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## Appeal Decision

Site visit made on 29 September 2015

**by Claire Victory BA (Hons) BPI MRTPI**

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

**Decision date: 22 December 2015**

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**Appeal Ref: APP/P1560/W/15/3124764**

**Land off Harwich Road, Little Oakley. Grid Ref Easting: 622033; Northing: 229396**

- 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 Landfast Ltd. against the decision of Tendring District Council.
  - The application Ref 14/00995/OUT, dated 18 July 2014, was refused by notice dated 11 March 2015.
  - The development proposed is an outline application for up to 60 dwellings at land off Harwich Road, Little Oakley.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application is made in outline with all matters (scale, layout, appearance, access and landscaping) reserved for future consideration, although an indicative layout has been submitted to which I have had regard. This includes a vehicular access, taken from Harwich Road to the east of No 16.
3. The appellant submitted an amended OS map, which includes the removal of a small strip of land in the north-west corner. The updated plan also shows additional land in the appellant's ownership edged in blue adjacent to the appeal site. Whilst the Council considers this change would warrant a further consultation on the proposal, the amendment would result in a small reduction in the area of the appeal site, and does not materially affect the proposal. On that basis I do not consider that anyone would be disadvantaged by my consideration of the amended plan in this appeal.
4. The appellant has submitted a unilateral undertaking and I deal with this in more detail below.

### Main Issues

5. The main issues in the appeal are:
    - the effect of the proposal on the character and appearance of the area;
    - whether the proposal makes adequate provision for infrastructure;
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- whether the proposal makes adequate provision for affordable housing; and
- taking all of the above into account, whether the proposal would represent sustainable development.

## **Reasons**

### *Planning Policy*

6. Policy QL1 of the Tendring District Replacement Local Plan (LP) (2007) describes Little Oakley as part of the built up area of Harwich and Dovercourt, and states that development should be concentrated primarily within the larger urban areas of Clacton and Harwich. The supporting text to LP Policy QL1 also states that Little Oakley should be considered as part of Harwich. However the Council contends that Policy SD6 of the Tendring District Local Plan: Proposed Submission Draft (2012) as amended by Pre-Submission Focussed Changes (2014) (draft local plan), which describes Little Oakley as a lower order 'smaller rural settlement' should be given greater weight than the adopted plan policy as it gives a more nuanced picture of Little Oakley.
7. The parties also dispute the extent of the Little Oakley settlement boundary. The Council considers that the inclusion of a small part of the appeal site within the settlement boundary as defined in the LP is a drafting error which it intends to correct in the draft local plan, but that document is at an early stage of preparation and has yet to be submitted for examination. As a result I can afford Policy SD6 and the anticipated settlement boundary of Little Oakley only limited weight.
8. In any case, the parties agree that the Council cannot demonstrate a 5 year supply of deliverable housing sites, and thus LP Policy QL1, which directs housing development in accordance with the aforementioned settlement hierarchy, should be considered out of date, as set out in paragraph 49 of the National Planning Policy Framework (the Framework). As such, the appeal scheme cannot be refused solely on the basis that it lies partially outside the settlement boundary, and the proposal should be assessed against paragraph 14 of the Framework and the three strands of sustainable development identified at paragraph 7.
9. Notwithstanding this, the greater part of the site lies within a Local Green Gap (LGG) as designated by LP Policy EN2. This policy aims to keep LGGs open and free of development, to prevent the coalescence of settlements and to protect their rural settings. This is compatible with the aim of the Framework, as set out in paragraph 17, to recognise the intrinsic character and beauty of the countryside and to protect valued landscapes. Consequently I have attached full weight to LP Policy EN2 in determining this appeal.

### *Character and appearance*

10. The appeal site is part of an open field to the north of Harwich Road. To the west lie the rear of dwellings on Aspen Way and Beech Grove (the Oak Ridge housing estate), and the southern boundary lies in part along the rear of frontage dwellings on Harwich Road. There is a limited road frontage between No 61 Harwich Road and dwellings opposite the junction with Seaview Avenue. An informal footpath runs along the eastern edge of the field, outside the appeal site and adjacent to the long rear gardens of the latter properties. This

links up with a public footpath that abuts the northern boundary of the site. North of the public footpath are arable fields, with built development visible beyond the fields to the north towards the village of Ramsey. There is also a public footpath that runs north-south through the western part of the appeal site, next to the Oak Ridge housing estate. Access to this footpath is taken from Harwich Road, adjacent to No 55.

