

Appeal Decision

Inquiry held on 9 and 10 August 2016

Site visit made on 10 August 2016

by Jameson Bridgwater PGDipTP MRTPI

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

Decision date: 29 September 2016

Appeal Ref: APP/P1560/W/15/3141016

Station Field, Plough Road, Great Bentley

- 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 Mr A Irwin (Moonlight Hollow Ltd) against the decision of Tendring District Council.
 - The application Ref 14/01750/OUT, dated 14 November 2014, was refused by notice dated 19 November 2015.
 - The development proposed is described as 'Outline application for a mixed use scheme comprising up to 150 dwellings and open space, a class B1 Employment Area and structural landscaping'.
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Decision

1. The appeal is allowed and outline planning permission is granted for a mixed use scheme comprising up to 150 dwellings and open space, a class B1 Employment Area and structural landscaping at Station Field, Plough Road, Great Bentley in accordance with the terms of the application, Ref 14/01750/OUT, dated 14 November 2014, subject to the 19 conditions set out in the attached schedule.

Preliminary matters

2. The planning application to which the appeal relates was submitted in outline form with all matters reserved.
 3. A planning obligation was submitted under section 106 of the Town and Country Planning Act 1990. I deal with the contents of this below.
 4. The Inquiry sat for 2 days. I held an accompanied site visit on 10 August 2016. I also conducted unaccompanied visits on the 8 and 9 August 2016.
 5. The Council have confirmed that they no longer seek to rely on any of the proposed policies cited within their reasons for refusal contained within the now abandoned Tendring District Plan: Proposed Submission draft (2012) as amended by Pre-Submission Focussed Changes (2014).
 6. The use of the term 'outline application for' within the description of development is superfluous and I have left it out of my formal decision, describing the proposal as 'a mixed use scheme comprising up to 150 dwellings and open space, a class B1 Employment Area and structural landscaping'.
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Application for costs

7. An application for costs was made by Mr A Irwin (Moonlight Hollow Ltd) against Tendring District Council. This application is the subject of a separate decision.

Main issues

8. A Statement of Common Ground (SOCG) was submitted which sets out the policy context along with matters of agreement and those in dispute. The SOCG confirms that the Council does not wish to defend reasons for refusal 3, 4 and 5 or that aspect of the first reason for refusal relating to growth in Key Rural Service Centres.
9. Therefore, the main issues in the appeal are:
 - the effect of the proposal on the character and appearance of the area; and
 - the effect of the proposal on rail and pedestrian safety with particular regard to the level crossing serving Public Footpath No 8.

Reasons

Housing land supply and planning policy

10. Paragraph 47 of the National Planning Policy Framework (the Framework) seeks to boost significantly the supply of housing. It identifies that Councils should ensure that their local plans meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies of the Framework. In addition, they must identify and update annually a supply of specific deliverable sites sufficient to provide a 5 year supply of land for housing against their housing requirements, with an additional buffer of either 5% or 20% (moved forward from later in the plan period), to ensure choice and competition in the market for land.
11. It was common ground at the Inquiry that the Council was unable to demonstrate the provision of a 5 year supply of land for housing, measured against their housing requirements. Moreover, based on the evidence before me it was clear that the shortfall in housing supply is significant with the Council only able to demonstrate 3.8 years of deliverable land for housing supply.
12. Policy QL1 of the Tendring District Local Plan (2007 (TDLP), seeks to restrict development in the countryside and forms part of the Council's strategic approach to the distribution and location of housing. It is, therefore, a relevant policy for the supply of housing and given there is no 5 year supply it cannot be regarded as being up to date. In these circumstances, paragraph 14 of the Framework states that, the presumption in favour of sustainable development means that planning permission should be granted, unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole or unless specific Framework policies indicate development should be restricted.
13. The provision of up to 150 dwellings, of which would include 40% affordable housing, would make a significant contribution to the supply of housing. This

weighs significantly in favour of the proposal, particularly given the absence of a 5 year supply of land for housing.

