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Planning in Principle for 5 self-build dwellings

Land at Shaftesbury House, Elmstead Market

Planning Statement

On behalf of Mr S Dulai

Prepared by Ben Norton LLB MRTPI

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01 Introduction

- 1.1 Norton Taylor Nunn Ltd has been retained to provide Town Planning advice in relation to the application for Permission in Principle for five (5) new dwellinghouses to be self-built on land adjacent to Shaftesbury House, Elmstead Market.
- 1.2 The application was subject to Pre-Application advice and has been amended following those discussions. The Pre-Application advice is included at Appendix One.

02 Site and Surroundings

- 2.1 The site is currently garden land to the rear of Shaftesbury House, a large dwelling to the south east of the village of Elmstead Market in the Tendring district.
- 2.2 To the north of the site is a residential dwelling and curtilage side garden. To the east of the site is the access to Beth Chatto's Plants and Gardens, a tourist attraction, informal gardens, and garden centre.
- 2.3 The proposed development would share the access with Beth Chatto's Plants and Gardens, which comes off the A133 Clacton Road just 65m to the north. Along the south side of Clacton Road, ribbon development of new housing has been built to infill.
- 2.4 To the north of Clacton Road a large industrial site covers several hectares with a lorry scrap yard.
- 2.5 To the west, the site is bounded by the retained garden of Shaftesbury House, a number of agricultural buildings, and beyond these, the Asterwood development being built out by Hills Residential.
- 2.6 There are a number of developments in depth to the south of the A133 Clacton Road, including Victory Fields and Asterwood developments off School Road to the west of the site, and the Lanswoodpark Business Centre and Grange Park housing estate to the east of the site.

03 Planning History and Pre-Application Consultation

- 3.1 The application site is within the curtilage of Shaftesbury House, Clacton Road, Elmstead. This property has a planning history unrelated to the part of the curtilage to which this application relates. However, 13/01078/FUL demonstrates consent for the vehicle access it is proposed to use. That application did not include this site within the red line boundary (see Drawing Number 13/14/03 Rev A, Site Location Plan).
- 3.2 The officer report for that application found that:

“The site is extremely well screened from public view with a dense frontage hedgerow and large grassed area to the rear beyond the garden in the applicant’s ownership. The proposed dwelling would not therefore be prominent in public views except a glimpse through the front gate. This is a very large plot currently accommodating a sizeable dwelling and large outbuildings and it is considered that the scale of development is acceptable.”

3.3 The officer went on to add that:

“The existing site benefits from very good screening from existing vegetation and the proposal would not therefore be visually intrusive on a skyline or harmful to the open character of the surrounding countryside.”

3.4 While these decisions were made under the previous Local Plan, the essential description of the landscape and the impact on landscape has not changed.

3.5 Pre-application consultation was carried out with the Council, with the relevant planning officer acknowledging that the application has the potential to meet Policy LP7 Self-Build and Custom Built Homes. The Pre-Application advice included the following:

“Having regard to Policy LP7 and the category of Elmstead Market within the Council’s Settlement Hierarchy, the development has the potential to meet Policy LP7 part b. However, the development must fully comply with the self-build /custom-built homes requirements, the applicants must be included on our self-build register, the application must be supported by sufficient evidence of self-build and the development must be acceptable ‘having regard to policies in this Local Plan’.”

3.6 The Pre-Application advice further noted that:

“The site is located close to existing dwellings with existing commercial development further rearward. The site essentially comprises extended garden land serving Shaftsbury House. On this basis, the proposal would not result in any immediate or wider landscape harm.”

3.7 With reference to Residential Amenity, the Pre-Application advice noted that:

“Paragraph 130 (f) of the National Planning Policy Framework (2021) states that planning should always seek to secure a good standard of amenity for all existing and future occupants.

“Section 1 Policy SP7 of the 2013-33 Local Plan requires that the amenity of existing and future residents is protected. Section 2 Policy SPL 3 Part C seeks to ensure that development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties. Furthermore, Policy LP4 seeks to

ensure that new dwellings are served by a private amenity space of a size and configuration that meets the needs and expectations of residents and which is commensurate to the size of dwelling and the character of the area.

