



Appeal Decision

Site visit made on 28 October 2019

by **Nicola Davies BA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 November 2019

Appeal Ref: APP/B1550/W/18/3203038

Fairways Garden Centre, Hullbridge Road, Rayleigh SS6 9QS

- 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 Kent Property Investments Ltd against the decision of Rochford District Council.
 - The application Ref 17/00431/OUT, dated 28 April 2017, was refused by notice dated 29 March 2018.
 - The development proposed is demolition of existing commercial and retail uses and construction of 4no two bedroom dwellings, 8no three bedroom dwellings and 4no four bedroom dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing commercial and retail uses and construction of 4no two bedroom dwellings, 8no three bedroom dwellings and 4no four bedroom dwellings at Fairways Garden Centre, Hullbridge Road, Rayleigh SS6 9QS in accordance with application Ref 17/00431/OUT, dated 28 April 2017, subject to the conditions set out within the attached schedule and completed Unilateral Undertaking dated 12 August 2019.

Preliminary Matters

2. The application was made in outline with approval being sought for access, appearance, layout and scale. Matters relating to landscaping have been reserved. I have dealt with the appeal on this basis.
3. I have taken the description of the proposed development from the planning application form although I note it is expressed differently on other documents.
4. A Unilateral Undertaking has been submitted in support of the appeal that seeks to secure a financial contribution toward affordable housing provision.

Main Issues

5. The main issues raised by this appeal are: -
 - (a) Whether or not the proposal makes adequate provision for affordable housing;
 - (b) The effect of the proposal upon the economy;

- (c) Whether or not the proposal would be inappropriate development in the Green Belt, the effect of the proposal on the openness of the Green Belt and whether the proposal is an appropriate location for new residential development and accessibility to services and facilities; and
- (d) The effect of the proposal on the character and appearance of the area.

Reasons

Affordable Housing

6. Policy H4 of the Rochford District Council Local Development Framework Core Strategy 2011 (the Core Strategy) seeks a minimum of 35% affordable housing on all developments of 15 or more units. This policy also indicates that the requirement for the provision of affordable housing may be relaxed, for example where constraints make on-site provision impossible or where the developer is able to demonstrate that 35% provision will be economically unviable, rendering the site undeliverable. In such cases the Council will negotiate the proportion of affordable dwellings based on the economic viability calculations. It is expected that affordable housing will be provided on each development site; in rare cases, taking account of particular site characteristics, the affordable housing contribution may be provided by way of a commuted sum toward off-site affordable housing.
7. The proposal has been supported by a viability assessment that has been independently assessed. The conclusion of the independent assessment is that a surplus of £663,429 is achieved, therefore, indicating that the provision of some affordable housing would be viable. The appellant indicates a willingness to pay a capital contribution toward the provision of off-site affordable housing as opposed to making provision as part of the proposed development. A Unilateral Undertaking that would secure this has been provided in support of the appeal.
8. Policy H4 of the Core Strategy sets the expectation that affordable housing will be provided as part of each development. This reflects paragraph 62 of the National Planning Policy Framework (the Framework). Nonetheless, both Policy H4 and the Framework allow for off-site contributions in lieu if robustly justified. The proposed development would provide dwellings of different sizes ranging from two to four-bedroom. I have not been made aware of any design constraints relating to the proposed development that might inhibit on-site provision. Notwithstanding this, the independent assessment concluded that as the development is a high value residential scheme, affordable housing is not considered appropriate. The independent assessment also concluded that a capital contribution is considered to provide greater benefit to Rochford District Council. On the evidence before me, it appears to me that in this particular case, accepting a commuted sum toward off-site affordable housing would be in the best way of achieving and securing the aims of Policy H4.
9. For the above reason, I conclude that the proposed development would make adequate provision for affordable housing and, as such, would not materially conflict with Policy H4 of the Core Strategy.

Existing Employment Use

10. I observed that there are various existing small businesses at the appeal site. Policy ED1 of the Core Strategy supports employment growth. This policy sets

out locations where economic development and enhancement would be supported; however, the appeal site is not one of those sites listed. Whilst there are businesses at the site, these are not many. I have not been provided with any substantial evidence that might indicate that it would not be possible to relocate these businesses elsewhere. Although the Council suggest that with investment in the site the land could generate further local employment, I see no certainty that this would happen, even though the site has good access to the strategic road network. I, therefore, do not consider there to be strong policy support for the retention of this employment site, particularly as it is not located within an existing settlement where businesses would be more likely to meet the day-to-day needs of the community. I, therefore, conclude that the proposal would not have a substantially harmful effect upon the economy and, therefore, it would not materially conflict with Policy ED1 of the Core Strategy.

