
Appeal Decisions

Site visit made on 16 October 2018

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2018

Appeal Ref A: APP/P1560/W/18/3195663

Land adjacent and to the rear of Hillside Garage, Clacton Road, Weeley CO16 9DN

- 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 Kays Properties against the decision of Tendring District Council.
 - The application Ref 16/00764/OUT, dated 16 May 2016, was refused by notice dated 10 August 2017.
 - The development proposed is described as 'Outline planning application for proposed relocation of motor vehicle workshop, provision of new access road and for the erection of up to 120 residential units with all matters reserved.'
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Appeal Ref B: APP/P1560/W/18/3195665

Hillside Motors, Clacton Road, Weeley CO16 9DN

- 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 Kays Properties against the decision of Tendring District Council.
 - The application Ref 16/00762/FUL, dated 17 May 2016, was refused by notice dated 11 August 2017.
 - The development proposed is the demolition of motor vehicle workshop and change of use of lands from agriculture to open space to be used in conjunction with proposed residential development.
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Decisions

1. Appeal A is dismissed and Appeal B is dismissed.

Preliminary Matters

2. The proposal for Appeal B includes the demolition of a workshop and would provide the open space to be used in conjunction with the residential development proposed in Appeal A. The two schemes are intended to be implemented together and were considered together when they were determined by the Council. The reason for refusal of Appeal B is substantially the same as the first reason for refusal of Appeal A. I have therefore considered the appeals together and framed the main issues accordingly.
 3. The application the subject of Appeal A was made in outline with all matters reserved. However, it was supported by drawing reference 1349 01 Rev C which shows access through the Hillside Garage site, the relocation of that facility, an internal road layout, open space, strategic landscaping and an area for potential site expansion. The Design and Access Statement confirms that this drawing is intended to be indicative and I have treated it in that way.
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Drawing number 617399/SK01, titled Junction Sightlines, was also submitted with the application. However, since access has been reserved for further approval, I have treated this drawing as being for information only.

4. The appellant's statement was submitted before the revised National Planning Policy Framework (the Framework) was published. However, the appellant was given the opportunity to comment. I have taken those comments into account.

Main Issues

5. The main issues are:

- whether the proposals accord with development plan policies for the location of new housing and associated development;
- whether the new housing makes adequate provision for affordable housing, education and healthcare provision and the maintenance of open space (Appeal A only).

Reasons

Development Plan Policies for the Location of New Housing and Associated Development

6. The appeal sites comprise part of Hillside Garage together with agricultural land to the rear of the, primarily residential development on the west side of Clacton Road, Weeley Heath. This essentially linear settlement runs south from the railway line and station. The larger and more consolidated settlement of Weeley lies to the north of the railway line. The sites sit adjacent to, but outside of, the settlement boundaries for Weeley Heath in both the Tendring District Local Plan 2007 (LP) and the emerging Tendring District Local Plan 2013-2033 (ELP).
7. Saved Policy QL1 of the LP sets out the spatial strategy and seeks to concentrate most development in the District's larger towns with limited development, consistent with local community needs, in smaller towns and villages. Weeley and Weeley Heath are defined as villages. The policy also seeks to concentrate development within settlement boundaries and states that development outside those boundaries will only be permitted where it is consistent with countryside policies. There is nothing to suggest that the proposals accord with the Plan's countryside policies. As such, they conflict with Policy QL1.
8. However the LP's spatial strategy runs to 2011. The appellant does not dispute that the Council can demonstrate a five year supply of housing land. However, that supply includes sites which are outside of settlement boundaries, which indicates that the Policy QL1 is no longer fulfilling the housing requirements of the District. Therefore, I agree with the Inspectors for the appeals at Colchester Road, Thorpe le Soken and Bromley Road, Ardleigh¹ who found that Policy QL1 is out of date. Since this is the most important policy in this case, paragraph 11 of the Framework is engaged. Framework policies that protect assets of particular importance are not applicable in this case and, therefore, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the proposals when assessed against the policies of the Framework as a whole.

