



Appeal Decision

Site visit made on 7 June 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th July 2022

Appeal Ref: APP/P1560/W/21/3283544

Land to the east of Tye Road, Elmstead Market

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Hills Residential Construction Ltd against Tendring District Council.
 - The application Ref 20/01797/FUL, is dated 09 December 2020.
 - The development proposed is described on the planning application form as 'Full planning application for residential development of 15 dwellings, land for open space and associated car parking and infrastructure.'
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Decision

1. The appeal is allowed and planning permission is granted for 'Full planning application for residential development of 15 dwellings, land for open space and associated car parking and infrastructure' at Land to the east of Tye Road, Elmstead Market in accordance with the terms of the application, Ref 20/01797/FUL, dated 09 December 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appellant has submitted an amended plan (reference 170119/P/12/A) which includes a very small 1 square metre increase in the overall floorspace of 'house type 3'. In considering the acceptability of these amendments, I have had regard to the Wheatcroft¹ principles. The amendment is aimed at addressing part of the Council's case with regard to whether sufficient internal floorspace is provided.
3. Nonetheless, given the very minor scale of the amendment and the fact that there would be little if any discernible change in the external appearance of the proposed development, I consider that it would not fundamentally alter the development as originally proposed and consulted on by the Council. Furthermore, this is a matter which could equally be addressed by planning condition. I have therefore considered the appeal on the basis of this amended plan.
4. Since this is an appeal against non-determination, there is no decision notice. That said, the Council has provided an appeal statement, which provides sufficient evidence to establish why the application would have been refused by the Council had it been determined. This evidence has informed the main issues of the appeal.

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

5. The main parties have both referred to the revised National Planning Policy Framework 2021 (the Framework) and I have had regard to it in this decision.
6. On 25 January 2022, the Council adopted Section 2² of the Tendring District Local Plan (TDLP) which now stands alongside TDLP Section 1³ (adopted in January 2021) to form the development plan for the area, superseding the saved policies of the previous district-wide Local Plan, adopted in 2007. Both main parties have made representations in relation to the TDLP Section 2 policies and I have had regard to them in this decision.

Main Issues

7. On the basis of the evidence before me, I consider that the main issues in relation to this appeal are:
 - Whether the site is a suitable location for the proposed development with particular regard to the Council's strategy for the location of new residential development.
 - The effect of the proposed development on the character and appearance of the area.
 - Whether the proposed development would provide a suitable standard of accommodation for future occupiers, with particular regard to the amount of internal floorspace proposed.
 - The effect of the proposed development on Special Protection Areas and Ramsar sites.

Reasons

8. The appeal site comprises an area of land to the north of a housing development which is under construction. This neighbouring development is referred to by the main parties as the 'Phase 1' site. The appeal site is referred to by the main parties as the 'Phase 2' site. The evidence before me indicates that the Phase 1 development comprises 32 dwellings which were allowed on appeal⁴. A previous application for 18 dwellings on the appeal site was refused planning permission and subsequently dismissed on appeal⁵ in March 2019.

Principle of development

9. TDLP Section 1 Policy SP3 sets out the broad strategy for the location of new housing in the district. It states that development will be accommodated within or adjoining existing settlements according to their scale, sustainability and existing role. The appeal site is located in the countryside, directly adjacent to the settlement boundary of Elmstead Market as identified on the adopted Policies Map. Indeed, the settlement boundary includes the Phase 1 development directly to the south of the appeal site.
10. TDLP Section 2 Policy SPL2 states that outside settlement boundaries, development proposals will be considered in relation to the patterns and scales of growth promoted through the settlement hierarchy.

² Tendring District Local Plan 2013-2033 and Beyond: Section 2 – Adopted 24th January 2022

³ Tendring District Local Plan 2013-2033 and Beyond: Section 1 – Adopted January 2021

