



## Appeal Decision

Hearing held on 7 June 2018

Site visit made on 7 June 2018

**by L Fleming BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 17<sup>th</sup> September 2018.**

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**Appeal Ref: APP/P1560/W/16/3164169**

**Land South of Centenary Way/North of London Road Clacton on Sea, Essex CO16 9QZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Ray Chapman (Ray Chapman Associates) against the decision of Tendring District Council.
  - The application Ref 15/01720/OUT, dated 11 November 2015, was refused by notice dated 20 June 2016.
  - The development proposed is outline planning application for the erection of up to 175 dwellings, provision of permanent public open space and supporting site infrastructure with all matters reserved apart from access
  - This decision supersedes that issued on the 11 September 2017. That decision on the appeal was quashed by order of the High Court.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Following the hearing the revised National Planning Policy Framework (the Framework) was published and I have therefore taken it into account in my decision. Both main parties and interested parties have had the opportunity to comment on the implications for the appeal and I am satisfied that no interested party has been prejudiced by my approach.
3. The application was submitted in outline with all detailed matters reserved apart from the access. I have dealt with the appeal on that basis, treating the plans as illustrative other than in respect of the access details. I have taken the site address from the appeal form and not the application form as this is more accurate.

### Main Issues

4. The main issues are:
    - whether the Council can demonstrate a five year supply of deliverable housing land;
    - the effect of the proposal on the function of the Local Green Gap and the character and appearance of the area.
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## Policy Background

5. The development plan is the saved Policies of Tendring District Local Plan (2007) (LP). An Examination in Public is currently underway on the emerging Tendring District Local Plan 2013-2033 (ELP). This plan is being prepared in two stages. The first relates to strategic matters including housing targets and strategic allocations (section 1). The second relates to more detailed local policies including non-strategic allocations (section 2).
6. Following the examination hearing sessions on section 1 of the ELP the examining Inspector raised a number of concerns with regard to the soundness of the plan as submitted. In order to make the plan sound the Inspector recommended either the removal of elements relating to new garden cities, provide significant additional evidence or withdraw the plan. The Councils have not yet decided how to proceed with the ELP.
7. Draft Policy PPL 6 of the ELP relates to Strategic Green Gaps and forms part of section 2 of the ELP. I am told work will not proceed on section 2 of the ELP until section 1 of the ELP has been found sound. Furthermore, draft Policy PPL 6 of the ELP is the subject of a number of unresolved objections as is the overall draft housing requirement. As such I agree with both main parties that in accordance with paragraph 48 of the Framework draft Policy PPL 6 of the ELP and the draft housing requirement should be afforded limited weight.

## Reasons

### *Housing land supply*

8. Paragraphs 67 and 73 of the Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirement with a 20% buffer where there has been significant under delivery of housing over the previous three years.
9. It is not my place in determining a section 78 appeal to undertake a detailed assessment of housing requirements or supply. Such matters are best left for the Local Plan process. However, what follows is a broad assessment based upon the evidence before me at the time of my determination.
10. The Council consider that the Objectively Assessed Need (OAN) for the district equates to 480 DPA and if this is found not to be the case the figure can be no more than 550 DPA. The appellant argues the OAN is 670 DPA but if this is found not to be the case it can be no lower than 600 DPA.
11. The Council's latest OAN Study update<sup>1</sup> considered the 2014-based sub national household projections (SNHP) and the mid-year estimates (MYE) and set a demographic starting point of 675 DPA for Tendring District. However, between 2001 and 2011 the MYE suggested the population grew in Tendring by 9,793 people whereas the Census figures suggested it fell by 740, an unattributable population change (UPC) of 10,533<sup>2</sup>.

