



Appeal Decision

Inquiry held on 24 to 27 November 2020

Site visit made on 28 October 2020

by Grahame Gould BA MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 January 2021

Appeal Ref: APP/P1560/W/20/3256190

700 St Johns Road and St Johns Nursery site, Earls Hall Drive, Clacton on Sea

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Kelsworth Limited against the decision of Tendring District Council.
 - The application Ref 18/01779/FUL, dated 19 October 2018, was refused by notice dated 19 February 2020.
 - The development proposed is demolition of nursery buildings and dwellinghouse. Erection of 195 residential units (comprising 6 two bed houses, 87 three bed houses, 33 four bed houses, 25 five bed houses, 12 one bedroom apartments and 24 two bedroom apartments), and 8 live work units (mixed commercial units measuring 1,064 square metres in total with flats above). Associated roads, open space, drainage, landscaping and other infrastructure.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The planning application was amended by the appellant prior to its determination by the Council. The description of the development subject to this appeal (the development) appearing on the Council's decision notice is as stated in the banner heading above and that description is accepted by the appellant.
3. While the Inquiry finished sitting on 27 November, I adjourned it, rather than formally closing it to allow for the submission of:
 - A certified copy of an executed Unilateral Undertaking (UU) entered into under Section 106 of the Town and Country Planning Act 1990 (as amended).
 - A final version of a list of suggested planning conditions agreed between the appellant and the Council, which was submitted on 4 December 2020.
 - Clarification about the proximity of the appeal site to the various Special Protection Areas for birds (SPA) and Special Areas of Conservation (SAC) and details for the SPAs and SACs (designation citations, conservation objectives and condition). This information having been submitted by the

Footnote 37 of the Framework states:

'... Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.'

78. Paragraph 11d)i does not apply in this instance because the nursery is not situated in a protected area and does not form a protected asset for the purposes of footnote 6 of the Framework. Under the provisions of paragraph 11d) for the purposes of the determination of this application there are two routes under which the presumption in favour of sustainable development could be engaged. The first route being the absence of a 5yrHS, while the second would be because the most important development plan policies for the determination of the application are out-of-date.

Housing land supply route

79. On 16 December 2020 the Secretary of State made a Written Ministerial Statement (WMS) providing an update on the Government's proposals for changing the way in which the standard method (SM) is calculated. On the same day amendments to the 'Housing and economic needs assessment' section of the PPG were also published. The changes to the SM will apply to cities and towns that have been specified in the PPG. Tendring is unaffected by the recently made changes to the calculation of the SM and those changes are therefore not material to the determination of this appeal.
80. The strategic policies of the TDLP are more than five years old and the appellant and the Council agree that there is no 5yrHS with respect to the need using the SM of calculation. That being confirmed in the Council's Strategic Housing Land Availability Assessment of May 2020 (the SHLAA) (CD6.3), with a supply of 4.45 years being identified in section 7 of the SHLAA. A 5yrHS of 4.45 years being based on the SM generating a local housing need of 865 dwellings per year, giving an overall five year housing requirement of 4,541 dwellings, inclusive of a 5% buffer⁴⁰.
81. I consider the appellant rightly questioned at the inquiry the inclusion of the delivery of housing from some sites that only had resolutions to grant planning permissions (resolution sites) within the 4.45 years of supply stated in the SHLAA for the period between 1 April 2020 to 31 March 2025. One such resolution site being Rouses Farm, which received its resolution to grant planning permission around two and a half years ago⁴¹ and for which the SHLAA identifies 90 dwellings being delivered by 31 March 2025. At the inquiry's close Rouses Farm continued not to benefit from a planning permission.
82. For the purposes of the determination of this appeal I requested the Council to recalculate its 5yrHS excluding all of the resolution sites which have been identified in the SHLAA as delivering dwellings by the end of March 2025. The recalculation of the 5yrHS being set out in CD13.12. In addition to Rouses Farm there are three other resolution sites which the SHLAA has assumed

⁴⁰ Tendring District Council having become a 5% buffer authority following the Government's publication of the Housing Delivery Test measurement for 2019 (CD6.3 and CD8.14)

⁴¹ 30 May 2018 - Appendix 1 of the SHLAA

would deliver a further 135 dwellings by 31 March 2025⁴². When the 225 dwellings from the four resolution sites are deducted, then there was a 5yrHS of 4.20 years on 1 April 2020⁴³, when measured against a local housing need derived from the SM. While planning permissions for two of the resolution sites have now been granted, I consider that the 94 dwellings predicted to be delivered from those sites by the end of March 2025, as identified in CD13.11, should not be treated as though permissions had existed on 1 April 2020.

