

Appeal Decision

Hearing held on 11 November 2016

Site visit made on 17 November 2016

by Alex Hutson MATP CMLI MARborA

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

Decision date: 17 February 2017

Appeal Ref: APP/W1525/W/16/3143960

Land North of Ladywell Lane, Sandon, Chelmsford CM2 7AE

- 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 Mr Peter Endersby against the decision of Chelmsford Borough Council.
 - The application Ref 15/01302/OUT, dated 29 July 2015, was refused by notice dated 20 November 2015.
 - The development proposed is Outline planning application for 2no. dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The application was made in outline with all matters being reserved for future consideration.
3. I undertook an unaccompanied site visit on 17 November 2016.

Policy background

4. The development plan for the area includes the Chelmsford City Council Core Strategy and Development Control Policies Development Plan Document 2008 (CSDCP), the Chelmsford City Council Site Allocations Development Plan Document 2012 (SADPD), and the Chelmsford City Council Core Strategy and Development Control Policies Focused Review 2013 (FR).
 5. Paragraph 215 of the National Planning Policy Framework (the Framework) sets out that that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
 6. Paragraph 49 of the Framework sets out that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of housing. The fourth bullet point of Paragraph 14 of the Framework sets out that where the development plan is absent, silent or relevant policies are out of date planning permission should be granted unless any adverse impacts of doing so would significantly and
-

demonstrably outweigh the benefits or specific policies in the Framework indicate development should be restricted.

7. The FR identified a number of CSDCP policies that, without the need to prepare further evidence, could be amended to be consistent with the provisions of the Framework. The housing requirement within the CSDCP was not considered as part of the FR. The amendments to these policies were considered at an Examination in Public and found by the Inspector to be sound. These policies included Policy CP5- Containing Urban Growth and Policy DC2- Controlling Development in the Countryside Beyond the Metropolitan Green Belt. There is no dispute that the site lies outside any settlement boundary and within the countryside for planning policy purposes and, as such, these policies are relevant.
8. Policy CP5 seeks to contain urban growth to within the physical limits of the Urban Areas of Chelmsford and South Woodham Ferrers and the Defined Settlements, and within rural areas beyond the Metropolitan Green Belt, to protect the intrinsic character and beauty of the countryside whilst supporting rural communities and economies. Policy DC2 reiterates the requirement to protect the intrinsic character and beauty of the countryside beyond the Metropolitan Green Belt and seeks to restrict development within these areas to development which falls within a specified list. The type of development proposed does not fall within the development types identified within this list.
9. The appellant considers that the requirements of these policies to 'protect' the intrinsic character and beauty of the countryside goes beyond and is inconsistent with the requirements of Paragraph 17 of the Framework. Here, the wording is to 'recognise' the intrinsic character and beauty of the countryside. Nevertheless, by seeking to protect the intrinsic character and beauty of the countryside, these policies recognise its importance. Moreover, the word 'protect', does not automatically mean that no change can occur. It is therefore my view that these policies, insofar as they seek to protect the countryside from development that would harm its intrinsic character and beauty, are consistent with the broad aims and objectives of the Framework. As such, and given that these policies have been found to be sound, I afford them significant weight in this regard.
10. In respect of the weight that I afford to these policies insofar as they relate to the supply of housing, in the context of Paragraph 49 of the Framework, I consider this matter later in my Decision.

Main issues

11. The main issues are whether the Council can demonstrate a five year housing land supply and the implications of this on local and national planning policy; and the effect of the proposal on the intrinsic character and beauty of the countryside.

Reasons

Whether the Council can demonstrate a five year housing land supply and the implications of this on local and national planning policy

12. The Framework aims to boost significantly the supply of housing, and requires that local planning authorities have a five year supply of specific and deliverable housing sites against their housing requirement, with a 5% buffer

