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## Appeal Decision

Site visit made on 25 February 2025

by **S J Warder BSc(Hons) MA DipUD (Dist) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28<sup>th</sup> February 2025

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**Appeal Ref: APP/P1560/W/24/3349483**

**173 Thorpe Road, Kirby Cross, Frinton-On-Sea, CO13 0NH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Atlantic Spa Ltd against the decision of Tendring District Council.
  - The application ref is 23/01221/OUT.
  - The development proposed is outline planning application (access to be considered) for the erection of up to 20 single storey dwellings with new vehicular access, open space and woodland walk.
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### Decision

1. The appeal is allowed and outline planning permission (access to be considered) is granted for the erection of up to 20 single storey dwellings with new vehicular access, open space and woodland walk at 173 Thorpe Road, Frinton-On-Sea, CO13 0NH in accordance with the terms of the application, ref 23/01221/OUT, subject to the conditions in the attached schedule.

### Preliminary Matters

2. Reasons for refusal 3 and 4 in the decision notice concern the absence of planning obligations for the provision of affordable housing, the maintenance of on-site open space and mitigation of effects on the Hamford Water Ramsar and Special Protection Area. A completed unilateral undertaking dated 5 August 2024 (UU) dealing with these matters was submitted during the appeal process and the Council considers it to be acceptable. I consider the UU under 'Other Matters' below.
3. Notwithstanding that landscaping and layout are reserved matters, a revised Landscape Strategy (drawing ref NC23.764-P201C) was submitted with the appeal. Local residents were given the opportunity to comment on the revised drawing prior to the submission of the appeal and the Council had the opportunity to comment in its appeal statement. Moreover, the revised drawing would not change the essential characteristics of the initial application scheme. Therefore, I consider that it would not prejudice any interested party to take into account the revised drawing.
4. The National Planning Policy Framework (NPPF) has been updated since the appeal statements were submitted. However, while the numbering of some of the paragraphs relevant to the appeal have changed, their substance has not. I have taken into account the updated NPPF and referred to its paragraph numbering in this decision.

## Main Issues

5. The main issues in this case are:

- the effect on the character of the landscape;
- the effect on the character and appearance of the area with particular regard to the view from Thorpe Road;
- the effects on the living conditions of the occupiers of 185 and 187 Thorpe Road with particular regard to noise and disturbance.

## Reasons

### *Landscape Character*

6. The largest part of the site falls outside of the settlement boundary as defined in the Tendring District Local Plan 2013-2033 (LP). Policy SP3 states that development will be accommodated within or adjoining settlements and that future growth will ensure that settlements maintain their distinctive character, avoid coalescence and conserve their settings. Policy SPL2 allows for consideration of development outside settlement boundaries in relation to the pattern and scale of growth set out in Policy SPL1. That policy categorises Kirby Cross as a Smaller Urban Settlement. It is apparent therefore that the relevant development plan policies allow, in principle, for development outside of settlement boundaries where it would be appropriate in scale and character and would respect the setting of the settlement. I note that similar conclusions have been reached in other appeal decisions<sup>1</sup>.
7. In this case, the appeal site is bounded to the north and east by built development and a residential garden runs part way along the western boundary. While the remainder of the western boundary and the southern boundary adjoin more open countryside, both are well defined and contained by substantial vegetation.
8. There is no suggestion that the proposal would lead to coalescence with adjoining settlements and maintenance of the boundary planting would, in turn, conserve the setting of Kirby Cross. Although the proposal would urbanise the body of the site, that area already has a closer visual association with the five recently constructed bungalows (application reference 19/1054/OUT) and the adjoining development along Thorpe Road and Barn Owl Road than with the countryside to the south and west.
9. The proposal is for 20 single storey dwellings on a site which is well-related to the existing settlement pattern. That pattern comprises significant areas of development in depth as well as the older linear development along Thorpe Road. Given this context, the scale of the proposal would be appropriate to its surroundings.
10. As shown on the revised Landscape Strategy and the photomontages accompanying the appellant's Landscape and Visual Assessment Addendum, this planting would also provide a good degree of screening of the parts of the site proposed for built development in views from the south and west. The photomontages indicate that the proposed bungalows would be largely hidden from

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<sup>1</sup> APP/P1560/W/22/3292186, APP/P1560/W/22/3291996, APP/P1560/W/22/3313107

external views from the south in year 1 and completely screened by year 15. Moreover, the retained planting would also help screen the proposed buildings from the public right of way which runs along the western site boundary. The proposal would have a very limited effect on the experience of walkers using this route.

