

PLANNING COMMITTEE

12 JULY 2016

ADDENDUM REPORT OF HEAD OF PLANNING

A.6 - Planning Application - 14/01750/OUT - Land at Station Field, Plough Road, Great Bentley, CO7 8LG

Outline application for a mixed use scheme comprising up to 150 dwellings and open space, a class B1 employment area and structural landscaping.

Council is required to submit evidence, by 13 July 2016 (tomorrow), to the Planning Inspectorate for the purposes of a Public Inquiry, scheduled to commence on 9 August 2016, in support of its reasons for refusing the planning application:

On the advice of the Barrister appointed to represent the Council at the Public Inquiry, this report seeks the Committee's agreement to withdraw some of the reasons for refusal from the Council's case but to continue to contest the appeal on the remaining reasons.

The above referenced planning application was refused at Planning Committee on 20 October 2015. In refusing the application the following reasons were given by the Committee:

1. The National Planning Policy Framework (2012), at its heart, promotes a presumption in favour of sustainable development that performs an economic, social and environmental role. Where local planning authorities are unable to identify a five year supply of deliverable housing sites against objectively assessed future needs, plus an appropriate buffer, policies relating to housing supply are considered out of date and the presumption in favour of sustainable development applies, requiring planning permission to be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

One of the core planning principles of the Framework is to actively manage patterns of growth to make the fullest use of public transport, walking and cycling, and to focus significant development in locations which are or can be made sustainable. Policy QL1 in the Tendring District Local Plan (2007) (the adopted Local Plan) and Policies SD2, SD3 and SD4 in the Tendring District Local Plan: Proposed Submission Draft (2012) as amended by Pre-Submission Focussed Changes (2014) (the emerging Local Plan) support this principle by setting out a spatial strategy, underpinned by hierarchy of settlements that seeks to focus new development on larger towns and villages which offer the greatest range of jobs, shops, services and facilities.

Policy SD3 of the Council's emerging Local Plan provides that 'Key Rural Service Centres', including Great Bentley, will accommodate a sustainable, fair and proportionate increase in housing stock that will support the overall growth proposed for the district. It also states that this will be achieved through development on sites specifically allocated for housing or mixed-use development and sites with outstanding planning permission for residential development, supplemented by development on other suitable sites within Settlement Development Boundaries, with no single housing development exceeding 50 dwellings in size. Paragraph 2.16 in support of Policy SD3 explains that the limit of 50 dwellings is to ensure that new development does not have an urbanising effect on the rural character of the village(s) concerned. Policy SD2 of the emerging Local Plan identifies urban settlements as being the focus for the majority of the district's growth and supporting paragraph 2.8 explains that urban settlements with large populations and a range of

existing infrastructure and facilities are the most sustainable locations for significant levels of growth.

The objectively assessed need for housing in Tendring, based on the latest evidence contained within the Objectively Assessed Housing Needs Study (July 2015) for Tendring, Colchester, Braintree and Chelmsford, suggests that the overall housing stock of the whole Tendring District may need to grow by approximately 15% over the next 17 years up to 2032. The residential element of the proposed development is for up to 150 dwellings on land that is not on a site allocated for development in either the Council's adopted Local Plan or the emerging Local Plan and also falls outside of the settlement development boundaries as defined in both plans.

The development would exceed, considerably, the 50 dwelling limit set out in emerging Policy SD3 and this number of dwellings would represent an approximate 22% increase in the housing stock of Great Bentley which is considerably higher, in percentage terms, than the projected housing stock increase required for the whole Tendring district over a 17 year period. For Great Bentley, a rural settlement within the second tier of the settlement hierarchy, this scale of development is considered to be too large to represent a sustainable, fair and proportionate increase in housing stock and would conflict with, and undermine, the core planning principle set out in the National Planning Policy Framework to make fullest use of public transport, walking and cycling and the need to focus significant development in locations which are or can be made sustainable.

2. The definition of sustainable transport modes contained within the glossary of the National Planning Policy Framework describes an efficient, safe and accessible means of transport with overall low impacts on the environment which includes walking and cycling. Policy TR3a of the Tendring District Local Plan (2007) (the adopted Local Plan) requires, where practical, that developments link with existing footpath and public rights of way networks and provide convenient, safe and direct routes for walking. The policy also requires, where appropriate, that development improves links between pedestrian routes and public transport facilities, and supports pedestrian priority measures.

The proposed development site is located in close proximity to two footpath level crossings for Great Bentley Station and is located on the opposite side of the railway line to many of the village's facilities and services including the primary school, doctors surgery, pub and local shops. The safety of the operational railway and of pedestrians using the crossings are of the highest importance. The proposed 150 residential dwellings are likely to result in an increase in usage of the crossings. An increase in usage at a crossing increases the level of safety risk at the crossing.