14. Notwithstanding this, the Council have argued that the emerging Tendring District Local Plan – 2013-2033 and Beyond – preferred options Consultation Document could be adopted before the Councils 3.8 year supply of deliverable housing land runs out and that the sites contained within the plan would be able to meet the objectively assessed housing need for the district. There is also reference to Great Bentley's position as a 4th Tier settlement and its limitations in terms of sustainability. However, whilst I have taken account of the Court of Appeal Judgement¹ submitted in evidence by the Council, the consultation process is not yet complete and the emerging plan is still to be submitted for examination. Consequently, there is no substantive evidence before me to demonstrate that the housing land being promoted within the emerging plan would be deliverable now to meet the identified shortfall in supply or that much weight can be given to the proposed settlement hierarchy. Thus, having regard to paragraph 216 of the Framework, the policies contained within the emerging plan can be given only limited weight and they have not had any significant bearing on my determination of the appeal. This is consistent with the approach of the Inspector in the recent Arlesford appeal decision.²

Character and appearance

15. The appeal site is located at the edge of the village of Great Bentley, immediately to the south and east of existing built development. The northern boundary of the site is partly defined by the Colchester to Clacton railway line with the overhead wires and supporting masts visible. The site is generally level with the southern and eastern boundaries of the site open. The appeal site is crossed by both a public footpath and a bridle way. It was common ground that the appeal site has no landscape designation and has no characteristics that would identify the site as a valued landscape (paragraph 109 of the Framework). Finally, to the south and the east of the site are a number of tree plantations which punctuate the landscape.
16. I confirmed by way of my site visits that the appeal site is visible from both Plough Road and St Mary's Lane/Lover's Lane particularly when travelling from Aingers Green. Furthermore, it would be visible by passengers of trains using the Colchester to Clacton railway line. It is clear that the appeal site does have a local aesthetic value, and this has been evidenced by the representations both in writing and during the Inquiry from local residents. It is common ground that the proposed development would have an effect on the open character of the appeal site. Moreover, I accept that the introduction of the built development would change the outlook for local residents particularly from Plough Road and those who use the public footpath/bridleway. The effect

¹ Court of Appeal Judgement – Suffolk Coastal District Council and Hopkins Homes Limited and Secretary of State for Communities and Local Government – Richborough Estates Partnership LLP and Cheshire East Borough Council and Secretary of State for Communities and Local Government – 17 March 2016

² APP/P1560/W/15/3124775

would be to increase the presence of suburban type development in the countryside.

17. However, whilst the new development would be visible, the views would be largely contained by the existing residential properties on Plough Road and the existing industrial estate. Furthermore, the proposed belt of structural landscaping that would be approximately 25m deep to the southern and eastern boundaries and would provide an adequate level of screening and would over time blend into the localised landscape character of the area. In reaching this conclusion I have taken into account the potential effect of the proposed access road being contained within the structural landscaping and find that it would have a minimal impact on the overall effectiveness of the structural landscaping. Therefore, given the context of the appeal site, the proposed development with the provision of structural landscaping would over time be likely to be viewed as an organic extension of Great Bentley, in relation its surroundings and topography. Consequently, this would partially mitigate the harm in relation to the localised change of character and outlook.
18. Having reached the above conclusions the proposed development would result in moderate harm to the character and appearance of the area. The proposal would therefore conflict with Policy QL1 of the TDLP. This seeks amongst other things to ensure that new development does not harm the countryside and its setting.

Rail and pedestrian safety

19. It is common ground that the development of 150 dwellings would result in an increase in the use of the pedestrian level crossing of the Colchester to Clacton railway line (Footpath FP8 Great Bentley E45) and that this would result in harm to both rail and pedestrian safety if it is not closed. This is confirmed by Network Rail who have identified the crossing within a programme of planned closures across the country. Evidence submitted at the Inquiry demonstrated that the legal process for the closure of the crossing is now underway. Moreover, whilst Network Rail originally objected to the proposed development, their objection has now been withdrawn subject to the imposition of a Grampian condition limiting the maximum number of dwellings that can be occupied to 25 until the level crossing is closed.
20. Network Rail's crossing closure process is likely to involve either the diversion of the footpath (3 alternative routes notionally red, green, and blue have been identified and consulted upon by Network Rail) or the construction of a footbridge. In relation to the construction of the footbridge, a memorandum of understanding between Network Rail and the appellant in relation to the appellant meeting the cost of the construction of the footbridge has been agreed. Furthermore, it was common ground that any footbridge would need the necessary permissions and consents before it could be implemented. Ultimately, these are processes outside the scope of the Inquiry.
21. The Council have argued that until a solution for the crossing can be confirmed in detail this would harm overall deliverability of the site and therefore the proposed development could be limited to only 25 dwellings and therefore its contribution to boost the supply of housing would be constrained. However, whilst I accept there would be a legal process to close the crossing, based on

all of the available evidence before me it seems likely that a suitable pedestrian alternative to the level crossing could be achieved particularly as one of the alternative routes (Blue) falls within land wholly under the control of the appellant. Furthermore, whilst there was lengthy discussion at the Inquiry no substantive evidence was presented to suggest that a footbridge could not be funded from the proceeds of the development as a whole.