⁴ PINS reference: APP/P1560/W/16/3160793

⁵ PINS reference: APP/P1560/W/18/3211471

11. As such, when read as a whole, these policies do not preclude the principle of new residential development on sites 'adjoining' the settlement boundaries, subject to a consideration of the patterns and scales of growth set out within the settlement hierarchy.
12. TDLP Section 2 Policy SPL1 defines a settlement hierarchy in which Elmstead Market is identified as a 'rural service centre'. TDLP Section 1 paragraph 3.3.1.3.1 sets out that some rural service centres will accommodate a 'modest increase in housing stock, where appropriate, within the plan period'. The text also explains that such development will be of a scale that is proportionate, achievable and sustainable for each of the settlements concerned, having regard to the existing size and character of each settlement; their more limited range of jobs, shops, services and facilities; and any physical, environmental or infrastructure constraints.
13. The evidence before me indicates that Elmstead Market has a reasonably good range of services and facilities including (but not limited to) various shops, a school and a petrol station. The appeal site would benefit from pedestrian links through the Phase 1 development and along Colchester Road, linking directly with the majority of these services and facilities. The footways are of a reasonable width and appear well maintained. Only a small section of this route is unlit and this would be unlikely to deter future occupiers from accessing the centre of the village on foot. Furthermore, there is a bus stop within 600 metres of the appeal site which provides extensive services to and from Colchester. Indeed, Colchester comprises a very wide range of services and facilities as well as opportunities for employment.
14. I note the conclusions reached by the previous Inspector in considering the previous appeal for 18 dwellings. However, she outlined that limited details were provided in relation to the extent and duration of local bus services. During my site visit I noted that there are regular services to Colchester throughout the week (including weekends) with travel times as low as 19 minutes. Cycling also offers a further transport solution for future occupiers to access the services and facilities in the village. Within this context, the future occupiers of the development would not be reliant on the motor vehicle to access services and facilities.
15. The appeal site is also physically related to the settlement, in that it would directly adjoin the settlement boundary and the partially constructed Phase 1 development. This may not have been the case when the Inspector considered the previous appeal, with the decision made in a different development plan policy context. This is another reason for reaching a different finding in comparison to the previous Inspector.
16. I recognise that Elmstead Market has been a focus of substantial residential growth in the recent past. However, there is no substantive evidence before me to indicate that the existing services and facilities within the settlement would not be capable of supporting the modest scale of growth proposed (even taking into account the extent of recent residential development locally). The close proximity of the site to regular sustainable transport links to Colchester would also reduce the pressure on services and facilities in the village in this regard.
17. The appeal site is directly adjacent to the settlement and future occupiers of the proposed development would have access to a good range of services and facilities, which would be accessible by sustainable means. Furthermore,

Elmstead Market is capable of accommodating the modest scale of growth proposed in this location. The proposed development would therefore comply with the Council's strategy for the location of residential development, including TDLP Section 1 policy SP3 and TDLP Section 2 policies SPL1 and SPL2.

Character and Appearance

18. Visually, the appeal site is well contained and is predominantly screened to the north, east and west by hedgerows and mature trees. The existing Phase 1 residential development is located directly to the south. As a result of these surrounding characteristics, the site does not have a particularly rural appearance. Indeed, it appears more contiguous with the Phase 1 development than with the surrounding countryside.
19. As a result, the proposed development would not have a detrimental impact on the wider landscape character which is more open and agricultural. In essence, not only is the site well screened from the surrounding area, but where it is visible, it appears as a separate area of land sandwiched between dense vegetation and an existing housing development. The development of this land for housing would form a logical extension of the Phase 1 development in this regard. Furthermore, it is noted that the Council's Tree and Landscape Officer did not object to the proposed development.
20. Additional landscaping and planting measures would assist in bolstering the existing boundary planting. I see no reason why such measures would lead to an enclosing impact on future occupiers. Indeed, the proximity of the proposed dwellings to the boundary planting is not unusual in this regard. I note that the previous Inspector came to a different conclusion in determining the previous appeal, however, that appeal related to a greater quantum of development and therefore the conclusions reached are not directly applicable in this case.
21. For these reasons, the proposed development would not be harmful to the character and appearance of the surrounding area. It would therefore comply with TDLP Section 2 Policy SPL3, which requires in part that development maintains or enhances local character including local landscape character.
22. The development would also comply with Framework Paragraph 130, which also requires development to be sympathetic to local character.