¹ Appeal decision references APP/P1560/W/17/3183155 and APP/P1560/W/17/3185776

9. That said, Policy QL1 forms part of the development plan and Framework paragraph 213 advises that due weight may be given to policies according to the degree of consistency with the Framework. The policy seeks to direct development within a hierarchy of settlements in accordance with the principles of sustainable development. In that regard it is consistent with the Framework. The policy also allows for restricted forms of development in rural areas. Although this reflects the Framework's recognition of the intrinsic character and beauty of the countryside to an extent, the revised Framework is less prescriptive on this point than earlier national planning policy. Overall, therefore, I consider that moderate weight can be given to the proposals' conflict with LP Policy QL1. Again this is consistent with earlier appeal decisions.
10. Policy SPL1 of the ELP defines the Plan's settlement hierarchy which seeks to prioritise development in locations with access to the strategic road network, public transport and the widest range of services. Under this hierarchy Weeley is categorised as a third tier Rural Service Centre and Weeley Heath as a Smaller Rural Settlement. The latter are considered to be the least sustainable locations for growth, but can achieve a small scale increase in housing within flexibly drawn settlement boundaries. The supporting text presumes against developments of more than 10 dwellings in Smaller Rural Settlements unless they have local support.
11. Policy SPL2 defines settlement boundaries and states that development outside of those boundaries will be considered in relation to the settlement hierarchy and any other relevant policies within the plan. I have not been made aware of any such relevant ELP policies which support the proposals. Given the size of the proposed housing development in relation to the scale of housing anticipated in Weeley Heath, I consider that this element of the proposal conflicts with Policy SPL2.
12. The ELP has been prepared in in two parts. Part 1 was prepared jointly with Colchester Borough and Braintree District Councils and includes proposals for Garden Communities. The Inspector had significant concerns regarding this element of the Plan. The three Councils are considering their response to these concerns and the examination of Part 2 will not proceed until they are resolved. Paragraph 48 of the Framework advises on the weight to be given to the policies of emerging plans. I have not been provided with information on the extent of any unresolved objections to Policies SPL1 and SPL2 and there is no substantive evidence to demonstrate that they are inconsistent with the Framework. Nevertheless, in view of the stage of preparation of the ELP, I give limited weight to the proposal's conflict with Policy SPL2.
13. Although I have given reduced weight to the conflict with LP Policy QL1 and ELP Policy SPL2, together these policies are consistent in seeking sustainable patterns of development where the scale of new housing reflects the capacity and accessibility of the locality. This approach broadly accords with the Framework.
14. The appellant has referred to an outline application for 280 dwellings, a primary school, nursery, office and ancillary development on land south of Thorpe Road, Weeley². The application was recommended for approval by planning officers, but the decision was deferred by the committee. That site is

² Application ref 17/02162/OUT

outside of the LP settlement boundary, but allocated for the proposed uses in the ELP. Officers considered that it would be appropriate to grant consent, amongst other things, to ensure a robust supply of housing sites. The appellant argues that the Council's decision reduces the extent of the planned development in the area and that this could be partly accommodated at the appeal site. However, the Council's decision was to defer, rather than refuse, the Thorpe Road scheme. Whilst this will lead to a delay, based on the information available, there is still the prospect that the scheme will proceed at some stage. In these circumstances it would be pre-emptive to allow the development of a non-allocated site to replace, at least in part, an allocated site, albeit that the allocation is in an emerging Plan.

15. The appellant also argues that the appeal site is located closer to a range of local facilities than the Thorpe Road site. However, the Thorpe Road proposal includes a school and open space and appears to offer a reasonably convenient footpath route to the railway station via Second Avenue. It is also closer to the shops, public houses and other facilities in Weeley than the appeal site. I recognise that the appeal site is fairly well located with regard to the railway station, bus stops, the primary school and playing fields. Nevertheless, overall I consider that it is not better located with regard to access to local facilities than the Thorpe Road site.
16. Appendix PLG4 of the appellant's statement shows the location of a number of sites where the Council has granted planning permission for housing. Apart from the Thorpe Road scheme, all appear to be smaller than the appeal proposals and I have not been provided with details of the circumstances of the Council's decisions. Therefore, whilst I recognise that the area offers access to some local facilities and public transport, I can give limited weight to the approvals at the other sites and they do not alter my finding regarding the relationship of the appeal proposals to the objectives of the settlement hierarchy set out in the LP and ELP.
17. It is also contended that the appeal site would have less impact on the wider countryside than the Thorpe Road site. However, unlike the Thorpe Road scheme, the appeal proposals are not supported by a Landscape and Visual Impact Assessment. It is, therefore, difficult to assess the respective landscape and visual effects of the proposals. I recognise that the appeal land is not the subject of specific landscape protection policies and does not fall within a designated strategic gap. Nevertheless, guidance in the Council commissioned Tendring District Landscape Assessment indicates that the strategy for the Clacton and the Sokens Character Area should be to conserve the low density settlement pattern in rural areas, maintain the distinctive identity of individual settlements and enhance the character of the urban fringe.
18. It does go on to state that there may be some opportunity for development adjacent to existing settlements. In the absence of a proper assessment it is not possible to establish conclusively whether the appeal site offers such an opportunity. However, the scale of the housing element of the proposal would be significant in relation to the adjoining established development and would result in the urbanisation of land which is currently open in character. It would create development in depth which would be a marked departure from the essentially linear pattern of development along Clacton Road. Furthermore, most of the site's western boundary is marked by a post and wire fence which

