

Appeal Decision

Site visit made on 7 November 2016

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 14th November 2016

Appeal Ref: APP/C1570/W/16/3157468

Gransmore Meadow, Chelmsford Road, Felsted, Essex CM6 3ER

- 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 Mr Oliver Hookway against the decision of Uttlesford District Council.
 - The application Ref UTT/16/1554/FUL, dated 1 June 2016, was refused by notice dated 29 July 2016.
 - The development proposed is a residential development and associated infrastructure to erect 9 No. dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted an arboricultural assessment¹ and biodiversity report² with his appeal submission. These reports have not altered the development considered by the Council and all parties have had an opportunity to consider and comment upon them. I have therefore accepted the reports and have taken them into account as part of my overall assessment. I note that a Public path Diversion Order has been submitted but this is not a matter before me and therefore it is not something I have considered.

Main Issues

3. The main issues in this appeal are the effect of the proposed development on:
 - The character and appearance of the area;
 - The living conditions of the future occupants of Plots 1 – 3 with particular reference to privacy; and
 - Protected species.

Reasons

The effect on the character and appearance of the area

4. The appeal site is located on the edge Felsted and encompasses a generally level and rectangular shaped paddock. The eastern and southern boundaries

¹ The Tim Moya Tree Survey

² The AA Environmental Limited ecological walk-over survey, 17 August 2016

- are defined by mature hedging with the western boundary hedge incorporating an impressive Oak tree protected by a TPO. The southern boundary is marked by a low post and wire fence that separates the appeal site from the rest of the paddock and the cemetery beyond. The northern boundary is delineated by a residential property, which currently marks the edge of the settlement, the built form of which is characterised in the main by linear frontage development.
5. The appeal scheme would involve the erection of nine detached and semi-detached houses arranged in two rows, one behind the other. Plot 1 would have an access directly from Chelmsford Road but all of the other properties would be accessed from a single shared drive with a turning head. The hedge along the eastern boundary would therefore remain broadly in-tacked. The houses would generally be two storeys in height although some would have accommodation in the roof void.
 6. The proposed development would be located outside of the defined development limits of Felsted and would thus be contrary to the broad aims of saved Policies S7 and H1 of the Uttlesford District Local Plan 2005 (LP), which seek to direct new development to sites within defined development limits. Nevertheless, the proposed houses would be located a short, level and comfortable walk from the centre of the village, which is well served by a number of everyday facilities. The appeal site is also broadly located opposite the telephone exchange and is adjacent to residential development to the north. As such, I am satisfied the proposed development would not be 'isolated' within the meaning of Paragraph 55 of the National Planning Policy Framework.
 7. However, the Framework also requires the intrinsic character and beauty of the countryside to be recognised. In this respect the appeal scheme would result in an urbanisation of the appeal site with its existing open and undeveloped character, when viewed from Chelmsford Road and nearby rights of way, replaced by housing and its associated paraphernalia.
 8. Nevertheless, I share the view of the appellant that a development within the appeal site, of an appropriate mix and scale, could appear as a natural extension of the village. Moreover, the retention of the southern part of the paddock alongside the cemetery would prevent coalescence between Felsted and Causeway End. In this respect, my findings are consistent with the Strategic Housing Land Availability Assessment. As such, I am satisfied that the inherent harm to the countryside from developing the appeal site could be off-set by the benefits accrued from delivering accessibly located housing. But this would only be the case if the development appeared as an organic extension of the village and I am not satisfied the appeal scheme would.
 9. This is because I share the view of the Council that the design solution advanced by the appellant would be incompatible with the pattern of development in both Felsted, which is characterised by a discernable and spacious linear arrangement. This layout results in expansive rear gardens and thus a perception of space behind the frontage development. This provides a soft transition to the countryside beyond and ample space for landscaping within and between plots.
 10. The appeal scheme on the other hand would have a second tier of housing behind the frontage development of Plots 1-4. This would be wholly at odds with the character and layout of development nearby. It would also leave little space within or between plots for landscaping. This arrangement would result

in an excessive, urban and incongruous concentration of housing on the edge of the settlement and thus a hard transition between the settlement and the countryside, which would harm the setting of both. As such, the appeal scheme would significantly harm the character and appearance of the area.