Standard of accommodation

23. The Technical Housing Standards – nationally described space standard document (Technical Standards), published in March 2015, sets out minimum standards for internal floorspace in respect of new residential development. The Council has indicated that the dwellings located on plots two to seven fall below the standards. However, I accept the appellant's contention that the beds shown on the submitted plans are for indicative purposes only. The fact that double beds are shown for illustrative purposes does not mean that those rooms must be considered against standards for double bedrooms. Indeed, the size of these rooms is more akin to a single bedroom and that is likely how future occupiers would utilise them. As such, plots four to seven are two-bedroom three-person houses. These all accord with the minimum space standard of 70sqm.
24. For similar reasons, plots two and three would provide three-bedroom, four-person accommodation as opposed to six-person accommodation. As such, a

minimum floorspace of 84sqm is required. The appellant has submitted an amended plan (which I have accepted) to increase the floorspace of these dwellings by 1sqm. As such, these proposed plots comply with the Technical Standards.

25. For these reasons the proposed development would provide an adequate standard of living accommodation for future occupiers and it would therefore comply with TDLF Section 1 Policy SP7, which requires new development to protect the amenity of future residents.
26. The proposed development would also comply with Framework Paragraph 130, which in part requires that new development results in a high standard of amenity for future users.

Appropriate Assessment

27. The appeal site is located within the zone of influence (ZoI) of the Colne Estuary SPA and Ramsar site and the Stour and the Orwell Estuary SPA and Ramsar site. These are European Sites which are protected under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
28. The Stour and Orwell Estuaries SPA and Ramsar sites include extensive mud-flats, low cliffs, saltmarsh and small areas of vegetated shingle on the lower reaches. They also include low-lying grazing marsh and shallow freshwater pools. The sites support breeding birds and wintering birds⁶. The Colne Estuary and Ramsar Sites include estuaries and intertidal sand and silt flats, including several islands, shingle and shell beaches and extensive areas of saltmarsh. They also support breeding and wintering birds⁷. The conservation objectives of these sites generally seek to maintain and restore the distribution and function of the habitats upon which the qualifying features rely, thereby increasing their populations and distributions.
29. There would be likely significant effects on these sites as a result of the proposed development in combination with other residential development within the ZoI. This is because these sites are within areas where people may undertake a range of recreational activities including (but not limited to) picnics, hiking, walking their dogs, swimming and sailing. The evidence⁸ before me indicates that housing and consequent population growth on sites within reach (ZoI) of these areas is likely to increase the number of visitors to these sensitive coastal areas, creating the potential for impacts from increased recreational disturbance of the birds and their habitats.
30. The appellant has submitted a UU with this appeal which includes a financial contribution aimed at mitigating these effects. The Council is satisfied that the UU submitted with the appeal would ensure that the development would '*not adversely affect the integrity of European Designated Sites*'. Nonetheless, I am the competent authority as the decision-maker and as such, it is necessary to undertake an appropriate assessment.

⁶ Dark-bellied brent goose, Northern pintail, Pied avocet, Grey plover, Red knot, Dunlin, Black-tailed godwit and Common redshank.

⁷ Dark-bellied brent goose, Common pochard, Hen harrier, Ringed plover, Common redshank and Little tern.

⁸ Essex Coast Recreational disturbance Avoidance & Mitigation Strategy (RAMS) 2018-2038

31. Increased recreational activity has the effect of disturbing and reducing the activities of breeding and wintering birds which can have a subsequent impact on their population and distribution. The Essex Coast Recreational disturbance Avoidance & Mitigation Strategy (RAMS) 2018-2038 provides details of strategic mitigation for the effects of increased residential development (and as such, populations) upon designated European Sites on the Essex coast.
32. Strategic mitigation measures set out within the RAMS include provision of information and awareness raising, fencing/waymarking/screening, pedestrian and vehicular access restrictions, habitat creation and partnership working with other organisations. The measures are fully costed. For development in Tendring district the RAMS sets out a contribution of £122.30 per residential unit. This figure increases in line with the retail price index and as such the evidence demonstrates that the latest index-linked figure is £137.71.
33. The appellant's UU includes provision for this sum to be paid prior to commencement of development. I am satisfied that this obligation will ensure that the proposed development would make the required contribution to the mitigation measures outlined within the RAMS.
34. The contributions would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. They therefore meet the tests set out under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations).
35. I conclude that the required mitigation would be properly secured and that the proposals would not have an adverse effect on the integrity of the identified European Sites either alone or in combination with other projects. The proposed development would therefore comply with TDLP Section 1 Policy SP2, which requires that RAMS contributions are secured. It would also comply with TDLP Section 2 Policy PPL4, which amongst other things seeks to protect the integrity of European Sites.