Green Belt, location and accessibility

11. The Framework sets out the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristic of Green Belts being their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 145 sets out exceptions with part g) of this paragraph indicating the acceptability of limited infilling or the partial or complete redevelopment of Previously Developed Land (PDL), whether redundant or in continued use (excluding temporary buildings) which would have not greater impact on the openness of the Green Belt than the existing development.
12. The Council's Officer Report to its Planning Committee confirms that the appeal site is considered to be PDL as defined within Annex 2 of the Framework. Policy DM10 of the Rochford District Council Local Development Framework Development Management Plan 2014 (the Development Management Plan) relates to PDL in the Green Belt and indicates that residential development may be appropriate on PDL if it can be demonstrated that it would constitute sustainable development and sets out a list of objectives that would need to be satisfied in order for residential development on PDL to be permitted.
13. The first, second and third objectives require the proposal to be well related to a defined residential settlement and to local services and facilities with good connections to the strategic road network. The appeal site is located between Rayleigh and Hullbridge. Although not part of either settlement the appeal site is positioned along the main road that links these settlements and is not particularly far from either settlement. There is good access by road and there is a bus stop close to the entrance of the appeal site that would allow travel by alternative means than motor vehicle. Whilst the pre-amble to this policy provides some guidance as to walking distances to services and facilities, access to some local facilities is not substantially farther away than the walking distance guidance advocates.
14. The fourth objective seeks to promote sustainable transport modes. The future occupiers would have access to local bus services that operate along Hullbridge Road and there is a bus stop close by the appeal site that would encourage use of the bus services. It would be possible to cycle to Rayleigh and Hullbridge and the footway along Hullbridge Road would facilitate walking. I do not consider the speed of traffic travelling along Hullbridge Road would discourage

future occupiers from cycling or accessing the bus stops or using the public footpath. I note the proposal would only have one access point, but I have not been provided with any substantive information that would indicate why this might be a problem. Although this is a matter raised as part of the Council refusal reason 4, I have not been directed to any substantive information or evidence that would substantiate the claim that future occupiers of the development would be put at significant risk when walking to the nearby bus stops.

15. With regard to the last two objectives, the Council has indicated within its Officer Report to its Planning Committee that the proposal would not have a negative impact on areas of international, European and local nature conservation importance, or the historic environment. I have no substantive reason before me that might lead me to a contrary view on this matter. It is also advised that the site is not located within the South Essex Coastal Towns landscape character area and, for this reason, I do not consider the proposal would impact that area.
16. In terms of this objectives of Policy DM10 of the Development Management Plan I consider the proposal would be acceptable. Policy DM10 also requires that the development of PDL should not undermine the five purposes of including the land with the Green Belt (paragraph 134 of the Framework). Although the site is located in the Green Belt this is a largely hardsurfaced site comprising buildings and structures. The appeal site does not form part of the open countryside. The proposal would limit itself to the existing site, which is considered to be PDL and, as such, would not encroach upon the wider countryside. The proposal is of limited size and would not result in the merger of existing settlements. I do not consider the development of this site would undermine the purposes of including the land within the Green Belt.
17. With regard to openness Policy DM10 of the Development Management Plan requires that any development permitted should be of a scale, design and siting such that the openness of the Green Belt and character of the countryside is not harmed.
18. In terms of volume of development at the site, the Council indicate that this would reduce by approximately 2,237metres cubed as a result of the proposed development. Although there would be an increase in height, this would be relatively modest. Overall, I consider that the proposed development would have an acceptable impact upon openness and since the development would not encroach into the surrounding area the wider countryside would not be harmed.
19. For the above reasons, I conclude that the proposed development would not be inappropriate development in the Green Belt and would not have an unacceptable effect on the openness of the Green Belt. Furthermore, I conclude that site is an appropriate location for new residential development that has accessibility to services and facilities. The proposal would not materially conflict with Policy DM10 parts (i), (ii) and (iv) that seek, amongst other matters, residential development of PDL in the Green Belt to relate well to a defined residential settlement, local services and facilities, and would promote sustainable transport modes.

Character and appearance

20. The proposed layout has been designed in a loop around a central amenity space. As a result, none of the proposed dwellings would have their frontage elevations facing toward Hullbridge Road. Plots 1 and 16 would have their rear elevations, gardens and boundaries facing Hullbridge Road, with the rear gardens also siding onto the site highway entrance. It is suggested that the inward looking development would be out of character with nearby development and the prevailing residential development within the District.
21. I acknowledge that the proposal would not host road frontage development onto Hullbridge Road. However, I consider the set back of the dwellings at plots 1 and 16 from Hullbridge Road, the low eaves height of the proposed dwellings and an appropriate landscaping scheme that can be agreed as part of a reserved matters application, when taken together would reduce the perception of the dwellings having their rear elevations fronting Hullbridge Road. Furthermore, an appropriate landscaped boundary along Hullbridge Road could reduce the visibility of the back gardens and the impression of this being a rear boundary when viewed from the Hullbridge Road streetscene.
22. With relation to concerns that the loop road would appear overly engineered and overly complicated for a development of 16 dwellings, the road appears to me to be akin to a typical residential highway. It would encircle an amenity area that, in my opinion, is an attractive feature of the proposed development and would be seen ahead as one enters the development. This would provide the development with a focus centrally located within the scheme that would contribute in its own way to the sense of arrival when entering the site from Hullbridge Road and would draw one's attention from the dwellings either side of the access being inward looking.
23. For the above reasons, I conclude that the proposed development would not harm the character and appearance of the area. The proposal would not materially conflict with Policy DM1 parts (i) and (ix) and Policy DM3 Part (i) of the Development Management Plan that seek, amongst other matters, to promote visual amenity.