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<sup>1</sup> 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

<sup>2</sup> Proof of Evidence by NMSS on behalf of Tendring District Council November 2017 submitted alongside APP/P1560/W/17/3183678, APP/P1560/W/17/3183695 & APP/P1560/W/17/3183626

12. Given this UPC the study questions the suitability of national population projections as the demographic basis for OAN in the district. It advises a corrected demographic starting point of 480 DPA which with market signals uplift recommends that the OAN for the District should be 550 DPA as the mid-point in the range of 500 to 600 DPA.
13. A number of appeals have been put before me where the OAN for the district has been considered. In October 2017<sup>3</sup> it was found that 600 DPA should be adopted as the higher figure in the range suggested by the latest OAN study update. I note that decision was subject to a lengthy Inquiry and unsuccessfully challenged by the Council in the High Court.
14. It also predates the other appeals put before me which took into account that decision. In January 2018<sup>4</sup> an Inspector found the OAN to be 510 DPA and in February 2018<sup>5</sup> two Inspectors found it should be 550 DPA. Furthermore, most recently three linked appeals were determined by the same Inspector in May 2018<sup>6</sup> by way of an Inquiry where the OAN was contested. It was found, taking into account the same appeal decisions put before me, that the OAN figure is within the range of 480 to 550 DPA and probably at the lower end of that range with the Inspector concluding that it was most appropriate to adopt the worst case scenario of 550 DPA.
15. Subsequently, the 2016 based sub national population projections (SNPP) have been published showing a projected increase in the district's population greater than the 2014 based SNPP and SNHP. These project from mid-2011, whereas the 2014 based SNPP relied on trends taken from between 2001 and 2011, thus the appellant's contend that the 2016 based SNPP are not infected by UPC.
16. However, the Council argue that the MYE post 2011 are informed by migration flows data taken from the 2011 Census. Furthermore, the Council tell me UPC in Tendring is mainly driven by errors in estimating internal migration flows with around 5,500 to 6,000 of UPC likely to be attributable to migration. Thus, it is the Council's view that the errors have continued post 2011 and have inflated the figures for the trend period used for the 2016 based SNPP.
17. I acknowledge the findings of the Local Plan Expert Group and the relevant comments in the Housing White Paper<sup>7</sup>. However, I find the Council's evidence convincing and I find it too simplistic to suggest that because the 2016 based SNPP indicates that the 2014 based SNHP did not overestimate household growth that the Council's extensive evidence with regard to the existence and effects of UPC in Tendring is inaccurate. Particularly, without any detailed analysis as to how migration data from the 2011 Census has informed the 2016 based SNPP or not.
18. I note the comments with regard to the district specific growth in households headed by someone aged 65 or over and the higher mortality rates suggested by the 2016 based SNPP than the previous projections. However, whilst I

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<sup>3</sup> Appeal Reference APP/P1560/W/17/3169220

<sup>4</sup> Appeal Reference APP/P1560/W/17/3177219

<sup>5</sup> Appeal References APP/P1560/W/17/3176089 & APP/P1560/W/17/3169150

<sup>6</sup> Appeal References APP/P1560/W/17/3183678, APP/P1560/W/17/3183695 & APP/P1560/W/17/3183626

<sup>7</sup> Local Plans Expert Group, Local Plan Report to the Communities Secretary and to the Minister of Housing and Planning March 2016 and Fixing our Broken Housing Market, DCLG February 2017

- accept this may indicate a higher need in the district than previously indicated, on the basis of the evidence before me I am unable to determine by how much.
19. Furthermore, the local plan examining Inspector in his letters<sup>8</sup> found the demographic starting point of 480 DPA with market signals uplift to an OAN of 550 DPA as soundly based having considered the implications of the 2016 based SNPP.
  20. I therefore find the appellant's evidence on this matter insufficient to lead me to any different conclusion to the Inspector in the May 2018 appeals<sup>9</sup> or those of the examining Inspector. Thus, the figure of 550 DPA underpinned by the most up to date assessment of OAN should be used for the purpose of this appeal.
  21. To determine whether or not buffers should be applied to the requirement for the five year period paragraph 73 of the Framework requires consideration of whether there has been significant under delivery of housing over the previous three years. I acknowledge that completions during the last two years have been in excess of 550 DPA. However in years 2015/16 to 2017/18 only 1,468 new dwellings were completed whereas 1650 would have been required. Thus, consistent with the views of both main parties I find the shortfall to be significant such that a 20% buffer should be applied.
  22. That said the total five year land supply requirement for the period 2018/19 to 2022/23 including the shortfall (Sedgefield method) and the 20% buffer is some 4,273 dwellings.
  23. The Council's latest Strategic Housing Land Availability Assessment (SHLAA)<sup>10</sup> identifies land to deliver 4,649 dwellings between 2018/19 and 2022/23. This is made up of 449 dwellings from emerging allocations, 3540 dwellings from large site commitments, and 660 dwellings from small windfall sites.
  24. The definition of deliverable in the glossary to the Framework states sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. I now deal with each source of supply with this in mind.
  25. The emerging allocations are proposed to be allocated in the section 2 ELP. There is insufficient site specific evidence before me to lead me to the conclusion that any of those emerging allocations should be regarded as so substantial or the cumulative effect of such would mean they should be regarded as premature within the terms of paragraph 49 of the Framework.
  26. Thus, I do not accept the argument any of the sites should be automatically discounted from the Council's deliverable land supply for prematurity reasons. Furthermore, even though additional sites not proposed to be allocated in the plan may be required to respond to any delays in bringing forward strategic sites, it is not for me determine which sites and when they will be needed.