22. Having reached the conclusions above subject to the imposition of a Grampian condition limiting occupation to 25 dwellings the effect of the proposed development on pedestrian and rail safety would be neutral. Furthermore, there is no substantive evidence that the deliverability of the site would be constrained within the life of the permission. Therefore the proposal would not conflict with Policy TR3a of the TDLP which seeks to ensure amongst other things that where practicable new developments link with existing footpath and public rights of way networks and provide convenient, safe, attractive and direct routes for walking.

Planning obligations

23. At the time the Council made their decision the appellant had not provided planning obligations in relation to education, affordable housing, open space, healthcare provision, and the closure of the level crossing to offset the effect of the proposed development. However, the appellant has as part of their appeal submitted a planning obligation pursuant to Section 106 of the Act, which addressed the issues outlined above. The planning obligation has been submitted in a 2 part counterpart form but both of them, taken together, constitute a single agreement.
24. None of the planning obligations contained within the agreement appear to be in dispute and the Council have provided a statement of CIL regulation compliance. However, I have considered them against the tests in Regulation 122 of the CIL Regulations 2010 and the Framework nonetheless.
25. The first obligation deals with education provision. The County Council have identified a need for a contribution for the provision of primary school places within the Tendring primary group 3 (Brightlingsea/Elmstead) and a contribution towards secondary school transportation to meet the needs of the proposed development. Moreover, it was confirmed at the Inquiry that this would not be in contravention of Regulation 123 of the CIL regulations 2010 in relation to pooling. The provision of a contribution toward primary school places and secondary school transportation are reasonably related in scale and kind to the needs generated by the proposed development. Further, these requirements are consistent with Policy QL12 of the TDLP.
26. The second obligation deals with affordable housing provision. The Council has identified a need for affordable homes in the District. The 40% affordable housing sought in the appeal scheme amounts to 60 units of the 150 proposed on the site, which was confirmed at the Inquiry as consistent with the requirements of Policy HG4 of the TDLP. The third obligation deals with on-site open space provision. The Council has identified a need for open space within residential development sites in the District. Furthermore, the provision within the obligation of on-site open space is consistent with the requirements of Policy COM6 of the TDLP.

27. The fourth obligation deals with health care provision. The NHS England has identified a need for a contribution towards the provision of health care facilities to meet the needs of the proposed development. Moreover, it was confirmed at the Inquiry that this would not be in contravention of Regulation 123 of the CIL regulations 2010 in relation to pooling. Moreover, the provision of a contribution towards health care is reasonably related in scale and kind to the needs generated by the proposed development and is consistent with the requirements of Policy QL12 of the TDLP. The fifth obligation deals with the rail level crossing. This sets out a notification process for the chosen rail crossing solution and confirms the restriction on the number of dwellings (25) that can be occupied before the rail level crossing is closed. This is consistent with the requirements of Policy TR3a of the TDLP.
28. I therefore consider that the obligations meet the necessary tests in law and I have taken account of them in reaching my decision.

Other considerations

29. There was significant local concern raised in relation to the potential cumulative effect of the proposed development and other developments in Great Bentley on the capacity of the local road network in the village. However, based on all of the evidence before me and the observations during my site visits, I am satisfied that any increase in traffic from the proposed development would not result in severe harm to highway safety. Moreover, this is consistent with the Highways Authority who raised no objection in relation to capacity or highway safety subject to the provision of site and locality specific highway improvement work.
30. A number of additional issues were raised by local residents. These included potential anti-social behaviour and fly tipping. However, these are matters that could be reasonably mitigated in the detailed design stage of the reserved matters or are controlled by other legislation.

Conditions

31. The conditions suggested by the Council have been considered in light of the advice contained within the National Planning Practice Guidance and the National Planning Policy Framework. In addition to the standard outline implementation conditions, it is necessary for certainty, to define the plans with which the scheme should accord. It is necessary in the interests of amenity that the reserved matters should be in general conformity with the illustrative master plan and that a phasing plan be submitted to and approved by the Local Planning Authority. It is necessary for certainty to define the maximum number of dwellings and the industrial floor space (B1).
32. To minimise the risk of flooding, it is necessary for details of foul and surface water drainage to be agreed with the Local Planning Authority. It is necessary to impose a condition requiring an assessment of ground conditions and for details of any required remediation to be submitted to and approved by the Local Planning Authority.
33. In the interests of highway and pedestrian safety it is necessary for a scheme for the construction of the off-site works of highway and transport improvement to be submitted to and approved by the Local Planning Authority.