- added to this to ensure choice and competition, or where there has been persistent under delivery of housing, a 20% buffer.
13. The housing requirement in the CSDCP is 14,000 dwellings over the period of 2001-2021, which equates to 700 dwellings per annum. This figure is based on evidence developed to inform the Draft East of England Plan 2004 (DEEP) which was revoked in 2013. The Planning Practice Guidance (PPG)¹ sets out that considerable weight should be given to the housing requirement figures in adopted Local Plans. Nevertheless, the PPG also acknowledges that evidence which dates back several years, such as that drawn from revoked regional strategies, may not adequately reflect current needs. Consequently, the figures contained within the CSDCP are likely to be considerably out of date.
 14. The PPG sets out that where evidence in Local Plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered. A Strategic Housing Market Assessment (SHMA) was carried out jointly in 2013 on behalf of the Council and four neighbouring authorities. The SHMA sets out that the housing need of the Borough for the period 2013-21 is between 700 and 925 dwellings per annum. An interim housing requirement of 800 dwellings per annum, based on the mid-point between the lower and higher figures of the SHMA was agreed by the Council, pending a full Objectively Assessed Housing Need (OAHN) for the area.
 15. The Council commissioned an OAHN study in July 2015² which recommended an annual housing requirement of 775 dwellings. This figure was adopted by the Council in September 2015. The OAHN was updated in October 2016³ to include the latest household projections published by the Department of Communities and Local Government. This increased the annual housing requirement to 805 dwellings. This figure is reflected within the Council's most recent housing land supply position statement⁴.
 16. The Council considers it appropriate to rebase the date to consider any shortfall in their delivery of housing from 2013 (327 dwellings) on the basis that this was when the DEEP was revoked. The Council does not dispute that a 20% buffer should be applied in light of past undersupply from this date. On this basis, the Council considers that their total housing requirement over the next five years is 5222 dwellings, which equates to 1044 dwellings per annum.
 17. The appellant considers that any shortfall from 2001 to date should be carried forward over the next five years. This equates to approximately 2291 dwellings in total which would increase the Council's housing requirement figure over the next five years to 6572 dwellings. I recognise that the Zurich case⁵ was a challenge against the adoption of a Core Strategy and did not involve an assessment of whether a five year housing land supply could be demonstrated. Furthermore, that the shortfall figures in that case were considerably less. I would therefore concur with the appellant that the Zurich case has significant differences to this case and, as such, is not wholly relevant.

¹ Planning Practice Guidance Paragraph 03 Reference ID: 3-030-20140306

² Objectively Assessed Housing Need Study - Peter Brett Associates (July 2015)

³ Objectively Assessed Housing Need Study Update- Peter Brett Associates (October 2016)

⁴ Chelmsford City Council Five Year Housing Land Supply Position Statement (November 2016)

⁵ Zurich Assurance Limited v Winchester City Council and South Downs National Park Authority [2014] EWHC 758 (Admin)

18. However, as noted above, the housing requirement figures in the CSDCP are out of date. On this basis, I afford greater weight to the housing requirement figures set out within the OAHN. Moreover, whilst the housing requirement figures within the OAHN and its subsequent update have not been tested through an Examination in Public, the study was undertaken by a recognised company with considerable experience in this field and in accordance with PPG requirements. Consequently, I am satisfied that to rebase the date of any shortfall back to 2013 is, in this instance, a reasonable approach to take.
19. In respect of concealed households, the OAHN has relied on the 2011 census data, an approach supported by the PPG⁶. It also adopts the Office of National Statistics definition of 'concealed households'. I acknowledge that OAHN figure for concealed households is at odds with the Council's SHMA 2013 figures for concealed households. Nevertheless, the Council's most recent OAHN figure still broadly represents a mid-point between the lower and higher housing requirement figure of the SHMA 2013. Moreover, there is no substantive evidence before me to convincingly demonstrate that lower interest rates, increased affordability and any recent Government housing incentives have significantly increased the number of concealed households within the Borough. As such, I am satisfied that concealed households have been adequately represented in the Council's housing requirement figures for the next five years.
20. The PPG acknowledges that establishing future need for housing is not an exact science. In addition, it is not for me under a section 78 appeal to carry out any sort of local plan process as part of determining this appeal. Nevertheless, in light of my reasoning above, it seems to me that the Council's overall housing requirement figure of 5222 dwellings, or 1044 dwellings per annum, is a reasonable reflection of housing need in the area over the next five years.
21. I now turn to consider the Council's housing land supply position. Footnote 11 of the Framework sets out that to be considered deliverable, sites should be available now, offer a location suitable for development now, be achievable with a real prospect that housing will be delivered within five years and that development of the site is viable. Furthermore, sites with planning permission should be considered deliverable unless there is clear evidence that schemes will not be implemented within five years. In addition, the PPG⁷ sets out that deliverable sites could include those that are allocated for housing in the development plan.
22. Of the sites identified by the Council for housing, 97% of these are either allocated within the SADPD and/or have planning permission. The remaining 3% comprise windfall sites. The Council sets out that in combination, 6212 dwellings would be delivered on these sites over the next five years. There is no dispute between the main parties in respect of the Council's windfall sites figures. However, the appellant raises a concern in respect of the deliverability of some of the other sites⁸ and as a result, suggests the removal of a number of houses from the Council's housing land supply figure and the imposition of a lapse rate. The delivery rates for these sites are identified on the Council's