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<sup>8</sup>Local Plan Inspectors Letters to the North Essex Authorities dated 8 & 27 June 2018 regarding Examination of the Strategic Section 1 Plan.

<sup>9</sup> Appeal References APP/P1560/W/17/3183678, APP/P1560/W/17/3183695 & APP/P1560/W/17/3183626

<sup>10</sup> Tendring District Council Strategic Housing Land Availability Assessment, April 2018

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27. The definition of deliverable in the Framework does not preclude sites identified in an emerging plan. However, I do not know when work will commence on the proposed strategic allocations in the section 1 ELP or the non-strategic allocations in the section 2 ELP. Without a timetable setting out a sequence of events necessary to make those allocations I cannot form a view on when or if those emerging allocations are likely to be allocated as envisaged. However, I will address some of the specific emerging allocations below.
28. Site reference SAMU3 does not benefit from planning permission and there are no relevant applications pending consideration. Whilst I note Appendix 3 of the SHLAA states an application is expected, the need for on-site infrastructure is noted which could have viability and development rate implications. Furthermore, SAH2, SAH1 and SAMU5 each have outline applications pending determination. Appendix 3 of the SHLAA notes there are a number of barriers to delivery to be overcome for all of these sites before they can be delivered. There are no specific details of what is required or when this would be achieved.
29. Thus with the absence of more detailed evidence to the contrary I am unconvinced that housing completions will begin within five years on sites SAMU3, SAH2, SAH1 and SAMU5, particularly given the likely delay in the preparation of section 2 of the ELP. These emerging allocations are expected to contribute a total of 299 dwellings to the deliverable housing land supply.
30. Emerging site allocation SAMU4 has outline planning permission and is awaiting the completion of a legal agreement which I am told is in progress, Furthermore I note independent viability evidence is being sought by the Council and the site is under the control of a housebuilder. Whilst I accept the appellant's arguments that there may be delays, there also may not be and I am not informed of any specific barriers to the delivery of this site. Given the demonstrated progress and with the absence of any more detailed evidence to the contrary I find it reasonable to expect that completions would occur at 30 dwellings a year from 20/21 as envisaged by the Council.
31. With regard to emerging allocation MS14, this site is the subject of an application for full planning permission for 32 dwellings. Whilst a decision has not been made and I note the comments with regard to ownership, without any details of any other specific constraints, I find a full planning application demonstrates a willingness to bring the site forward and the Council's assumptions reasonable, notwithstanding its contribution should be reduced from 35 to 32 dwellings.
32. Prior to the publication of the revised Framework there was no dispute between the main parties on the supply from large site commitments. However, this source includes a significant number of sites which benefit only from outline planning permission. It is the appellant's view that these should now be removed from the deliverable land supply following the revised definition of deliverability set out in the glossary to the Framework.
33. However, Appendix 1 of the SHLAA provides a detailed assessment of all these sites. With the absence of any substantive site specific evidence to the contrary, I find no reason to question the Council's detailed assessment of these sites and I am satisfied that this demonstrates that housing completions will begin on these sites within five years.

34. With regard to small windfall sites. I note that each site is not specifically identified in the SHLAA. However, I was told that all of the 660 dwellings from this source benefit from extant planning permission. Furthermore, Appendix 2 of the SHLAA makes clear that the actual number of dwellings with planning permission on sites under nine dwellings is significantly more than 660 dwellings, which if accounted for could increase the deliverable land supply. Thus, whilst I accept the comments with regard to the transparency of this data, the figures seem reasonable and there is no substantive evidence before me which challenges them.
35. Thus on the basis of the evidence before me I find the Council's deliverable land supply should be reduced by 302 dwellings to 4347 dwellings. The Council is therefore able to demonstrate a deliverable land supply of 5.09 years.