Further it is necessary in the interests of railway and pedestrian safety to impose a condition that ensures that occupation of the residential element of the proposed development does not exceed 25 units until the level crossing is closed. Moreover, it is necessary to impose a condition requiring the provision of a residential travel pack to be provided for new residents of the development.

34. To minimise the risk to biodiversity it is necessary to apply a condition in relation to the provision of an ecological mitigation scheme and management plan. It is necessary in the interests of amenity to impose a condition in relation to the details and management of the structural landscape buffer and that a landscape, lighting and open space management plan is agreed. Further it is necessary to control and agree details of methods of construction in the interests of local residents. It is necessary in the interests of amenity to impose a condition requiring noise impact and air quality assessments to be carried out and for details of any required remediation to be submitted to and approved by the Local Planning Authority.
35. It is necessary in the interests of sustainability for each dwelling to be provided with a connection to fibre optic broadband. However, it is not necessary to impose a condition in relation to local employment given that there is no local plan policy requirement or substantive evidence in support of such a condition.

Planning balance and conclusion

36. I have found that the proposed development would be contrary to the development plan in that it would result in moderate harm to the rural character and appearance of the area. In addition, as explained above, in this case the effect on rail and pedestrian safety is a neutral factor. Balanced against this is the contribution to the supply of housing of up to 150 new homes with 40% of those affordable, to which I have given significant weight. Moreover, whilst not a matter of dispute between the parties, the provision of land for employment purposes weighs in favour of the proposal.
37. Taking everything into account, I conclude that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework as a whole.
38. For the above reasons and having regard to all other matters, I conclude that the appeal should be allowed.

Jameson Bridgwater

INSPECTOR

Schedule – Conditions

- 1) No development shall be commenced until plans and particulars of "the reserved matters" relating to the access, appearance, landscaping, layout and scale of the development 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.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
- 3) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the Location Plan No. EG004-LP01 Revision B.
- 5) The reserved matters shall be in general conformity with the Illustrative Masterplan EG004-CP-01 Revision A.
- 6) The maximum number of dwellings to be contained in the development shall be 150 and maximum amount of gross internal B1 business space shall be 2,700 square metres.
- 7) The details of appearance, landscaping and layout which are required to be submitted under condition 1 above shall include a landscaped buffer along the southern and eastern boundaries of the site; and to properties in Plough Road. Structural landscaping shall be carried out during the first planting and seeding season (October – March inclusive) following the commencement of the development and other landscaping in a phased arrangement as may be agreed in writing by the local planning authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority agrees in writing to a variation of the previously approved details.
- 8) No development shall commence until a Phasing Plan and Programme for the application site has been submitted to and approved in writing by the Local Planning Authority. The document shall identify the physical extent of each proposed phase of development, the layout and an indicative timescale for implementation of each phase. Each phase or phases of the residential and employment development so approved shall be completed in accordance with a hard and soft landscaping scheme, required under condition 1 above. The Phasing Plan and Programme shall include the timing of development on the employment land which is required as part of the overall mix of uses as well as the phases of development that could be delivered in advance of either the closure of the pedestrian railway crossing or provision of new footbridge on land north of the site, as per the requirements of the s106 legal agreement in respect of this planning permission.

- 9) In addition to the requirements of Condition 8 above, in order to reflect the requirements of Network Rail, no more than 25 dwellings shall be occupied so long as Footpath FP8 level crossing (also referred to as E45) remains open. Any additional dwellings may not be occupied until such time as this rail crossing has been closed and a footpath diversion has been provided or a bridge or other possible measures to be agreed by the Council in writing are in place.
- 10) No development shall commence until a Landscape and Public Open Space Management Plan including a lighting strategy, long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas has been submitted to and approved, in writing, by the Local Planning Authority. The Landscape and Public Open Space Management Plan so approved shall be carried out in accordance with the details and timescales to be contained in that document.
- 11) No development shall commence until a foul water strategy has been submitted to and approved in writing by the local planning authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved.
- 12) No development shall commence until details of a surface water drainage works shall have been submitted to and approved in writing by the local planning authority. The submitted details shall:
 - a) include measures to minimise the risk of flooding during the construction works; and
 - b) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; and
 - c) include a timetable for its implementation; and
 - d) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

No building shall be occupied until the works have been implemented in accordance with the approved details.

