lighting. As such, they are not routes along which pedestrians should be encouraged to travel frequently, especially at night or in inclement weather. The distance and unappealing walking environment would deter future residents of the appeal scheme from walking to access local services and facilities.
13. Accessing these services by bicycle could be an option for some future residents, but not all, depending on mobility and proficiency. Thus reducing the reliance that can be placed on this mode of transport as a genuine alternative to a private car. Cycling would also have similar limitations to walking as the winding rural roads and speed of traffic would be likely to discourage many future residents of the appeal scheme from using this mode of transport.
14. A public house, post office and bus stop are located within a comfortable and safe walk of the appeal site. I have not been provided with a bus timetable so am unable to establish whether the service is frequent. Nevertheless, I note that the timetable was found, in a decision relating to a nearby appeal (APP/P1560/W/16/3163353), to have significant gaps in its service. I have no reason to reach a different conclusion. As such, the appeal site could reasonably be described as being isolated from everyday services and facilities save for a pub and post office operating on reduced hours. The presence of utility services and the ability to shop over the internet would not mitigate for this shortcoming, particularly the remoteness from employment and education.
15. I therefore conclude that the appeal scheme would be contrary to the rural housing policies of the development plan referred to earlier and would result in homes that would be harmfully remote from a collection of everyday services and facilities. The remoteness of the appeal site would leave future occupants of the proposed dwellings largely reliant on private vehicles with limited travel choices. It would do little to minimise pollution and encourage adaptation to climate change and a low carbon economy.

*Whether the proposal would make adequate provision for affordable housing*

16. For schemes of 5 or more dwellings Policy HG4 of the LP requires up to 40% of the new dwellings to be 'affordable housing'. Although this policy is now dated I have seen nothing to suggest that the affordability of housing is no longer an issue in the district. As such, I consider the approach in Policy HG4 to be broadly consistent with Paragraphs 47 and 50 of the Framework, which requires local planning authorities to meet the full, objectively assessed needs for market and affordable housing and where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified. The planning application should be determined in accordance with the development plan unless there are material considerations which indicate otherwise.
17. The appellants have not provided a planning obligation that would secure 40% affordable housing and a case has not been advanced that such a level of

provision would be unviable. In accordance with the Planning Practice Guide<sup>3</sup>, I am not satisfied a negatively worded planning condition that would effectively require a legal agreement to be entered into at a later date<sup>4</sup> would be a suitable mechanism to secure the affordable housing, as such a course of action can only be entertained in exceptional circumstances in the case of more complex and strategically important development. This is not the case here.

18. Consequently, on the basis of the evidence before me the requirement for affordable housing arises from the development and the development plan and satisfies the 3 tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. Nevertheless, I have not been presented with a planning obligation that would secure the provision of affordable housing. I therefore conclude that the proposal would not make adequate provision for affordable housing contrary to Policy HG4 of the LP.

### Other Matters

19. It is necessary to consider the benefits of the proposal as material considerations that may outweigh the conflict with the development plan I have identified in the preceding paragraphs. As a benefit, the proposal could support the local economy through construction jobs and the circulation of funds. The proposal would also boost housing supply and choice<sup>5</sup>. The provision of fourteen homes is not insignificant but these benefits could be accrued by a development in a more accessible location that would not have the harmful impacts I have identified. Moreover, the Council has a five year housing land supply so any boost to housing supply is not determinative.
20. The development may provide patrons for the local public house, post office and bus service. These are local benefits but they cannot be guaranteed and the scale of them is unclear. Thus, they are matters of insufficient weight in favour of the scheme. Therefore, as material considerations, the benefits of the scheme do not outweigh the harm I have identified and the subsequent conflict with the development plan.
21. Various concerns have been raised by interested parties in respect of flood risk, education, the size of the development, its proportionately to Bromley Cross and the safety of the highway access, which I have noted. However, given my findings above it has not been necessary for me to address these further as they would not alter the outcome of the appeal, which has failed on the main issues. The appeal scheme would result in a notable urbanisation of the countryside and I have not been presented with an ecological assessment. Nevertheless, I have likewise not considered these matters further given my earlier findings.
22. The appellant has provided an extract from Planning Resources that refers to an approved housing development, which was granted outside of a defined settlement even though the Council had an up to date housing land supply. I accept that such a course of action can be perfectly acceptable when material considerations indicate the development should be forthcoming in spite of any conflict with the development plan. Such a conclusion turns on the facts of the

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<sup>3</sup> ID: 21a-010-20140306

<sup>4</sup> I have not been presented with a method for securing the affordable housing that would not involve a planning obligation in the form of a legal agreement or similar

<sup>5</sup> The appellants have suggested the development could include bungalows and self-build plots

case and in this instance, for the reasons already given, I have not reached such a conclusion.

23. In a similar vein the appellant has referred to a recent appeal in the district where material considerations were found to outweigh the development plan. However, in this instance the development was found to be well located to facilities with no harm to the character and appearance of the area. These are materially different circumstances and consequently there is no inconsistency between my findings and those of my colleague.

### **Conclusion**

24. The appeal scheme would be contrary to the development plan taken as a whole and material considerations do not indicate planning permission should be forthcoming in spite of this. Accordingly, having had regard to all matters raised, I conclude the appeal should be dismissed.

*Graham Chamberlain*  
INSPECTOR

Richborough Estates