*Local Green Gap and character and appearance*

36. The appeal site comprises a number of fields, a dwelling and outbuildings between the main built up areas of Little Clacton and Clacton on Sea. To the east of the appeal site is a supermarket and associated car park, a petrol filling station and a holiday park. Although these are outside of the defined settlement development boundary of Clacton on Sea they appear very much as urban features effectively forming part of the built up area, thus linking the appeal site to the main built up area of Clacton on Sea. Given these features, the area has a relatively open and edge of settlement character and appearance.
37. The proposed development would be within part of a Local Green Gap (LGG) as designated by saved Policy EN2 of the LP which states that during the plan period, land within LGG's will be kept open, and essentially free from development.
38. The sub text to saved Policy EN2 of the LP makes clear with specific reference to the relevant LGG its function includes to safeguard the separate identity, character and openness of the setting of the settlements, particularly protecting undeveloped land either side of the Centenary Way, to preserve and where possible enhance views from the settlements and to safeguard the open character of the land either side of the Little Clacton Bypass.
39. Whilst the proposal would bring Little Clacton and Clacton on Sea much closer together, the proposed substantial landscape buffering along the northern edge of the site would ensure that they remain and appear as separate settlements. It would also partly retain the undeveloped character along Centenary Way and safeguard views from Little Clacton towards Clacton on Sea, with additional and existing trees and planting limiting views of the development and separating it from the road.
40. However, it is without doubt that even with landscaping, the introduction of a substantial residential development would change the character of this area from open and edge of settlement to a built-up part of a wider urban area. This would harm the open character of the area and the open approach to Clacton on Sea physically bringing Little Clacton and Clacton on Sea much closer together.
41. The proposal would therefore be in direct conflict with saved Policy EN2 of the LP. In which case, paragraph 213 of the Framework makes clear that due

weight should be given to relevant policies according to their degree of consistency with the Framework.

42. I accept that the LGG does not fall within any of the designations noted under footnote 6 of the Framework. However, the aims of saved Policy EN2 of the LP are consistent with the aims of paragraph 170 of the Framework which requires the intrinsic character and beauty of the countryside to be recognised. However, I accept, the rigid restriction of any development within the LGG is in conflict with the more flexible approach to development required by the Framework overall.
43. Furthermore, saved Policy EN2 of the LP specifically refers to being operational during a plan period which has expired. The reason for this specific policy wording is the Council's recognition of the need to review such restraint policies in line with the need to review the development plan to bring forward inevitable new developments on the edge of settlements. The LGG's are under review through the ELP and I have also found that the Council can demonstrate at least a five year supply of deliverable housing land, which is a factor when considering whether or not such a policy is out of date.
44. Nevertheless consistent with the findings in the most recent appeal decisions<sup>11</sup> put before me relevant to this matter, I find saved Policy EN2 of the ELP is out of date although it remains partly consistent with the Framework. Thus it should be afforded only moderate weight. Even so, the introduction of a substantial built form into an otherwise open area would be harmful to the function of the LGG and as such harmful to the open edge of settlement character and appearance of the area.
45. Thus, the proposal fails to accord with saved Policy EN2 of the LP which aims to safeguard the character and openness of the setting of settlements. For the reasons given I afford this harm and conflict moderate weight. For the same reasons it would also conflict with draft Policy PPL 6 of the ELP although for the reasons given I afford this conflict only limited weight.

### **Other Matters**

46. The submitted planning obligations would secure contributions towards education and healthcare facilities. They would also ensure on site open space provision and that twelve affordable dwellings are gifted to the Council. I am satisfied these obligations meet the tests and I take them into account in my overall planning balance.
47. The proposal would add 175 more dwellings to the supply of housing in the area including 12 affordable dwellings in a location well served by public transport and close to services, facilities and employment. There would also be significant economic benefits in terms of customers and employees for local businesses and economic benefits associated with construction. There would also be new homes bonus and Council tax revenues.
48. I have noted the letters of support and the comments with regard to the effects of the existing car boot sale. I note the associated comments with regard to congestion in the area on car boot sale day and the environmental effects of the existing use. I acknowledge that part of the appeal site is a Local Wildlife

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<sup>11</sup> Appeal References APP/P1560/W/17/3169220 & APP/P1560/W/17/3176089

Site hosting corky-fruited water-dropwort and adders tongue fern which would be retained, managed and enhanced resulting in a net gain in bio-diversity.