11. The appeal site forms part of a LGG which separates Little Oakley from the village of Ramsey to the north. Whilst within the same settlement boundary, Little Oakley is formed of two distinct parts. The main part of the village lies to the east of the appeal site, whilst to the west of the appeal site, the built form is predominantly enclosed by Harwich Road to the south, Rectory Road to the west and the footpath to the north. The appeal site, and the remainder of the field abutting it to the east, provides an open area between these two parts of the village, as well as contributing to the physical separation between Little Oakley and Ramsey, and is linked to the open fields to the north by the network of public footpaths in the locality. Consequently in maintaining a physical separation between these built up areas and protecting the semi-rural character of the area the appeal site makes an important contribution to the function of the LGG.
12. The illustrative masterplan proposes that up to 60 dwellings could be accommodated on that part of the site to the rear of the Harwich Road frontage dwellings, leaving the remainder as open space. Despite the existence of some frontage development along part of the southern boundary, the existing edge of the Oak Ridge estate forms a logical and consistent boundary to this built up area. The considerable depth of the appeal site behind the Harwich Road frontage means that there would be a significant incursion of built development into the gap. As such the development would unacceptably erode the open nature of the LGG and weaken its role in separating the built up areas.
13. The appellant contends that a sufficient gap would be retained along the frontage if the appeal were allowed, but the construction of the road access would introduce a hard landscaped element into the undeveloped LGG that would be incongruous with its rural character. I also acknowledge that the Harwich Road site frontage lies within the settlement boundary, but the development would also be seen from the footpath to the north of the site, which forms part of the wider footpath network and route into the village from the Oak Ridge development, and the LGG would appear significantly reduced when viewed from this perspective.
14. For these reasons I conclude that the proposal would cause significant harm to the character and appearance of the surrounding area, contrary to LP Policy EN2 and the Framework.

#### *Infrastructure*

15. The Council require a financial contribution for additional or enhanced open space in accordance with LP Policy COM6. This is supported by an Open Space Audit (2008) and Provision of Recreational Open Space for New Development SPD (2008) and Open Space Audit, which indicates that there is a deficiency of more than 1 ha of equipped play and formal open space within the parish of Little Oakley. LP Policy COM26 requires a financial contribution towards school places in the case of all developments of 12 or more dwellings. Furthermore, NHS England has identified the need for a financial contribution of £18,100 to

address expected increased demand for GP services arising from the development, and a Health Impact Assessment has been provided to evidence this. LP Policy QL12 allows for the Council to seek planning obligations for infrastructure where appropriate. As future occupiers of the dwellings would create demand for and expect to use such facilities, I consider that the contributions sought by the Council would meet the tests in paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010.

16. The appellant has submitted a unilateral undertaking agreeing to make financial contributions towards play equipment at Little Oakley Playing Field, additional floorspace at Bessbrook Branch Surgery, Harwich Road, Great Oakley, and local provision for pre-school children, and the Council has confirmed the contributions specified within the UU are acceptable. I therefore conclude that the proposal would make provision for infrastructure, and would accord with LP Policies COM6, COM26 and QL12.

#### *Affordable Housing*

17. The Council's third reason for refusal relates to an absence of contributions towards the provision of affordable housing. The decision notice refers to Policy PEO10 of the draft local plan, which requires developments of more than 10 dwellings to make 25% of the dwellings available to the Council at a discounted value for use as Council housing, or 10% if new dwellings are to be made available alongside a financial contribution for affordable housing either off-site or on-site. However, for reasons I have already described this document can be afforded only limited weight in determining the appeal.
18. The unilateral undertaking submitted by the appellant provides for no less than 25% of the dwellings on site to be affordable housing, in accordance with the draft policy. Although the obligation is directly related to the development and it seems to me to be fairly and reasonably related in scale and kind, due to the absence of any adopted development plan policy or guidance in support of the requirement, I am not persuaded that it is necessary to make the development acceptable in planning terms, and that part of the undertaking would not accord with the provisions of Regulation 122 of the Community Infrastructure Regulations (CIL) 2010 and the tests for planning obligations set out in the Framework. I therefore conclude that there is no requirement for the appeal proposal to provide on or off site affordable housing.