Network Rail has advised that pedestrian safety concerns could potentially be addressed through an appropriate bridge solution and the closure of current footpaths. The applicant has expressed a willingness, in principle, to enter into a s106 legal agreement to secure such a solution. However, insufficient evidence has been submitted with the application to fully assess the impact of the proposed development on usage of the crossings, to identify the specific improvements that would be required or to demonstrate that a bridge solution is physically deliverable and economically viable. In addition there is no evidence to suggest that Network Rail can guarantee that the existing footpath can be shut in the absence of a risk assessment to test the safety of diverting the footpath further up track.

The Council considers that, in the absence of sufficient evidence to the contrary, the development would put unacceptable pressure on the safety of the operational railway while also having a material impact on the safety of future occupiers of the proposed development who are likely to make increased use of Great Bentley Station and the services and facilities located on the opposite side of the railway line.

The development would be contrary to Policy TR3a of the Tendring District Local Plan (2007) (the adopted Local Plan) by failing to provide convenient, safe, attractive and direct routes for walking.

3. One of the core planning principles of the National Planning Policy Framework (2012) is to actively manage patterns of growth to make the fullest use of public transport, walking and cycling, and to focus significant development in locations which are or can be made sustainable.

The social role of sustainable development as set out in paragraph 7 of the National Planning Policy Framework (2012) involves supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being.

For this significant development to be considered sustainable therefore, it needs to be supported by accessible local services which include public transport.

Policy QL2 in the Tendring District Local Plan (2007) (the adopted Local Plan) states that: "All new development proposals should be located and designed to avoid reliance on the use of the private car and promote travel choice other than in exceptional circumstances. Permission will not be granted for development if it is not accessible by a choice of means of transport. Where necessary, measures to improve the accessibility of development will be required (from the developer), particularly access by walking, cycling and public transport."

Although the site is located within walking distance of a railway station and a number of bus stops, the frequency of bus and rail services is limited and they do not therefore provide a viable alternative to the private car for everyday travel as required for a residential development of this scale to be considered sustainable.

It is acknowledged, at the time of this decision, that the adopted Local Plan in respect of housing land supply is out of date, the Council is unable to identify a five year supply of deliverable housing sites against its objectively assessed requirements and therefore the proposal must be considered in line with the presumption in favour of sustainable development. Whilst the development of up to 150 homes would make a significant contribution toward addressing housing need in Tendring, the Council considers that with limited public transport in the locality and an unacceptable reliance on the private car, the adverse social and environmental impact caused by the development would significantly and demonstrably outweigh any social, economic or environmental benefits of the proposal. The development would fail against the social role set out in Paragraph 7 of the National Planning Policy Framework and its Core Principle of making the fullest use of public transport, walking and cycling and would be contrary to Policy QL2 in the adopted Local Plan. The proposal would not therefore constitute sustainable development.

4. The social role of sustainable development as set out in paragraph 7 of the National Planning Policy Framework (2012) involves supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being.

For the development to be considered sustainable therefore, it needs to be supported by accessible local services which include education provision.

Policy COM26 of the Tendring District Local Plan (2007) (the adopted Local Plan) states where necessary planning permission will only be granted for residential developments of 12 or more dwellings if land and/or financial contributions are made to provide the additional school places that will be needed to service the development. Policy SD7 of the Tendring District Local Plan Proposed Submission Draft (2012) as amended by the Tendring District Local Plan: Pre-Submission Focussed Changes (2014) (the emerging Local Plan), states planning permission will not be granted for new development unless the individual or cumulative impacts of development on infrastructure can be addressed, at the developer's cost, either on-site or through financial contributions towards off-site improvements.

Essex County Council in its capacity as the Local Education Authority was consulted as part of the application process. Essex County Council Education Services confirmed that according to the latest information available to Essex County Council's Early Years and Childcare Team all places in the surrounding wards are at 100% capacity, and could not accommodate the proposed development.

With regard to primary school provision it has been forecast that there would be a deficit of 65 permanent places and therefore the area could not accommodate children from this development.

With regard to secondary school places, it does appear that there are sufficient places to serve the needs of the development.

The Education Authority has advised that a financial contribution secured through a Section 106 legal agreement could be used to mitigate the lack of places in the area, however evidence has not been provided to demonstrate how such a contribution will be utilised to create the additional capacity that would be necessary.

It is acknowledged, at the time of this decision, that the adopted Local Plan in respect of housing land supply is out of date, the Council is unable to identify a five year supply of deliverable housing sites against its objectively assessed requirements and therefore the proposal must be considered in line with the presumption in favour of sustainable development. Whilst the development of up to 150 homes would make a significant contribution toward addressing housing need in Tendring, the Council considers that with insufficient Early Years and Childcare and Primary School places in the locality and a lack of evidence to demonstrate how this can be mitigated through financial contributions, the adverse social impact caused by the development would significantly and demonstrably outweigh any social, economic or environmental benefits of the proposal. The development would fail against the social role set out in Paragraph 7 of the National Planning Policy Framework and would not therefore constitute sustainable development.

5. The social role of sustainable development as set out in paragraph 7 of the National Planning Policy Framework (2012) involves supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being.