is not a strong landscape feature and offers no visual containment. Whilst a 5m wide landscape buffer is proposed along this boundary, I am not convinced that this would adequately assimilate the proposal into its landscape setting, even allowing for a relatively low density of residential development.

19. The open space element of the proposal would preserve the openness of that part of the site and, subject to appropriate landscaping, would be unlikely to have a significant visual impact. Nevertheless, in order to function effectively, the open space would be likely to have a manicured appearance (notwithstanding my concerns regarding its maintenance set out below) and would require footpaths, play equipment and other paraphernalia. Consequently, it would change the landscape character of the land. If Appeal B was allowed and the open space was developed independently of the proposed housing, it would appear as an isolated and incongruous feature in the landscape.
20. Overall therefore, I consider that the landscape and visual impacts of the development have not been satisfactorily assessed. However, based on the information available, I find that the proposals would be likely to have a harmful effect on the character and appearance of the area.

Affordable Housing, Education and Healthcare Provision and the Maintenance of Open Space

21. Policy HG4 of the LP seeks 40% affordable housing on sites such as the appeal site. Policy LP5 of the ELP requires 30% of new dwellings to be affordable on sites of 11 or more units. The Council's submissions indicate that the ELP is based on up to date evidence on housing need and viability. The appellant has not disputed that position or claimed that the provision of affordable housing would make the appeal scheme unviable.
22. Policy COM26 of the LP requires, where necessary, a financial contribution or land to be made available to provide for the additional school places needed to serve residential developments of 12 or more dwellings. Policy PP12 of the ELP requires the impacts of residential development on education provision to be addressed on-site or through financial contributions. Essex County Council has provided information on the likely number of pupils generated by the development and the deficit in the capacity of the local primary and secondary schools. It has also set out the requirements to mitigate the effects of the proposal by means of financial contributions to increase the capacity of the local primary school and to provide transport for secondary school pupils. The appellant has not disputed these requirements.
23. Policy COM6 of the LP requires a financial contribution towards the maintenance of on-site open space which is to be transferred to the Council. The appeal proposals include on-site open space, but no alternative to transferring it to the Council to maintain has been put forward. In the absence of satisfactory maintenance arrangements the open space would be unlikely to provide an adequate recreational facility for future residents and to become unsightly.
24. Policy QL12 of the LP states that the Council may seek Planning Obligations to secure, amongst other things, community and education facilities. NHS England, as the primary healthcare provider, has submitted information on the deficit in the capacity of the local GP surgery and the likely demand for the

service arising from the development. It considers that a financial contribution is required to mitigate the impact of the development. The appellant has not challenged this requirement.

25. The appellant's planning statement advised that all of these requirements would be addressed through the submission of a Unilateral Undertaking (UU). Nevertheless, no such UU has been submitted. The appellant's final comments contend that the Council has not formally requested the provision of affordable housing or financial contributions. Annex N of the Procedural Guide³ provides advice on Planning Obligations. It confirms that it is the responsibility of the appellant to clarify at an early stage the logistics of completing the deed and that a complete copy of the Obligation should be submitted within seven weeks of the start date of the appeal. Furthermore, it is for the Inspector to assess whether the Obligations meet the tests set out in the Framework and the Community Infrastructure Levy Regulations, although the parties should provide the evidence need to allow this assessment to be made.
26. An Obligation in the form of a UU does not require the Council to be a party to it. Nor is it necessary for the appellant to be satisfied that the Obligations would meet the necessary tests before the UU is submitted. The Council's evidence on the need for the obligations sought is undisputed. Therefore, I find that Appeal A proposal would not make adequate provision for affordable housing, education and healthcare provision or the maintenance of open space. As such, it would conflict with LP Policies HG4, COM26, COM6 and QL12. To the extent that Policy HG4 has been overtaken by more up to date evidence, the proposal would still conflict with ELP Policy PP12.