“Additionally, the Essex Design Guide offers guidance on achieving acceptable rear aspect. Where habitable rooms are located at the rears of neighbouring properties and the rear facades face each other, the general rule is that a minimum spacing of 25m between the rears of the properties is required.

“Although the site is located near to other existing residential dwellings, the separation distance between the site and these properties is such that, the development could achieve an internal layout and relationship with neighbouring dwellings that would not result in any material harm to residential amenities in terms of loss of light, sunlight, overlooking, privacy or outlook. The location and use of the shared access with Beth Chatto Gardens to serve 4 dwellings would not amount to any significant traffic movements that would amount to noise and disturbance of a harmful level.”

04 Planning Policy

- 4.1 All planning decisions should be made in accordance with an adopted Development Plan unless material considerations indicate otherwise¹.
- 4.2 In making a planning decision, a planning authority shall have regard to the provisions of the development plan, so far as material to the application; a post-examination draft neighbourhood development plan, so far as material to the application; any local finance considerations, so far as material to the application; and any other material considerations².
- 4.3 In the case of this planning authority, it is accepted that the development plan is made up of the Tendring District Local Plan 2013-2033 and Beyond: North Essex Authorities’ Shared Strategic Section 1, adopted in January 2021, and the Tendring District Local Plan 2013-2033 and Beyond: Section 2, adopted January 2022.
- 4.4 Elmstead Market Parish Council applied for, and gained, designation as a Neighbourhood Plan Area, under Neighbourhood Planning (General) Regulations 2012. At the time of writing, the Neighbourhood Plan, and an associated Neighbourhood Development Order, have completed pre-examination consultation, but have not yet been examined. As a result, limited weight can be given to the policies contained therein.
- 4.5 The application therefore falls to be determined in accordance with the development plan, unless material considerations indicate otherwise.

¹ Section 38(6) Planning and Compulsory Purchase Act 2004

² Section 70(2) Town and Country Planning Act 1990

4.6 The Self-Build and Custom Housebuilding Act 2015 and subsequent secondary legislation provides a material consideration in any application for Self-Build or Custom Housebuilding.

4.7 The National Planning Policy Framework (NPPF) was updated in September 2023. A further update is awaited, following consultation earlier this year. In the meantime, the NPPF references are to paragraph numbers in the September 2023 update.

4.8 The policies considered relevant to the development proposals are:

Policy SP1 – Presumption in Favour of Sustainable Development

Policy SP2 – Recreational disturbance Avoidance and Mitigation Strategy

Policy SP4 – Meeting Housing Needs

Policy SPL1 – Managing Growth

Policy SPL2 – Settlement Development Boundaries

Policy SPL3 – Sustainable Design

Policy LP1 – Housing Supply

Policy LP7 – Self-Build and Custom-Built Homes

Policy LP8 – Backland Residential Development

Policy PPL3 – The Rural Landscape

Policy PPL4 – Biodiversity and Geodiversity

Policy PPL5 – Water Conservation, Drainage, and Sewerage

Policy CP1 – Sustainable Transport and Accessibility

4.9 Of these, Policies SPL1, SPL2 and LP7 are most relevant to the determination of the Principle of Development.

4.10 Other planning considerations include decisions by a planning inspector on behalf of the Secretary of State, as well as decisions by the Secretary of State.

4.11 Of particular importance will be Planning Practice Guidance relating to Permission in Principle, which provides that:

“The scope of permission in principle is limited to location, land use and amount of development. Issues relevant to these ‘in principle’ matters should be considered at the permission in principle stage. Other matters should be considered at the technical details consent stage. In addition, local authorities cannot list the information they require for applications for permission in principle in the same way they can for applications for planning permission.”