11. In reaching this view I note that there is development in depth elsewhere in the village e.g. at Bings Hall retirement home and Riche Close. However, these developments are located closer towards the centre of the village where development appears more tightly knit. Moreover, the appeal site is an important gateway into the village where the countryside meets the built form of the settlement. This is a materially different siting to Bings Hall and Riche Close and therefore the appeal scheme is not justified by their presence.
12. The new native hedge proposed along the southern boundary of the appeal site would do little to soften the impact of the development. This is due to the diminutive depth proposed and lack of tree and structural planting, which could otherwise define the southern boundary of the village and reinforce the sense of leaving one place and entering another. Given the proposed proximity of Plots 4 and 5 to the southern site boundary, this failing cannot be addressed through a planning condition. The retention of most of the existing hedge along the site frontage would soften the development and provide a sense of maturity, but this would not mitigate for the limitations in the layout I have identified, which would still be clearly visible from Chelmsford Road.
13. The Council are concerned that the proposed development would adversely impact on the integrity and longevity of the existing Oak tree on the western boundary of the appeal site. To this end the appellant has submitted an arboricultural assessment that demonstrates the development, Plots 8 and 9 in particular, would not adversely impact on the roots of the tree and would be situated a sufficient distance away to limit any post development pressure. The same would apply to an important Field Maple. The Council has not disputed these findings. As such, I am satisfied the Oak tree, which is a landscape feature of local significance, would be safeguarded as part of the proposed development and thus a conflict with Policy ENV3 of the LP would not arise.
14. Nevertheless, my overall conclusion on this matter is that the appeal scheme would harm the character and appearance of the area contrary to saved Policies S7 and GEN2 of the LP, which seek to protect the character of the countryside and deliver new development that is compatible with existing development. These aims are broadly consistent with Paragraphs 17 and 58 of the Framework.

The effect on living conditions

15. Plots 5-9 would be located behind Plots 1-4. The occupants of Plots 7-9 would have an outlook from first floor windows directly into the rear gardens and rear rooms of Plots 1-3. The distance between the front windows of Plots 7-9 and the rear elevations of Plots 1-3 would be short, at approximately 14m-19m. The distance to the rear gardens would be less. The Council suggest that the Essex Design Guide recommends that a distance of 25m should be provided to maintain privacy. In my experience 25m is a reasonable guide. Consequently, the arrangement proposed would result in a noteworthy loss of privacy for the future occupants of Plots 1-3 and thus their living conditions would be significantly harmed.

16. The appellant has suggested that the windows in Plots 7-9 that would face the rear elevations of Plots 1-3 could be partially obscured or, in the case of the roof lights, set at a high level. The appellant suggests this could be secured by a suitably worded planning condition. However, such an arrangement would result in a poor outlook for the future occupants of Plots 7-9. Consequently, this proposition would not adequately mitigate the harmful impact I have identified. Moreover, given that the windows in Plots 7-9 would be elevated, the intervening fences would do little to mitigate the loss of privacy either.
17. In coming to this view, I note that future occupants of the dwellings may be aware of the arrangement when purchasing or renting Plots 1-3. Nevertheless, Paragraph 17 of the Framework states that planning should always seek a good standard of amenity for future occupants of land and buildings. As such, the concept of 'buyer-beware' is not consistent with the Framework and therefore I afford this point very limited weight.
18. I therefore conclude that the proposal would fail to provide adequate living conditions for the future occupants of Plots 1-3. This would be contrary to saved Policy GEN2 of the LP, which seeks to protect residential amenity. An aim consistent with Paragraph 17 of the Framework.

The effect on biodiversity

19. The appellant has submitted a biodiversity survey with the appeal submission, the results of which demonstrate that the appeal scheme would not have an adverse impact on biodiversity, subject to a number of specific and generic recommendations. The Council have not disputed these findings and there is nothing to suggest the recommendations could not be secured through a planning condition if the appeal scheme was otherwise acceptable. As such, I find no conflict with saved Policy GEN7 of the LP, which seeks to prevent and mitigate harmful effects on wildlife. This is an objective consistent with Paragraph 118 of the Framework.

Other Matters

20. I note the additional concerns raised by interested parties but given my findings on the main issues it has not been necessary for me to draw conclusions on these points.
21. The policies referred to by the Council in its decision notice were all 'saved' and cannot be considered to be absent or silent. They continue to form part of the extant development plan. I have found the saved Policies the Council based its decision on to be consistent with the Framework and there is nothing to suggest the Council does not have a five year housing land supply. As such, I find no reason why the development plan policies relied upon by the Council should be regarded as being absent, silent or out-of-date. The application should be determined in accordance with the development plan unless there are material considerations which indicate otherwise.
22. The proposal is not without merit with some social, economic and environmental benefits. The development would increase housing supply and choice in an accessible location and there would be some economic benefits to the construction industry and to the local economy from the circulation of funds. The development would also use land more efficiently. However, these

are benefits that are to be expected from most new housing development and thus I afford them only moderate weight.

23. Moreover, the benefits would be accrued by a development that would significantly harm the character and appearance of the area and provide inadequate living conditions. The absence of harm in others respects is a neutral matter. As such, there would be a conflict with the development plan and Framework when read as a whole. Thus, the proposal would not be sustainable development. I afford this significant weight. I therefore conclude that the benefits I have identified, as material considerations, are not sufficient to outweigh the conflict with the development plan and national planning policy. Accordingly, the appeal should be dismissed.

Conclusion

24. Whilst I have found that the effect on biodiversity that would arise from the appeal scheme would be acceptable, this would not mitigate for the significant harm to the character and appearance of the area and the living conditions of future occupants. Accordingly, for the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Graham Chamberlain

INSPECTOR