Other Matters

27. The appellant has drawn my attention to appeal decisions at Sladbury's Lane, Clacton; Frinton Road, Thorpe le Soken; Heckfords Road, Great Bentley; Station Road, Thorrington and Colchester Road, Thorpe le Soken⁴. In first three cases the Council was not able to demonstrate a five year supply of housing land and the appellants had produced Planning Obligations to secure affordable housing and local infrastructure contributions. The Thorrington and Colchester Road, Thorpe le Soken appeals were for 10 and 9 dwellings respectively. They were, therefore, considerably smaller in scale than the current appeal scheme and the Inspectors in those case found that their size was compatible with the objectives of LP Policy QL1. As such, the balance of considerations in each of the cited appeals was distinguishable from the current appeal.
28. I have had regard to the other concerns expressed locally, but none has led me to a different overall conclusion.

Planning Balance and Conclusion

29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case I have found that the most important policy in the determination of the

³ Planning Inspectorate Procedural Guide – Planning Appeals England

⁴ Appeal references APP/P1560/W/17/3169220, APP/P1560/W/17/3166985, APP/P1560/W/17/3174843, APP/P1560/W/17/3175859 and APP/P1560/W/17/3183155

appeal is out of date and, therefore, that the 'tilted balance' applies when assessing proposals against the policies of the Framework as a whole.

30. Framework paragraph 8 sets out the objectives for sustainable development. The proposals would have economic benefits in the short-term through the creation of construction employment and activity, although this would apply to any comparable development. Expenditure by future residents could be expected to support local businesses and services. However, whilst I have recognised that the appeal site is fairly well located to some facilities, these are limited in extent and it is likely that future occupiers would need to travel further afield to meet the full range of their day to day needs. This would run counter to the Council's spatial strategy which seeks to prioritise development in locations where such facilities are closer to hand. This limits the weight that I can give to the economic benefits of the proposals.
31. The Framework seeks to significantly boost the supply of homes by ensuring that a sufficient amount and variety of land comes forward where it is needed. The 120 dwellings proposed would make a considerable contribution to the supply in the District. However, the Council considers that it can demonstrate a 5.88 year supply of housing land. As the appellant and other Inspectors have noted, the District's housing land supply position has fluctuated over time. However, the current claimed supply, which is not disputed by the appellant, is less marginal than was the case when the appeals at Bromley Road and Station Road, Thorington⁵ were determined. I have already noted that land is allocated elsewhere to allow Weeley to meet its role in the ELP's spatial strategy and the appeal proposals are large in relation to the anticipated role of Weeley Heath. Consequently a pressing need for the new housing has not been demonstrated.
32. Moreover, the housing element of the proposals would fail to take the opportunity to provide needed affordable housing and would not mitigate its impact on education or healthcare provision. Nor has a satisfactory means of maintaining the proposed open space been secured. Balancing these considerations with the absence of a pressing need for the proposed housing in this location, I consider that the proposals would have an adverse impact on the social objectives for sustainability.
33. I have already expressed concerns regarding the impact of the proposals on the character and appearance of the area and the lack of detailed information on their landscape and visual effects. There is no firm evidence to suggest that the proposals would have an unacceptable impact on ecology. Given the size of the site and the fact that the layout is reserved for further approval, it would be reasonable to expect that the development could be achieved without adversely affecting the living conditions of neighbouring occupiers. I also note that flood risk and highway safety matters were addressed at the application stage. However, the absence of further harm does not amount to a positive benefit in favour of the proposals. Overall therefore, I consider that the proposals are likely to have a negative effect on the environmental role of sustainability.
34. The Framework encourages a plan-led approach to development. Notwithstanding the reduced weight that I have given to relevant development

⁵ Appeal reference APP/P1560/W/17/3175859

plan policies in this case, the proposals would be at odds with both the adopted and the emerging strategy for development in Weeley Heath.

35. Having regard to all of these considerations, I find that the adverse impacts of the proposals would significantly and demonstrably outweigh their benefits when assessed against the policies of the Framework as a whole. As such, the proposals would not amount to sustainable development and do not benefit for the presumption in favour. Therefore the appeals should be determined in accordance with the development plan. The conflicts with LP Policies QL1 (Appeals A and B), QL12, COM6, COM26 and HG4 (Appeal A) indicate the appeals should be dismissed. The conflicts with ELP Policies SPL2 and PP12 reinforce that conclusion.

36. For the reasons set out above, appeals A and B should be dismissed.

Simon Warder

INSPECTOR

Richborough Estates