Paragraph 012 Reference ID 58-012-20180615

05 Planning Considerations

- 5.1 The proposed development is for five self-build properties, and the application for Permission in Principle considers only the principle of development. The scope of the decision must be limited to location, land use and amount of development.
- 5.2 The Tendring Local Plan Part 1 provides, with Policy SP3, a broad strategy for the location of new housing development within the Tendring District. New development will be accommodated within or adjoining existing settlements according to their scale.
- 5.3 The site is located outside of the settlement boundary for Elmstead Market, but is a part of the garden of a property immediately adjacent to the boundary.
- 5.4 Tendring Local Plan Part 2 provides, with Policy SPL2, that development outside settlement boundaries will be considered in relation to the patterns and scales of development promoted through the settlement hierarchy.
- 5.5 Policy SPL1 defines the settlement hierarchy for the district. Elmstead Market is identified as a Rural Service Centre which, the plan explains, is suitable for a modest increase in housing stock. Development should be on a “scale that is proportionate, achievable and sustainable for each of the settlements concerned having regard to the existing size and character of each settlement; their more limited range of jobs, shops, services and facilities; and any physical, environmental or infrastructure constraints³”.
- 5.6 A Rural Service Centre is the third level of the hierarchy, above Smaller Rural Settlements; however, even Smaller Rural Settlements are capable of growth by up to 10 dwellings, as noted in Paragraph 3.3.1.4.4 of the supportive text. As a consequence, a development of 5 dwellings would not be inappropriate by reason of quantity.
- 5.7 When the plan policies are read together as a whole, it is clear that the policies do not preclude the principle of development due to location; the site is well related to existing settlement boundaries, adjacent to a rural service centre.
- 5.8 A secondary consideration is that, following the decision of the Court of Appeal⁴ in relation to the definition of Previously Developed Land, the site in question is PDL as it is within the curtilage of land occupied by a permanent structure (as outlined in blue on the site location plan).
- 5.9 Policy LP7 sets out the case for Self-Build and Custom-Built Homes. It provides that:

³ TDLP: Section 2 Paragraph 3.3.1.3.1

⁴ Dartford Borough Council -v- SSCLG [2017] EWCA Civ 141

“The Council will also consider... proposals for small developments of new Self-Build.. Homes on land outside of, but within a reasonable proximity to, settlement development boundaries, where they will still support a sustainable pattern of growth in the District... All new dwellings on such developments must either:

- a. Be safely accessible on foot within 6600 metres of the edge of the settlement development boundary of one of the District’s ‘strategic urban settlements’, or ‘smaller urban settlements’.
- b. Be safely accessible on foot within 400 metres of the edge of the settlement development boundary of one of the District’s ‘rural service centres’; or
- c. Involve the redevelopment of vacant or redundant previously developed land that can be shown... to be unviable for employment use.”

5.10 We contend that, having regard to the strategic policies and the policies within the plan as a whole, it is clear that the location of the proposed development would be acceptable on a fair interpretation of these policies.

5.11 The site is currently in residential garden use. As such it is land use C3 Residential within the meaning of the Use Classes Order⁵. It is proposed to remain as C3 Residential land, and consequently the land use is an appropriate land use for the site.

5.12 As set out in the supportive text to Policy SPL1, the quantum of development acceptable in a Rural Service Centre exceeds that in a Smaller Rural Settlements. In this case, an additional 5 dwellings would not be contrary to the requirement in Policy SPL2 for development outside settlement boundaries to be related to the level of development allowed for inside the adjacent settlement.

5.13 As a result of a fair reading of the policy context as a whole, the Principle of Development is made out even without the Self-Build context. That these properties are intended for Self-Build only further underlines the reason to approve.

5.14 A recently dismissed appeal⁶ identified that a site located adjacent to a Rural Service Centre could be acceptable in principle for development, even where located outside the settlement development boundaries, in precisely the way laid out above.

5.15 That appeal was dismissed on grounds of Character and Appearance, and on grounds of failure to protect habitat. However, the Inspector found that the location in that appeal was acceptable. That location was less well related to the nearest settlement than this application, and we assert the appeal is grounds to demonstrate the acceptability of this proposal on location grounds.