Planning Obligation

36. In addition to the RAMS contribution discussed above, the appellant has included various other obligations within the UU. The UU has been prepared by the appellant in conjunction with the Council.

Affordable Housing

37. The evidence before me demonstrates that there is a need for affordable housing in the district and this is reflected under TDLP Section 2 Policy LP5, which outlines that the Council expects 30% of new dwellings to be made available as affordable housing. The appellant has included an obligation within the UU to provide on-site affordable housing to meet the 30% requirement. The UU includes provision for one affordable unit to be transferred to the Council should it so wish. The other three units would be transferred to a registered provider.

Open Space

38. TDLP Section 2 Policy HP5 states that all developments of 11 dwellings or more on sites 1.5 hectares and above should provide a minimum of 10% of the gross site area as open space. It also states that if new development would be better

served by existing or proposed open spaces then a financial contribution in lieu of on-site provision may be sought. The Council has identified that there is a deficit of 4.51 hectares of equipped play/formal open space in Elmstead Market and that there are plans to provide recreation facilities on a site known as Charity Fields on School Road.

39. Within the UU, the appellant has included provision for the sum to be calculated based upon the Council's Open Space SPD addendum (2021)⁹ to be paid prior to occupation of the proposed development. The UU specifies that this contribution will only be spent on the aforementioned Charity Fields site.

Education

40. TDLP Section 2 Policy PP 12 states that planning permission will not be granted unless the individual or cumulative impacts of development on education provision can be addressed at the developers cost, either on-site or through financial contributions. It also outlines that the County Council will be the consultee in this regard. Essex County Council confirmed to the Council that a development of this size can be expected to generate the need for up to 1.35 Early Years and Childcare (EY&C) places; 4.5 primary school, and 3 secondary school places. However, it specified that the provision of contributions are not necessary for Early Years and secondary school education.
41. The formula for calculating the education contribution as set out in the UU means that a sum of £77,706 (Index linked) would be paid to the County Council as a primary education contribution. This formula is based on 'The Essex County Council Developers' Guide to Infrastructure Contributions' (Revised 2020).

Libraries

42. As identified in the Developers' Guide to Infrastructure Contributions, new housing development will put a strain on existing library provision, which may require funding towards library projects. TDLP Section 2 Policy DI1 states that where a development would lead to a requirement for additional infrastructure capacity, to be deemed acceptable - mitigation measures must be agreed with the Council and can include financial contributions towards such facilities.
43. The UU includes a contribution of £77.80 per unit, which is based on the sum provided within the Developers Guide to Infrastructure Contributions and would be used to upgrade the facilities at the nearest existing library, Greenstead Library.

Summary

44. For the reasons outlined above, the obligations set out within the signed and dated UU are all necessary to make the development acceptable, directly related to the development; and fairly and reasonably related in scale and kind to the development. The planning obligation therefore meets the tests set out under Framework Paragraph 57 and Regulation 122(2) of the CIL Regulations. I have therefore taken it into account in determining this appeal.

⁹ Addendum: Supplementary Planning Document For Policy COM6 Tendring District Local Plan 2007 - Provision of Recreational Open Space for New Development (May 2021)

Other Matters

45. The proposed development would include social and economic benefits associated with the provision of market and affordable housing, with 15 dwellings added to the housing stock. These benefits can be afforded significant weight even in the absence of a housing land supply shortfall. There would also be some temporary benefits associated with construction and other permanent benefits associated with the support for local services and facilities resulting from an increased local population. These benefits all weigh in favour of the development.
46. I have taken into consideration the representations made by the Parish Council (PC), who object to the proposed development. I have already addressed matters pertaining to character and appearance, the settlement boundary, and the capacity of the settlement to accommodate growth. The PC also has concerns about the cumulative impact of residential development on the loss of agricultural land and increased traffic. However, there is no substantive evidence to indicate that the proposed development would result in an unacceptable increase in traffic or loss of best and most versatile agricultural land, either alone, or in combination with other residential development. This is not therefore a consideration which weighs against the proposed development.
47. The PC also indicate that the proposed development would compromise the ability to retain a 'green gap' between Elmstead Market and the Colchester/Tendring Borders Garden Community which is referred to in TDLP Section 1 Policy SP3. However, the appeal site is already relatively contained and I do not consider that it would lead to coalescence with this proposed settlement. Furthermore, I have not been provided with any evidence to indicate that the Garden Community proposals are at an advanced stage and the landscape and visual impact of any such proposals would need to be considered at planning application stage in any case (including any implications in terms of coalescence). The PC refers to the preparation of a neighbourhood plan, but I have not been provided with a copy of any published document and no policies are referred to by the PC. This consideration does not therefore attract any significant weight.