11. As such, I find that the proposal would have a minimal impact on landscape character and would not lead to the erosion of the countryside. It would, therefore, meet the aims of LP Policy SP3 as well as LP Policies SP7, SPL3 and PPL3 which, among other things, require development to respond positively to local character and context, particularly in relation to its siting, height and scale and to protect the rural landscape. The proposal would also accord with paragraphs 135 and 187 of the NPPF which require proposals to be sympathetic to local character and to recognise the intrinsic character and beauty of the countryside.

#### *Character and Appearance – Thorpe Road*

12. The proposal would extend the driveway constructed to access the five recently constructed bungalows. While that driveway is fairly long and straight, the extension to serve the proposed development would run at a right angle at the end of it. As such, the extension would add little to the apparent length of the existing driveway when viewed from Thorpe Road. Moreover, the extension would be set back a considerable distance from Thorpe Road and, therefore, would not be conspicuous in views from it. I also note that the drive serving the relatively recent development at Barn Owl Road is straight for a longer distance than the proposed extended driveway.
13. Consequently, I find that the proposed driveway would not have a harmful effect on the character and appearance of the area with particular regard to views from Thorpe Road. Therefore, this aspect of the proposal would accord with LP Policies SP7, SPL3 and LP4 which, together seek to ensure that new housing relates well to its surroundings, including street patterns and has a well-considered site layout. It would also accord with LP Policy LP8(f) which presumes against proposals which are out of character with the area or set a harmful precedent. The proposal would also comply with NPPF paragraph 135 to the extent that it has similar aims.

#### *Living Conditions of the Occupiers of 185 and 187 Thorpe Road*

14. The existing driveway runs close to the side boundaries of the adjoining residential properties. Further, the flank walls of both dwellings are close to their respective side boundaries and contain a number of openings. On the other hand, both boundaries are enclosed by 1.8m high close boarded fencing and both properties have fairly generous gardens spreading away from the driveway.
15. The applicant's Highway Traffic and Transport Evidence indicates that the 20 dwellings proposed would generate around ten additional vehicle movements per hour, equating to one movement every six minutes on average. Those movements are based on figures used in the Barn Owl Road appeal. As the applicant's evidence suggests, the bungalows proposed in the current appeal may well generate fewer movements than the mix of family housing at Barn Owl Road. I also note that it is proposed to provide speed cushions along the driveway to limit vehicle speeds.
16. Notwithstanding the proximity of the driveway to the side boundaries and flank walls of 185 and 187, I consider that the relatively low level of additional vehicle

movements generated by the proposal would not increase noise and distance to the point of having a harmful effect on the living conditions of the neighbouring occupiers. For the same reason I find that the additional movements would not create unacceptable disturbance from headlight glare for the occupiers of 185 even though the 1.8m fencing does not extend to the front of that property.

17. Therefore, the proposal would not conflict with LP Policy LP8 which requires backland development to ensure that vehicular access does not cause undue disturbance to neighbouring residents. Nor would it conflict with LP Policies SP7, SL3 or LP4 insofar as they seek well-designed development which protects the amenity of existing residents.

### **Other Matters**

18. Policy LP5 of the LP requires the provision of 30% affordable housing on sites of 11 or more dwellings in accordance with the Council's Strategic Housing Market Assessment. This approach is consistent with NPPF paragraphs 65 and 66 and would be secured through the submitted UU.
19. Policy HP5 of the LP requires residential developments of 11 or more dwellings to provide a minimum 10% of the gross site area as open space and for its maintenance to be secured through a legal agreement. The proposed site layout indicates that the requisite amount of open space would be provided, and the UU makes provisions for its use, design and maintenance.
20. The appeal site falls within the zone of influence of the Hamford Water Ramsar and SPA. The Council has adopted the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) Strategy Document. It aims to deliver the mitigation necessary to avoid adverse effects on integrity from the in-combination impacts of residential development in order to meet the requirements of the Habitats Regulations Assessment for the Ramsar and SPA. LP Policy PPL4 requires residential development to provide a financial contribution in accordance with the RAMS. The UU secures such a contribution.
21. I consider that each of the obligations in the UU meets the tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 to be necessary to make the development acceptable in planning terms, directly related to the development; and fairly and reasonably related in scale and kind. Therefore, I have taken the UU into account in my determination of this appeal.
22. Frinton and Walton Town Council and others consider the proposed access to be dangerous. However, I note that the local highway authority does not share that view and I will impose a condition to control visibility at the access. In terms of other concerns expressed locally, I am content that the appeal submissions adequately characterise the biodiversity and tree planting at the site and that the conditions set out below would provide satisfactory protection for them. The obligations in the UU would secure the maintenance of the on-site open space. There is no firm evidence that the proposal would overload local services, facilities or the drainage system.