⁵ Town and Country Planning (Use Classes) Order 1987 (as amended)

⁶ Appeal Decision APP/P1560/W/21/3287859 | Land rear of The Gables / The Towers, Clacton Road, Weeley Heath, CO16 9EF

- 5.16 Insofar as the proposals are required to demonstrate accordance with the Character and Appearance of the area, we contend that this site location is well located for residential development. To that end, the access is via a commercial site access, so the additional traffic from five dwellings will not be significant. Equally, the pattern of development in Elmstead Market is in depth, rather than linear development. While there is linear spread along Clacton Road, there is development in depth in the form of Winterbourne Gardens, the ongoing development of the Asterwood development by Hills Residential on School Road, and the combination of Lanswoodpark Business Centre and the Grange Park housing estate to the east along Clacton Road.
- 5.17 These developments, to the south of Clacton Road, adds to the perception that cluster development characterises this Parish, and the development of Grange Park further underscores the acceptability of in depth development along Clacton Road.
- 5.18 The location of Beth Chatto's Plants & Gardens, a commercial horticultural site, to the south, and the residential development to the north, further makes clear that this particular location is not some open agricultural or rural idyll, but rather a piece of garden land behind existing housing, which it is appropriate to develop in principle.
- 5.19 To the west and south west of the location would be retained residential garden land, with the boundary clearly defined by a thick delineation of trees and shrubbery clustering around Elmstead Brook. Further development south or south west would therefore be prevented.
- 5.20 As a result, it is asserted that the proposals would accord with the Character and Appearance consequences of Policy LP7. The proposal can easily be designed to avoid having a significant material adverse impact on the landscape, residential amenity, highway safety, or the form and character of the settlements. It is appropriate in scale for the location, as shown in argument above, particularly in Paragraph 5.6.
- 5.21 The landscape impacts would be limited from most points of view; while the site is flat and relatively open to the east of the shared access, it is behind a mature hedge, with the capacity for further planting and landscaping to mitigate any material adverse impact on the landscape. It will leave a substantial rear garden to the existing dwelling, and neighbouring properties are set well away from the proposed development, so issues of overlooking or other harm to residential amenity are avoided.
- 5.22 In highway terms, the access is an existing driveway, leading to the existing access used by both residential dwellings and the general public for access to Beth Chatto's Plants & Gardens. As a result, the increasing use of the access would be minimal. While the A133 at the point of the access is not restricted in speed below National Speed Limits, the access is well sighted and identified with road signs as well as the provision of an additional turning lane. The addition of 5 dwellings is not considered to warrant concern of officers in relation to highway safety.

- 5.23 As noted in the Pre-Application advice received (cited at 3.5, 3.6 and 3.7 above) the site is acceptable as a location (per LP7(b)), and will not harm landscape or residential amenity. The question for the decision-maker is whether or not the application site represents a suitable location, a suitable land use, and a suitable quantum of development. Clearly, the Pre-Application advice provided supports the grant of this Permission in Principle.
- 5.24 For the avoidance of doubt, the five families proposing to Self-Build at this site are all listed on the Self-Build register. The proposal has an additional planning benefit in terms of the social element of sustainability in that the families are related, and so an element of sustainability in intergenerational support will be provided.

06 Conclusions

- 6.1 The proposal can demonstrate that on location, land use and amount of development, the application meets the requirements set out in the Tendring District Local Plan.
- 6.2 On location, the proposals are contained within the garden curtilage of a property adjacent to the settlement boundary of Elmstead Market. This is in line with a proper reading of the Local Plan policies. Moreover, it is broadly in keeping with the findings of a planning inspector regarding the workings of the Local Plan.
- 6.3 The location would not be contrary to the Character and Appearance of the area, albeit the principle is already established via policy. This is because, per Policy LP7, the proposal would have no significant material impact on landscape, residential amenity, highway safety, or the form and character of nearby settlements.
- 6.4 The use of the land for residential dwellinghouses is appropriate; the land use is already one of residential garden use, and the surrounding development is either residential or horticultural, with some commercial development on the opposite side of Clacton Road.
- 6.5 The amount of development, at five dwellinghouses, clearly accords with Policy SPL2 of the Local Plan, as demonstrated in 5.6 above (and at 3.3.1.4.4 of the Local Plan Part 2).
- 6.6 As a result, the applicant asserts that the application accords with the relevant policies in the adopted Development Plan, and that no material considerations indicate that the application should be refused.
- 6.7 In accordance with Paragraph 11 of the NPPF, the applicant cordially invites the Council to accept the above evidence as set out, and grant consent without undue delay.