
Appeal Decisions

Site visit made on 14 October 2014

by Anne Napier-Derere BA(Hons) MRTPI AIEMA

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

Decision date: 12 November 2014

Appeal A Ref: APP/P1560/A/14/2223852

112 Oxford Road, Clacton-on-Sea, Essex CO15 3TE

- 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 FGH Ltd against the decision of Tendring District Council.
 - The application Ref 13/01310/OUT, dated 25 October 2013, was refused by notice dated 17 February 2014.
 - The development proposed is residential development (houses and flats) with potential retail or office units at ground floor level.
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Appeal B Ref: APP/P1560/A/14/2223860

118 Oxford Road, Clacton-on-Sea, Essex CO15 3TE

- 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 Colco against the decision of Tendring District Council.
 - The application Ref 13/01309/OUT, dated 25 October 2013, was refused by notice dated 17 February 2014.
 - The development proposed is residential development (houses and flats) with potential retail or office units at ground floor level.
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Decisions

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

Preliminary Matters

2. The two appeals concern separate but adjoining sites, which are proposed to be redeveloped with proposals that share the same description. Although the appellants differ, the supporting information submitted in respect of both appeals and the issues raised in relation to the proposals are very similar. Accordingly, to avoid unnecessary repetition, I intend to consider the proposals jointly, although the decision on each appeal scheme will be made separately, on its own merits and in light of all representations made.
3. The appeal applications sought approval for planning permission in outline with all matters reserved. Although no plans or floorspace figures have been submitted to provide indicative details of the proposed developments, for Appeal A, the application form and Planning and Design and Access Statement (PDAS) envisage a scheme of some 15 two or three bedroom houses, or some 30 flats, with retail or office use at ground floor level. In respect of Appeal B, the application form and paragraph 1.1 of the PDAS indicate a similar proposed development, but for a scheme of some 12 houses or 24 flats. For both

schemes, it is suggested that the buildings could be of around two to three storeys in height. I intend to treat this information as indicative of the amount and type of development proposed and consider the appeals on this basis.

4. The Council's decision notice makes reference to policies from the emerging *Tendring District Local Plan Proposed Submission Draft (2012)* and the *Pre-Submission Focussed Changes (2014)*. The Council's appeal questionnaires responses indicate that further substantial revisions to the emerging Local Plan (ELP) are proposed, relating primarily to issues of housing supply. I intend to take this into account in my consideration of the proposals.

Main Issues

5. The main issues in both these appeals are:

- The effect of the proposals on the supply of employment land;
- Whether or not the appeal sites would be appropriate locations for residential, retail and office development, having regard to the principles of sustainable development; and
- The effect of the proposals on the provision of play space and education facilities.

Reasons

Employment land

6. The appeal sites are located adjacent to the railway line, relatively close to the town centre, and form part of an established area of varied predominantly industrial development along Oxford Road. The wider local area includes a range of uses, including retail and residential, as well as a school and leisure centre to the east of the railway line. At the time of my visit, both the appeal sites were in active use for a range of storage and industrial related uses, as well as for a relatively small retail outlet and showroom.
7. It is not a matter of contention that the sites are located within an area that is defined as a Principal Business and Industrial Area in the *Tendring District Local Plan 2007 (LP)*. LP Policy ER3 seeks to protect employment land from redevelopment for other uses, with Policy ER2 seeking to prevent the use of such sites for office use. The proposed redevelopment of the sites for residential, office and retail purposes would be contrary to these policies.
8. The evidence before me indicates that the policies of the ELP are potentially subject to change. As such, I only give them limited weight. Nonetheless, insofar as the appeal sites are concerned, there is nothing substantive before me to indicate that the overall aims of the current development plan employment policies, referred to above, are not intended to be taken forward in the ELP employment policies.
9. Furthermore, it is not disputed that the most recent *Employment Land Review (ELR)* in 2013 indicates that the area containing the appeal sites should be retained for industrial related employment purposes, notwithstanding the supply of employment land elsewhere. In addition, the draft *Economic Development Strategy* for the area identifies the retention and improvement of key employment sites as important, and the retention of sufficient employment land of the right type and in the right location as critical to the achievement of

its aspirations for the town. From the details available to me, neither of these documents forms part of the development plan and information regarding their production and methodology is limited. As such, I only accord them little weight. However, they also support the development plan approach with regard to these appeal sites.