### **Conditions**

23. The Council has suggested a list of 14 conditions, all of which are acceptable to the appellant. Suggested condition 3 repeats condition 1 and is therefore omitted. I

have considered the remaining conditions in accordance with the tests at NPPF paragraph 57. Conditions dealing with the timing and content of the outstanding reserved matters are necessary to secure the proper development of the site and to comply with section 92 of the Act.

24. A condition specifying the approved plans and documents is necessary in the interests of certainty. I have amended the suggested condition to remove reference to listed buildings and phasing which are not applicable in this case. I have also updated drawing reference NC23.764-P201 to revision C as this is the revised Landscape Strategy referred to in my reasoning. I have omitted drawing DB22002/002c as it is superseded by the revised Landscape Strategy. I have also omitted drawing NC23.764- P202 Revision A, the Landscape and Visual Appraisal, Planning Statement and Design and Access Statement as they provide contextual information only.
25. A condition securing details of water, energy and waste efficiency measures is necessary to ensure the sustainable use and treatment of those resources in accordance with LP Policies SPL3 and PPL10. A condition to control the management of construction activities is required to safeguard the living conditions of neighbouring occupiers, movement around the site and the existing vegetation on the site. Conditions detailing site access visibility and width and the discharge of surface water onto the highway are necessary in the interests of highway safety.
26. A condition to secure the provision of a Residential Travel Information Pack is required to promote sustainable travel. Suggested condition 11 replicates one of the requirements of suggested condition 4 and is therefore unnecessary. Conditions to secure a biodiversity construction environmental management plan and a Biodiversity Enhancement Strategy are necessary to achieve the protection and enhancement of biodiversity during construction and operation of the development.
27. A condition to secure details of the housing mix and minimum space standards is required to ensure that the proposal meets the aims of the Strategic Housing Market Assessment and in accordance with LP Policy LP3.

### **Planning Balance and Conclusion**

28. I have found that the proposal accords with the aims of LP policies for new development adjoining existing settlements and would have a minimal adverse impact on local landscape character. I have not found other harms. Conversely, the proposal would boost the supply of housing in the area in accordance with the aims of the NPPF, notwithstanding that the Council can demonstrate a five-year supply. It would also have benefits in terms of providing affordable housing and biodiversity enhancements. These benefits outweigh the minimal harm to landscape character.
29. For the reasons given above the appeal should be allowed.

*S J Warder*

INSPECTOR

## Schedule of Conditions

1. Application for approval of all outstanding and the final reserved matters for any phase of the development must be made to the Local Planning Authority not later than the expiration of three years beginning with the date of this permission, and the development must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
2. No development shall commence until approval of the details of:
  - the appearance of the buildings and place;
  - landscaping;
  - layout; and
  - scale.(hereinafter called "the reserved matters") for that particular phase have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
3. The development hereby permitted shall be carried out in accordance with the drawings/documents listed below and/or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard.

Drawing Numbers DB22003/001 and NC23.764-P201 Revision C and the documents titled 'Arboricultural Impact Assessment and Method Statements', 'Preliminary Ecological Assessment', 'Flood Risk Assessments', 'Transport Statement' and the untitled letter received by the Council dated 11th January 2024 from ACJ Ecology.
4. No development shall commence above slab level until a scheme for the provision and implementation of water, energy and resource efficiency measures for the lifetime of the development have been submitted to and approved, in writing, by the Local Planning Authority. The scheme shall include as a minimum:
  - a) an electric car charging point per dwelling;
  - b) agreement of a scheme for water conservation including greywater recycling and rainwater capture/re-use for new dwellings;
  - c) agreement of a scheme to achieve as far as possible a water consumption rate of not more than 110 litres, per person, per day;
  - d) agreement of heating of each dwelling;
  - e) agreement of scheme for waste reduction; and
  - f) provision of a fibre optic broadband connection to the best possible speed installed on an open access basis and directly accessed from the nearest exchange, incorporating the use of resistant tubing. (If the applicant is

unable to achieve this standard of connection, and can evidence through consultation that this would not be possible, practical or economically viable an alternative superfast (ie will provide speeds greater than 30mbps) wireless service will be considered).