Other Matters

24. Neighbour concern has been raised to the proximity of the proposed development to the boundaries of existing dwellings and the potential for this to give rise to overlooking that would result in loss of privacy, particularly if boundary trees are cut back. The Council has indicated that the minimum separation distance of the proposed dwellings at plots 2 and 3 would have approximately 18m between them and Nursery Lodge and I note that these proposed dwellings would have oblique orientation to Nursery Lodge and its grounds. I consider this to be sufficient to ensure an appropriate level of privacy is maintained even if trees are cut back.
25. Concern has also been expressed to potential impacts on water supply but on the evidence available I cannot say with any degree of certainty that any problems to supply would occur as a result of the proposed development.

Conditions

26. I have considered the planning conditions suggested by the Council in light of paragraph 55 of the Framework and the advice in the Planning Practice Guidance. Conditions 1 and 2 relate to the details and time limit for the reserved matters submission. Conditions 3 and 8 are necessary in the interests of the character and appearance of the area, whilst condition 4 is necessary in the interest of highway safety. In the interests of achieving appropriate accessibility, condition 6 should be imposed. Condition 10 is necessary to ensure the site is properly drained and to prevent flooding.
27. Conditions 5, 7 and 9 are pre-commencement conditions. Conditions 5 and 9 involve ground works that would take place at the initial stage of the development. It is, therefore, appropriate to agree these details prior to the development commencing. Vehicles will be attending the site from day one of the development being implemented. For this reason, it is necessary to ensure that vehicles visiting the site are managed appropriately and this needs to be agreed before the development commencement. I have omitted some of the Council's suggested text relating to these conditions in the interests of conciseness.
28. A condition relating to a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works has been requested by the Council, however I consider this can form part of the Construction Method Statement required by condition 7.
29. The Council considers that the removal of Class A, B and E of Schedule 2, Part 1 of the Town and Country (General Permitted Development) Order 2015 permitted development rights would be appropriate in the interests of protecting the open character of the Green Belt. The proposed development represents an overall reduction in volume of development at this site. I refer to the advice in the Planning Practice Guidance which states that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. I do not consider there to be exceptional circumstances here.

Conclusion

30. Having regard to the above the appeal should be allowed.

Nicola Davies

INSPECTOR

SCHEDULE OF CONDITIONS

- 1 Plans and particulars showing precise details of the landscaping of the site (herein after called the 'Reserved Matters') shall be submitted to and approved in writing by the local planning authority before any development is commenced. All development at the site shall be carried out in accordance with the 'Reserved Matters' details approved.
- 2 Application for approval of all 'Reserved Matters' referred to in Condition 1 above shall be made to the local planning authority before the expiration of three years from the date of this outline planning permission. The development to which this permission relates 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 of different dates, the final approval of the last such matter to be approved.
- 3 No development works above ground level shall take place until details of all facing materials, including windows, doors and roofing materials to be used in the development, have been submitted to and approved in writing by the local planning authority. The facing materials shall be carried out only in accordance with approved details.
- 4 Prior to the first occupation of each dwelling, two parking spaces shall be provided on the site measuring 2.9 metres by 5.5 metres per space. The parking spaces shall be hard surfaced and constructed either of a porous material or provision shall be made to direct surface water run-off from the hard surface to a permeable or porous area or surface within the that dwelling plot. Once implemented, the hard surface and surface water run-off shall be retained for the lifetime of the dwelling.
- 5 Prior to commencement of the development hereby permitted, plans and details to demonstrate how compliance will be achieved with part G water efficiency of the Building Regulations (2010) as amended shall be submitted to and agreed in writing by the local planning authority. Once agreed part G of the Building Regulations (2010) as amended shall be met for the dwellings on the site and retained in the agreed form for the lifetime of the development.
- 6 One dwelling at the site as a minimum shall meet the optional building regulations requirement part M. Prior to the occupation of the development hereby permitted, plans and details to demonstrate which property and how the dwelling shall meet the minimum optional buildings regulations requirement part M shall be submitted to and agreed in writing by the local planning authority. Once agreed that dwelling shall be built in accordance with the agreed details and retained thereafter in the agreed form for the lifetime of the development.
- 7 Prior to the commencement of development, including any ground works or demolition, a Construction Method Statement shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the agreed Construction Method Statement.

- 8 Prior to the occupation of any of the dwellings hereby permitted, the shared highway access to all plots shall be constructed to a width of 5.5 metres for at least the first 6 metres from the back edge of the highway boundary and provided with an appropriate dropped kerb crossing of the verge.
- 9 Prior to commencement of the development hereby permitted, a detailed surface water drainage scheme shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the agreed surface water drainage scheme.
- 10 Prior to first occupation of the development hereby permitted, a detailed Drainage Maintenance Plan setting out the maintenance agreements, including who is responsible for different activities/frequencies, shall be submitted to and approved in writing by the local planning authority.

End of schedule