For the development to be considered sustainable therefore, it needs to be supported by accessible local services which include health provision.

Policy SD7 of the Tendring District Local Plan Proposed Submission Draft (2012) as amended by the Tendring District Local Plan: Pre-Submission Focussed Changes (2014) (the emerging Local Plan), states planning permission will not be granted for new development unless the individual or cumulative impacts of development on infrastructure can be addressed, at the developer's cost, either on-site or through financial contributions towards off-site improvements.

NHS England was consulted as part of the application process and although, at the time of the decision, no formal response had been received, the Council understands that Great Bentley Doctors Surgery is operating at or above full capacity. Whilst the applicant has indicated a willingness to make a financial contribution toward health care provision through a Section 106 legal agreement to mitigate the lack of provision in the area, evidence has not been provided to demonstrate how such a contribution will be utilised to create the additional capacity that would be necessary.

It is acknowledged, at the time of this decision, that the adopted Local Plan in respect of housing land supply is out of date, the Council is unable to identify a five year supply of deliverable housing sites against its objectively assessed requirements and therefore the proposal must be considered in line with the presumption in favour of sustainable development. Whilst the development of up to 150 homes would make a significant contribution toward addressing housing need in Tendring, the Council considers that with insufficient healthcare provision in the locality and a lack of evidence to demonstrate how this can be mitigated, the adverse social impact caused by the development would significantly and demonstrably outweigh any social, economic or environmental benefits of the proposal. The development would fail against the social role set out in Paragraph 7 of the National Planning Policy Framework and would not therefore constitute sustainable development.

The applicant has appealed against the refusal of planning permission and a Public Inquiry is scheduled to commence on 9th August 2016.

A summary of the Barrister's advice is set out as follows:

- a) Following both the Inspector's decision to allow a development of up to 145 dwellings on land south of Cockaynes Lane, Alresford and Full Council's approval, for consultation purposes, of the new Local Plan - Preferred Options Draft, the Council is no longer in a position to reasonably defend certain aspects of Reason for Refusal 1. Namely:
 - i) Reference to a 'sustainable, fair and proportionate approach to growth' is a concept that was rejected by the Inspector for the Alresford scheme and that has not been carried forward into the new Local Plan – Preferred Options Draft; and
 - ii) The maximum of 50-dwellings for residential developments in Key Rural Service Centres is another concept rejected by the Alresford Inspector and that has not been carried forward into the new Local Plan – Preferred Options Draft.
- b) The Council is not in a position to reasonably defend Reasons for Refusal 4 and 5 while Essex County Council and NHS England are content to accept a financial payment towards education and health provision and whilst the applicant is prepared to make such payments through a s106 agreement (which is currently in the process of being prepared). This is particularly the case when the Council has given approval to a scheme of up to 50 dwellings at Admiral's Farm, Great Bentley conditional on similar financial contributions being secured.

- c) The Council cannot reasonably defend Reason for Refusal 3 when Great Bentley is categorised as a Key Rural Service Centre and when the appeal site is so close to a railway station. Notwithstanding the Committee's concern about the lack of bus services, Great Bentley is recognised as a Key Rural Service Centre due to its reasonable accessibility to shops, jobs, services and facilities compared with many villages in Tendring. Again, as the Council has given approval to a scheme of up to 50 dwellings at Admiral's Farm, Great Bentley without raising any objection to the lack of public transport, it would not be reasonable to uphold such an argument for the appeal scheme, particularly when it is much closer to the railway station.
- d) Subject to point a) above the Council can still formulate a reasonable defence of its concerns about the urbanising effect of the development in this location (within reason 1) and its concerns about pedestrian safety in relation to the railway crossing and the uncertainty over how the risk to pedestrians will be eliminated through the construction of a footbridge or other appropriate solution (reason 2).

Given the above advice the Committee is asked to decide which of the reasons for refusal Officers will defend at the Public Inquiry.

When considering this matter the Committee ought to remember that the National Planning Practice Guidance deals with the awards of costs at Paragraph: 028 (Reference ID: 16-028-20140306) which states as follows:

"Parties in planning appeals and other planning proceedings normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs."

The aim of the costs regime is to:

- encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case*
- encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay."*

The Planning Committee is under an obligation to take into account professional advice received and the Planning Practice Guidance; if departing from these detailed reasons must be provided for their decision: failure to do so may result in an award of costs against the Council.

RECOMMENDATION:

1. The Planning Committee notes the summary of legal advice received from external Counsel;

2. In light of the clear legal advice, the Planning Committee confirms that it does not wish to continue defending Reasons for Refusal 3, 4 and 5 as set out above, nor the aspects of Reason for Refusal 1 that refer specifically to a sustainable, fair and

proportionate approach to growth and the 50-dwelling limit on residential developments in Key Rural Service Centres; and

3. That Officers are instructed to work with Counsel to defend the planning appeal on the 'urbanisation' aspect of Reason for Refusal 1 along with the full grounds of Reason for Refusal 2 that relate to the safety of pedestrians crossing the railway line.