83. However, under the provisions of Policy SP3 of Section 1 of the eLP an annual housing requirement of 550 dwellings a year for Tendring has been found to be sound by the EI. A housing requirement of 550 dwellings a year being significantly less than the SM derived local housing need figure of 865 dwellings per year. However, the EI at paragraph 52 of his report has commented:

'The policy SP3 requirement for Tendring is not derived from the official household projections, due to the distorting effect of those projections of errors that gave rise to exceptionally large unattributable population change [UPC] in the district between 2001 and 2011 Censuses. In IED/012 and IED/022 I set out my reasons for endorsing the alternative approach used to derive the demographic starting-point for Tendring, which in turn underpins the housing requirement figure.' (CD13.16)

84. At paragraph 54 of the eLP report the EI has further remarked that to counter the potential for worsening housing affordability in Tendring '*... the housing requirement for Tendring includes a substantial 15% affordability uplift ...*'.
85. Until Section 1 of the eLP is adopted then paragraph 73 (including footnote 37) of the Framework, advises that the SM should, rather than must, be used to establish a local housing need figure for Tendring. That national policy is a material consideration of great weight. However, the examination of Section 1 of the eLP has established that the official household projections for Tendring are subject to distortion due to errors arising from the UPC. In that regard there is evidence available demonstrating that the ONS recognises that for Tendring there is an error with the mid year estimates, which feed into the calculation of the household projections, with a '*migration error... likely to be in the range of 5-6,000 people*⁴⁴. That migration error being thought to represent 47% to 57% of the UPC for Tendring⁴⁵, with the positive UPC figure for Tendring being around 10,500 and '*... one of the biggest of any LPA in England*⁴⁶.
86. With Section 1 of the eLP so recently having been found to be sound, it seems likely that this part of the eLP, including emerging Policy SP3, will imminently progress to adoption. I consider those circumstances to be a very important material consideration, outweighing the advice in paragraph 73 of the Framework that the SM should be used. That approach being consistent with the advice stated in paragraph 48 of the Framework, because Section 1 of the

⁴² South of Ramsey Road (41 dwellings), Former Martello Caravan Park, Walton on The Naze (53 units) and Land west of Church Road, Elmstead market (41 units)

⁴³ Ie the beginning of the five year period for the purposes of the SHLAA

⁴⁴ Email of 29 November 2017 from the ONS to a consultant instructed on the Council's behalf appended to CD13.13

⁴⁵ Paragraph 13 of the examining Inspector's IED012 of 27 June 2018 appended to CD13.13

⁴⁶ Paragraph 8 of IED/012

eLP has reached such an advanced stage in its preparation. When an annual housing requirement of 550 dwellings is used and a historic shortfall allowance of 212 dwellings and a 5% buffer are added, then a total five year requirement of 3,110 dwellings has been identified by the Council in the SHLAA.

87. Against a requirement of 3,110 dwellings the Council is able to demonstrate the availability of a 5yrHS of 6.14 years, including the deduction of 225 dwellings from the four resolution sites as set out in CD13.12. A 5yrHS of 6.14 years represents a surplus of around 20% when considered against a five year requirement of 3,110 dwellings.
88. Even if the adoption of Section 1 of the eLP does not happen in January 2021, as currently envisaged by the Council⁴⁷, on the evidence available to me I consider that the SM derived local housing need figure of 865 dwellings per year is so erroneous it simply cannot be relied upon as the basis for assessing the current 5yrHS position for Tendring. That is because of the distortion caused by the UPC, with the 2014 based household projection for Tendring, an essential input into the SM, being subject to a significant statistical error that the ONS has recognised exists. Given those circumstances I consider the SM yields a deeply flawed local housing need figure for Tendring.
89. I recognise that my approach to the consideration of this matter differs to that of the Inspectors who have determined four other appeals in the Council's area drawn to my attention⁴⁸. However, there has been a very recent material change of circumstances postdating the determination of those other appeals, namely the completion of the examination for Section 1 of the eLP. That means that what was an 'interim finding' of the EI that a housing requirement based on 550 dwellings per year was likely to be acceptable, as was for example the situation when the Mistley appeal was determined on 23 December 2019, has now become a firm conclusion.
90. As I am of the view that for the purposes of the determination of this appeal the Council can currently demonstrate that a 5yrHS exists, I consider this possible route to engaging the presumption in favour of sustainable development under paragraph 11d) of the Framework does not apply in this instance.

Non-housing land supply route

91. At paragraph 4.2 of the general SoCG (CD12.3A) a large number of TDLP policies have been identified as being relevant development plan policies. Later on in this SoCG Policies QL1, QL9, QL10, QL11, HG4, HG13, TR1, TR3a, COM6, COM26, ER3 and EN11a of the TDLP have been identified as being the 'most relevant development plan policies'. For the reasons I have given above I consider that Policy TR1a of the TDLP should be added to that group of policies. Of those development plan policies, I am of the view that a distinction can be made between those that are 'relevant' and those which are 'most important for determining the application'.

⁴⁷ The Council's email of 18 December 2020 (CD13.20)

⁴⁸ APP/P1560/W/19/3239002 Land at Footh Farm, Thorpe Road, Clacton on Sea (CD7.1)

APP/P1506/W/19/3220201 Land to the South of Long Road, Mistley (CD7.2), APP/P1560/W/18/3201067 Land off Grange Road, Lawford (CD7.3) and APP/P1560/W/18/3196412 Land west of Edenside, Bloomfield Avenue, Frinton-On-Sea (CD7.4)