10. Paragraph 22 of the *National Planning Policy Framework* (the Framework) states that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. However, from my visit, both the appeal sites are currently in use and the buildings within them appear to be in relatively good condition for their age. They are also located within an employment area that is in active use for a range of different industrial and business purposes.
11. I understand that the existing businesses on the appeal sites are exploring relocation elsewhere and reference has been made to the 2013 ELR, which indicated that the condition of the existing industrial stock in Clacton is such that it may be difficult to re-let if existing tenants relocate. The details before me also indicate that employment sites elsewhere also exist, such as the Gorse Lane industrial estate to the north of the town. I understand that a proposal also exists for a vacant unit opposite the appeal sites to be used for retail development.
12. Nonetheless, there is nothing substantive before me to demonstrate that an alternative employment use of the appeal sites would not be viable, nor that they would not be suitable for other employment uses should the existing businesses decide to move. Taking into account the location, size and nature of the sites and the buildings available, together with the level and type of activity within the immediate local area, the individual appeal sites would appear to have a realistic potential to remain in employment use in the future.
13. The retail and office uses proposed for the sites would also create a number of jobs. However, details of this aspect of the schemes are limited and, in the main, this type of employment would be markedly different from that currently, or potentially able to be, provided on the two appeal sites in their present form. From the evidence available to me, even if the future employment base for the area becomes more dependent on service industries than has been the case in the past, I am not satisfied that there would be no requirement for the industrial and storage type of employment space provided by the appeal sites. Furthermore, although a number of jobs would be created in the construction of the proposed developments, by their nature, the benefits resulting from these would be temporary.
14. I note that objections to the proposals were not raised by the Council's Regeneration or Planning Policy teams. Nevertheless, overall, I consider that the loss of existing employment land of this type, which would result from each of the proposals, would be material in its impact and unacceptably harmful to the economic development of the area. Given the encouragement within paragraph 19 of the Framework, for the planning system to support and encourage sustainable economic growth, I give this significant weight.
15. Reference has been made to recent planning permissions for new employment sites elsewhere in the town. The appellants' contention that these sites would meet the area's identified future employment land requirements is not disputed by the Council. Nonetheless, there is nothing substantive before me to indicate

that they are currently available for employment use, or to provide details about their implementation, to demonstrate that they are likely to be operational within a reasonable period of time. Consequently, whilst this matter weighs in favour of the proposals, the weight given to it is limited and not sufficient to outweigh the harm identified above.

16. Accordingly, for the above reasons, I conclude that each of the proposals would have a detrimental effect on the supply of employment land. They would be contrary to LP Policies ER2 and ER3 and would not meet the aims of section 1 and paragraph 17 of the Framework, to build a strong, competitive economy and support sustainable economic development.

Locations for residential, retail and office development

17. The proposals would result in the development of a number of residential dwellings, which would contribute towards meeting the identified housing needs of the area, on previously developed sites in locations within comfortable reach of a range of local services and facilities. Paragraph 47 of the Framework aims to boost significantly the supply of housing and the Council does not dispute that it is unable to demonstrate a five year supply of deliverable housing land. However, taking into account the size of the two sites, the contribution made by the proposals would be relatively modest and, therefore, I give moderate weight to this benefit of the scheme.
18. Having regard to the existing use of the sites, their planning history and their potential for future use, their use as proposed in the appeal schemes would be less likely to generate movements of larger vehicles, or activities that may cause noise and disturbance. However, given the context of the two sites, including their location within an established industrial area, their size and their distance to nearby dwellings, I consider the beneficial impact of the proposals in these respects is likely to be relatively limited. As such, I accord these matters only limited weight.
19. Paragraph 5.5 of both the PDAS indicates that the appeal developments are also proposed to incorporate ground floor retail and office uses, with the extent of this dependent on viability and demand. These uses are identified as main town centre uses within the Framework. Although the appeal sites are located relatively close to the town centre, there is nothing before me to demonstrate that suitable and viable sites within the town centre are not available for these types of use, nor is the scale of these proposed uses clear at this stage. Consequently, overall, whilst these elements may also have some local social and economic benefits, I accord them little weight in favour of the proposals.
20. Paragraphs 6-9 of the Framework indicate that 'sustainability' should not be interpreted narrowly. Elements of sustainable development cannot be undertaken in isolation but should be sought jointly and simultaneously. The planning system has an economic role to perform 'by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation'. Economic growth can secure higher social and environmental standards and sustainable development involves 'seeking positive improvements in the quality of the built environment, as well as in people's quality of life', including making it easier for jobs to be created.
21. I have found that the proposals would have some benefits and these would contribute towards the aim of achieving sustainable development. However,

for the above reasons, I consider that these benefits would be significantly and demonstrably outweighed by the harm to the supply of employment land identified above. The appellants have made reference to paragraph 51 of the Framework. However, the proposals concern neither empty buildings, nor the change of use of such buildings. Moreover, I have found that there would be strong economic reasons why the development proposals would be inappropriate. As a result, they would not meet the aims of this paragraph.