Conditions

48. I have considered the Council's suggested conditions in light of advice contained in the Planning Practice Guidance and the tests within the Framework. As a result, I have amended some of the conditions so that they are enforceable, precise, relevant, necessary and reasonable in all other respects. With regard to Section 100ZA of the Town and Country Planning Act 1990 (as amended), the appellant has given his written agreement to the precommencement conditions suggested by the Council and where I have modified these it has had no material bearing on their function.
49. Conditions relating to timeliness [1] and the identification of plans [2] are necessary to provide certainty. The plans condition includes the amended plan submitted by the appellant as part of this appeal.
50. One condition (as opposed to several) [3], which requires details of surface water drainage and management details, is required to prevent flooding. For the same reason, a condition pertaining to submission of drainage details for construction is also necessary [4].

51. A condition requiring details to be provided of the estate roads and footways and implementation prior to occupation [5] is necessary to ensure that they are laid out to an acceptable standard and would not have an adverse impact on highway safety. For the same reason, a condition requiring that vehicular accesses are not constructed of unbound material [8] is necessary.
52. Details of proposed hard and soft landscaping measures [6] are required in the interest of preserving the character and appearance of the area.
53. A condition requiring the submission and implementation of cycle parking prior to occupation [7] is necessary in the interests of encouraging travel by sustainable means of transport and given that the location of such facilities is not shown on the submitted plans.
54. Tree protection measures [9 and 10] are to be implemented in the interest of the character and appearance of the surrounding area.
55. There is no need for conditions relating to the access onto the highway or drainage onto the highway, given that: the access to the adopted highway has already been constructed as part of the Phase 1 development; I have already imposed a condition pertaining to drainage; and the internal road layout is subject to approval under a separate condition. The Highway Authority has also requested conditions on parking space and garage dimensions, but I am not persuaded that these are necessary, given that the submitted plans comply with the recommended specifications.

Conclusion

56. The proposed development complies with the development plan, taken as a whole. There are no material considerations of sufficient weight which indicate that a decision should be made other than in accordance with the development plan. As such, the appeal is allowed subject to conditions and the obligations contained within the UU.

Luke Simpson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 170119/P/1, 170119/P/2/A, 170119/P/10, 170119/P/11/A, 170119/P/12/A, 170119/P/13, 170119/P/15/A, 170119/P/16/A, 170119/P/18, 170119/P/19; 170119/P/20/A.
- 3) No development shall take place, except demolition, until a detailed surface water drainage scheme for the site, including details of maintenance in perpetuity, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented prior to first occupation of the development hereby approved and retained thereafter in accordance with the approved details.
- 4) No development shall take place until a scheme to minimise the risk of flooding caused by surface water run-off and groundwater and prevent pollution during construction works has been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details.
- 5) No development shall take place until details of the estate roads and footways (including layout, levels, gradients and surfacing) have been submitted to and approved in writing by the Local Planning Authority. The estate roads and footways shall be constructed in accordance with the approved details prior to first occupation of the dwellings hereby approved and shall be retained as such thereafter.
- 6) No development shall commence until details of both hard and soft landscape works, including a timetable for their implementation, have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out and retained in accordance with the approved details.
- 7) Prior to occupation of each dwelling hereby approved, details of secure, convenient and covered cycle parking shall be provided to and approved in writing by the Local Planning Authority. The cycle parking for each dwelling shall be constructed prior to first occupation of that dwelling and retained thereafter in accordance with the approved details.
- 8) No unbound material shall be used in the surface treatment of the vehicular accesses throughout.
- 9) The construction of the development hereby approved shall be undertaken in accordance with the approved tree protection methods and measures as set out within the Arboricultural Impact Assessment (Reference TPSarb3301120).
- 10) No retained tree (as indicated within the Arboricultural Impact Assessment) shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner from the date of the first occupation of the dwellings hereby

approved, other than in accordance with the Arboricultural Impact Assessment (Reference TPSarb3301120), without the prior written approval of the local planning authority.

Richborough Estates