49. Moreover, I note the grade II listed Building of Stone Hall is to the north of the appeal site within Little Clacton. In accordance with section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 I am required to have special regard to the desirability of preserving its setting. Given the separation distance and intervening features there would be no harm to the setting or significance of the designated heritage asset such that its setting would be preserved.

### **Conclusion**

50. Section 38(6) of the Planning and Compulsory Purchase Act (2004) states decisions must be made in accordance with the development plan unless material considerations indicate otherwise.
51. I have found that the Council can demonstrate at least a five year supply of deliverable housing land. As such paragraph 11(d) of the Framework is not engaged and the weight I afford to the benefit of 175 dwellings in this location at this time is significantly reduced.
52. Even though I have found saved Policy EN2 of the LP to be out of date I have also found it to be partly consistent with the aims of the Framework. With the five year land supply in place the tilted balance is not triggered, instead the weight to be afforded to the conflict with saved Policy EN2 is reduced in accordance with paragraph 213 of the Framework.
53. That said, the moderate weight I attach to the harm I have identified to the character and appearance of the area, the LGG and conflict with the development plan outweighs the weight I attach to the benefit of delivering 175 new dwellings including affordable homes, together with the planning obligations, associated economic benefits and environment benefits including the proposed biodiversity enhancement.
54. Even if I did accept saved Policy EN2 of the LP being out of date triggered the tilted balance, with a five year supply the weight I attach to the benefit of 175 new dwellings would still be significantly reduced such that when combined with the other benefits of the scheme, those benefits are significantly and demonstrably outweighed by the moderate weight I attach to the conflict with saved Policy EN2 of LP and the harm to the character and appearance of the area and the LGG.
55. For the reasons set out above, I conclude that on balance the proposed development would not accord with the development plan. Thus, having had regard to all other matters raised and all other relevant material considerations including the Framework taken as a whole, the appeal should be dismissed.

*L Fleming*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT

P Shadarevian QC	Cornerstone Barristers
S Hollingworth	Strutt Parker LLP
R Clews	Strutt Parker LLP
J Blake	James Blake Associates
J O'Conner	James Blake Associates
R Chapman	Appellant
R Allwright	Landowner

### FOR THE COUNCIL

G Guiver	Tendring District Council
G Nourse	Tendring District Council
Cllr Jeff Bray	Tendring District Council

### THIRD PARTIES

J Cutting	Little Clacton Parish Council
R Everett	Resident
F Strutt	Resident
S Tompkin	Resident
L Thompson	Resident
L Moulos	Resident
T Martin	Land Logic

## **DOCUMENTS SUBMITTED AT THE EVENT**

1. Representation for Centenary Way Hearing Land Supply by R Everett
2. Statement of Common Ground – Update June 2018 (Signed)
3. Cotswold District Council v Secretary of State for Local Government and Hannick Homes and Development Ltd [2013] EWHC 3719 (Admin).

## **DOCUMENTS SUBMITTED AFTER THE EVENT**

1. Local Plan Inspectors Letters to the North Essex Authorities dated 8 & 27 June 2018 (Local Plan Inspectors Letters) regarding Examination of the Strategic Section 1 Plan.
2. Representation from Tendring District Council with regard to Local Plan Inspectors Letters
3. Representation from Strutt Parker LLP with regard to Local Plan Inspectors Letters
4. Representation from R Everett with regard to Local Plan Inspectors Letters
5. Representation from Cllr Jeff Bray with regard to Local Plan Inspectors Letter
6. Representation from Strutt Parker LLP with regard to the implications of the revised Framework
7. Representation from Tendring District Council with regard to the implications of the revised Framework.
8. Representation from F Strutt with regard to the implications of the revised Framework.
9. Representation Martin Robeson Planning Practice with regard to the implications of the revised Framework.