#### *Whether sustainable development*

19. There would be a modest benefit to the local economy, from the short term at least from the construction of the dwellings, and the appellant has pointed to the proximity of local employment opportunities. The Council accept there would be a modest benefit in terms of the economic dimension. Accordingly I consider the economic dimension would be met.
20. The social role of sustainable development includes providing the supply of housing required to meet the needs of present and future generations. The Council concedes in the officer report that there is only a 2.9 year supply of housing, taking into account a 20% buffer, reflecting a record of persistent under delivery of housing in the District. The provision of up to 60 dwellings would assist in boosting significantly the supply of housing within an area where there is a shortfall, and I give considerable weight to this factor. Whilst

the unilateral undertaking submitted allows for 25% of the dwellings on site to be affordable housing, I have found it would not meet the tests in the CIL Regulations or the Framework in relation to affordable housing, and paragraph 5.3 of the undertaking states there is no obligation on the appellant to provide the affordable housing in that event. In addition, as the infrastructure contributions offered simply fulfil policy expectations they attract no positive weight in support of the scheme.

21. The Council are concerned with the scale of development in relation to the accessibility of services and facilities. There are two primary schools in the vicinity, albeit concerns have been expressed locally regarding their current capacity. A convenience store and public house are within a reasonable walking distance of the site, and other local shops and facilities at Great Oakley are about 1km away. Cycling could therefore be a realistic option for some journeys. Bus stops near to the appeal site on Harwich Road, generally providing an hourly service during the daytime would enable access to higher order shops and services in Dovercourt, Harwich and Colchester, and I am mindful of the Framework which states that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. I consider that on balance the appeal proposal would meet the social role.
22. Flood risk, ecology, landscape and archaeology concerns can be addressed satisfactorily through the use of appropriate conditions. However, I have found that the appeal proposal would result in significant harm to the character and appearance of the area arising from intrusion into the Local Green Gap, and thus the environmental role of sustainable development would not be met.
23. Paragraph 8 of the Framework confirms that the different roles of sustainable development should not be undertaken in isolation, because they are mutually dependent, and should be sought jointly and simultaneously through the planning system. Taking all of the above into account, I conclude that the development would not represent a sustainable form of development, and would fail to accord with national policy.

### **Other Matters**

24. The Council has not indicated whether planning obligations towards the provision of the aforementioned infrastructure would result the pooling of more than 5 such agreements, and thus whether the contributions sought would be contrary to Regulation 123 (3) of the Community Infrastructure Levy Regulations 2010. Nevertheless, as I am dismissing the appeal, I have not pursued this matter with the parties.
25. The site lies within Flood Risk Zone 1, and is therefore at low risk of flooding, and Anglian Water has confirmed that there is sufficient capacity for foul drainage within the area. Whilst there are concerns regarding drainage within the locality, I consider that these would be met by the imposition of appropriate conditions requiring full details of foul and surface water drainage to be provided, if the appeal scheme were acceptable in all other respects.
26. Nos 1 and 2 Grapevine Cottages are grade II listed. At the site visit I saw that these buildings appeared to form a single property, No 63 Harwich Road. There are modern buildings on either side and opposite the listed buildings, and the detailed design and layout would be the subject of a reserved matters

application. As such I agree with the Council that development to the rear of these properties would not harm their setting.

27. My attention has been drawn to the public right of way within the site, close to its western boundary. The appellant has indicated that there would be an application to divert this footpath, but this would need to follow a separate process outside of this appeal and as such this would not affect my overall conclusion. Likewise, any land ownership disputes would fall outside the scope of this appeal.
28. I have had regard to all other matters raised but none of these matters, either individually or cumulatively, would lead me to any other overall conclusion.

### **Conclusion**

29. I have found that there would be no requirement for the provision of affordable housing on the site. I also consider that the provision of up to 60 dwellings in a district with a serious shortfall of housing would be a benefit to be weighed in favour of the appeal scheme. There would also be some limited economic benefits.
30. However, these benefits would be outweighed by the significant and demonstrable harm that would be caused to the character and appearance of the area that would conflict with LP Policy EN2, and paragraph 17 of the Framework.
31. For the above reasons I conclude that the appeal should be dismissed.

*Claire Victory*

INSPECTOR