- 13) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in

accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 20 days of the report being completed and approved in writing by the local planning authority.

- 14) A noise assessment and an air quality assessment shall be carried out and submitted to the Council concurrent with the submission of reserved matters and the development shall be carried out in line with the findings and recommendations of the assessments to the extent that the same have been approved in writing by the local planning authority.
- 15) No occupation of the development shall take place until the following have been completed in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority:
 - i) A priority junction off Plough Road to provide access to the site as shown in principle on the planning application drawings; and
 - ii) Widening of Heckfords Road at its junction with the A133 and 2no. traffic islands with illuminated bollards and high level beacons at the right turn lane; and
 - iii) Two new bus stops adjacent the proposal site access off Plough Road or upgrading of existing bus stops with the highest frequency of services which would serve the development. For either option, stops shall be provided or upgraded to current Essex County Council specification.

No dwelling within the development shall be first occupied until such time as all facilities identified in a), b) and c) above have been provided in accordance with details so approved.

- 16) Prior to occupation of the development, the Developer shall be responsible for the provision, to the first owner of each dwelling on the site, a Residential Travel Information Pack for sustainable transport, approved by the Local Planning Authority, in consultation with Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator.
- 17) No phase of development shall commence until an Ecological Mitigation Scheme and Management Plan for that particular phase has been submitted to and approved, in writing, by the Local Planning Authority. The document shall include:
 - i) A survey to confirm (or otherwise) the presence of protected species on the application site.

If protected species are present, the survey shall be accompanied by a scheme of appropriate mitigation measures (including precise details of the timing and method/s of protection). No development shall be undertaken except in full accordance with any such approved scheme of mitigation

- ii) A management plan to demonstrate how biodiversity within the site will be encouraged by the development.

- 18) No phase of development shall commence until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority for that particular phase. The statement shall include details of:

- i) the parking of vehicles of site operatives and visitors; and
- ii) the loading and unloading of plant and materials; and
- iii) storage of plant and materials used in constructing the development;
- iv) wheel and under-body washing facilities; and
- v) hours of construction

- 19) The hereby permitted development shall not be occupied until a fibre optic broadband connection installed on an open access basis and directly accessed from the nearest exchange, incorporating the use of resistant tubing, has been installed at the site, in accordance with details that shall be submitted and approved, in writing, by the Local Planning Authority. 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 (i.e. will provide speeds greater than 24mbps) wireless service will be considered acceptable.

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Court of Appeal Judgement – Suffolk Coastal District Council and Hopkins Homes Limited and Secretary of State for Communities and Local Government – Richborough Estates Partnership LLP and Cheshire East Borough Council and Secretary of State for Communities and Local Government – 17 March 2016
2. Planning position on major schemes in Great Bentley as at 9 August 2016
3. Addendum to Proof of Evidence on behalf of Tendring District Council
4. Data from Tendring housing register
5. Transcript of Peter Harry's representation (local resident)
6. Tendring District Local Plan – Local Development Scheme (LDS) 2015-2018
7. Tendring District Local Plan – 2013-2033 and Beyond – preferred options Consultation Document

8. Email Network Rail to Christopher Glegg – Comments in relation to Great Bentley rail crossings E45 and E46 (public consultation)
9. Transcript of the opening statement of Mr Andrew Marsden of Counsel
10. Transcript of the opening statement of Mr Josef Cannon of Counsel
11. Transcript of the closing statement of Mr Josef Cannon of Counsel
12. Transcript of the closing statement of Mr Andrew Marsden of Counsel

APPEARANCES

FOR THE APPELLANT:

Mr Andrew Marsden of Counsel Instructed by Mr Edward Gittins

He Called

Edward Gittins BA(Hons) Dip TP FRTPI Edwards Gittins and Associates

Christopher Glegg CEng MICE MIHT Intermodal Transportation

FOR THE LOCAL PLANNING AUTHORITY:

Mr Josef Cannon of Counsel Instructed by Tendring District Council

He Called

Ray Ricks MRTPI Boyer Planning

INTERESTED PERSONS:

Kevin Plummer Great Bentley Parish Council

Peter Harry Local resident