The scheme shall be fully implemented prior to the first occupancy of the development unless otherwise agreed in writing by the Local Planning Authority. The scheme shall be constructed, and the measures provided and made available for use as may be agreed and thereafter shall be maintained.

5. Prior to the commencement of development details of the construction methodology and timetable shall be submitted to and approved, in writing, by the Local Planning Authority. This shall incorporate the following information:
- a) details of the hours of work/construction of the development within which such operations shall take place and the hours within which delivery/collection of materials for the said construction shall take place at the site;
  - b) details of the loading/unloading/storage of construction materials on site, including details of their siting and maximum storage height;
  - c) details of how construction traffic, deliveries for construction, worker traffic and all parking shall be managed on and/or off site. This shall include details of clear routing of all associated traffic and any directional signs to be installed and where located;
  - d) details of protection measures for footpaths and trees surrounding and within the site during construction;
  - e) details of means of access to the site during construction;
  - f) details of the scheduled timing/phasing of development for the overall construction period;
  - g) details of measures to control the emission of dust and dirt during construction, and including details of any wheel washing to be undertaken, management and location it is intended to take place;
  - h) details of the siting and maximum height of any on site compounds and portaloos;
  - i) details of the method of any demolition to take place, including the recycling and disposal of the materials resulting from demolition;
  - j) a site waste management plan (that shall include reuse and recycling of materials);
  - k) a scheme for sustainable construction management to ensure effective water and energy use;
  - l) a scheme of review of complaints from neighbours;
  - m) registration and details of a Considerate Constructors Scheme that shall be implemented and followed throughout construction; and

n) details on the provision, location and management of any show home/s or reception, including opening times, parking and advertisements (including flags and directional signs).

The approved methodology shall be implemented in its entirety and shall operate at all times during construction.

6. Prior to first use of the access, visibility splays shall be provided with a minimum clear to ground visibility splay with dimensions of 2.4 metres by 54 metres in both directions, as measured from and along the nearside edge of the carriageway, and shall then be retained in its approved form. Notwithstanding the provisions of Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.
7. Prior to the commencement of any works to the access, details of the means to prevent the discharge of surface water from the development onto the public highway shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The approved scheme shall be carried out in its entirety prior to the first use of the access and shall then be retained in the approved form.
8. Prior to first occupation of each dwelling, a Residential Travel Information Pack (travel pack) shall be provided to each dwelling for use of its first occupiers. The travel pack shall be agreed, in writing, by the Local Planning Authority prior to provision and shall include a minimum of six one day travel vouchers for use with a local transport operator.
9. Prior to first use, the access and drive for Number 185 Thorpe Road shall be constructed to a minimum width of 4.5 metres for a distance of at least 6 metres measured from the nearby edge of the carriageway and shall thereafter be retained.
10. Prior to first occupation of the hereby approved development, a Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:
  - a) purpose and conservation objectives for the proposed enhancement measures;
  - b) detailed designs or product descriptions to achieve stated objectives;
  - c) locations, orientations, and heights of proposed enhancement measures by appropriate maps and plans;
  - d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
  - e) persons responsible for implementing the enhancement measures; and
  - f) details of initial aftercare and long-term maintenance (where relevant).

The approved development shall be implemented in accordance with the approved Biodiversity Enhancement Strategy prior to occupation and shall be retained in that manner thereafter.

11. Prior to commencement of the development hereby approved, a construction environmental management plan (Biodiversity CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The Biodiversity CEMP shall include the following.
- a) a risk assessment of potentially damaging construction activities;
  - b) identification of "biodiversity protection zones";
  - c) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (including method statements for Great Crested Newt);
  - d) the location and timing of sensitive works to avoid harm to biodiversity features;
  - e) the times during construction when specialist ecologists need to be present on site to oversee works;
  - f) responsible persons and lines of communication;
  - g) the role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
  - h) use of protective fences, exclusion barriers and warning signs; and
  - i) containment, control and removal of any Invasive non-native species present on site.

The approved Biodiversity CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

12. Concurrent with the submission of the first reserved matter, the housing mix both in terms of house type and number of bedrooms for both market and affordable housing shall be submitted, in writing, for approval by the Local Planning Authority. The development shall be carried out entirely in accordance with the approved details. The size of bedrooms shall comply entirely with the nationally adopted "Technical housing standards – nationally described space standard".

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