22. Having regard to paragraphs 14 and 47-49 of the Framework and when assessed against its policies taken as a whole, I conclude that the proposals would not meet the overarching aims of the Framework to achieve sustainable development. As such, I find that the contribution of the two proposals to the supply of housing within the area is not a compelling reason to allow these appeals.

Play space and education provision

23. There is evidence of an identified shortage of play facilities within the area and LP Policy COM6 requires a financial contribution to be made for residential development schemes of this size, where the existing facilities are inadequate to meet the projected needs of the future occupiers of the development.
24. The Council's *Supplementary Planning Document on the Provision of Recreational Open Space for New Development 2008* (SPD) provides a methodology for the calculation of a specific sum for a financial contribution in this respect, based on the number and size of dwellings proposed. The Council's *Formal Open Space Audit 2008* and *Summary of Play Area and Sports Pitch Need by Town and Parish Area 2011* indicate priorities for improvement, the latest of which include one of the two play areas identified as being closest to the appeal sites.
25. Nonetheless, taking into account the age of the documents and the level of detail contained within them, together with the consultation response on the appeal applications, I am not satisfied that the Council has provided a sufficiently clear and convincing explanation of how, and on what, any monies contributed would be spent. Furthermore, the mechanism for calculating the potential financial contribution for outline development proposals is not entirely clear and, despite references to an annual review of costs, those detailed in the SPD are from 2007.
26. Similarly, LP Policy COM26 indicates that, where necessary, financial contributions will be sought to provide additional school places needed to serve developments. The County Council has identified that there is likely to be a significant lack of capacity within primary schools across the town by 2018. However, no substantive information has been provided about the relationship of the appeal sites to existing schools or regarding any proposed works to which the development proposals would reasonably be expected to contribute.
27. As such, having regard to regulation 122 of the Community Infrastructure Levy Regulations 2010 and to paragraph 204 of the Framework, I am not satisfied that the details available to me indicate that, in these cases, contributions to play space and education provision would meet the relevant tests, as it has not been adequately demonstrated that the financial contributions would be fairly and reasonably related or directly related to the developments proposed.

28. Consequently, I conclude that financial contributions towards play space and education provision have not been fully justified as necessary to make the development proposals acceptable in planning terms or that, in the absence of such contributions, the appeal proposals would conflict with the underlying aims of LP Policies COM6 and COM26. However, this does not address the harm identified in respect of the previous main issues.

Other matters

29. I understand that restrictions on finance are such that a residential use of the appeal sites would be necessary to support the relocation of the existing enterprises on the two sites. However, whilst I recognise that this is likely to be of significant benefit to those businesses, it is not sufficient to outweigh the harm identified above.

30. The appeal applications were made in outline, with all matters reserved. I have taken into account that certain aspects of the schemes may alter from the indicative details provided. Nevertheless, even if the form of the development proposals were to alter from that suggested, this would not be sufficient to address the above concerns.

31. The evidence before me indicates that residential development has relatively recently taken place on sites located to the south, on the same side of the road as the appeal sites. Reference has also been made to a recent permission granted for housing development on land previously allocated for employment use. I do not have the full background to those schemes or the decisions relating to them. However, in terms of their location and the character of other development nearby, they would not appear to be directly comparable with the schemes before me. Moreover, the existence of development elsewhere is not an appropriate reason to allow proposals that would cause harm.

32. I note the appellants' comments in relation to the fee paid to the Council for the preparation of planning obligations in respect of the proposals. However, given my findings above, I regard this as primarily a matter for the Council, in the first instance, and not one that should be decisive in these appeals.

Conclusions

33. I have considered each of the proposed developments on its individual merits. For the above reasons and having regard to all other matters raised, I conclude that both Appeal A and Appeal B should be dismissed.

Anne Napier-Derere

INSPECTOR