⁶ Planning Practice Guidance Paragraph 14 Reference ID: 2a-014-20140306

⁷ Planning Practice Guidance Paragraph 031 Reference ID: 3-031-20140306

⁸ Referred to as University Campus, Phase 2; Car Park Eastern End, Wharf Road, Chelmsford; Greater Beaulieu Park, White Hart Lane, Springfield; Land North of Copperfield Road (East Portion), Chelmsford; Land South West of Broomfield Place, Main Road; Land East of North Court Road and North of Hospital Approach, Broomfield; and Runwell Hospital;

Housing Sites Schedule April 2016 (HSS). These sites were discussed in some detail during the Hearing.

23. The University Campus site, which is to deliver a number of flats, is currently under construction. Correspondence between the Council and the developer shows that the scheme is due for completion in 2018/19. Even if the development of this site experiences some delays, there is no clear evidence from the appellant to demonstrate that it would not be completed within the next five years. In respect of the Car Park Eastern End site, this is an allocated site and a full planning application⁹ has recently been submitted to the Council to develop the site for housing. Correspondence between the Council and the developer indicates that the development of the site would commence in 2017/18 and would be completed in 2020/21. There is no substantive evidence before me to demonstrate that the application could not be determined, any subsequent conditions discharged and any s106 agreement drawn up to fit in with the proposed commencement dates in respect of this site. I therefore have no great concerns in respect of its deliverability within the next five years.
24. The Greater Beaulieu Park site is a major strategic site where infrastructure work commenced in 2013 and phased housing development commenced in 2014. Whilst there may have been some delays on this site in the past, the Council's HSS delivery rates for this site over the next five years, including for Phases 2-4, is based on information obtained directly from the developer. These figures show that the commencement of Phases 2-4 is not reliant on the completion of any other phases and the appellant has provided no persuasive evidence which would lead me to conclude otherwise. Consequently, the HSS delivery rates over the next five years for this site do not appear to me to be unreasonable.
25. Planning permission has been granted and a section 106 agreement has been executed in respect of the Land North of Copperfield Road site. The Council's HSS delivery figures have been obtained directly from the developer and correspondence from the developer sets out that the housing delivery figures, subject to an executed s106 agreement, which has now been executed, are attainable. There is no strong evidence from the appellant that would lead me to conclude otherwise. In respect of the Land South West of Broomfield Place site, I recognise the level of uncertainty that surrounds the delivery of a new primary school, which has delayed the determination of a planning application for housing on the site. Nevertheless, this is the reason that the Council's HSS identifies housing development to commence in 2019/20 and to be completed in 2020/21. The Council indicated at the Hearing that their aim is to resolve any issues in the short term and there is political will to do so. Even if not resolved in the short term, there would still be a considerable period of time to resolve this matter prior to the proposed commencement date. As such, the delivery of the proposed number of houses on this site within the next five years does not seem to me to be unreasonable.
26. The HSS indicates that the Land East of Northcote Road site would deliver 168 houses in the year 2020/21. Whilst I note this is a substantial number of houses for a single developer to deliver, the appellant has not provided any clear evidence to demonstrate categorically that this would be unattainable.

⁹ Ref 16/01630/FUL

Development has commenced on the Runwell Hospital site and a considerable number of houses were completed within the 2016/17 period to September 2017. Moreover, the Council's HSS figures are based on information directly from the developer. The appellant's suggestion to move the phasing back is therefore, in my opinion, unfounded, notably given that the number of completions for the whole of the 2016/17 period for this site has not yet been determined.

27. Consequently, I find no strong reasons to suggest that the Council's HSS in respect of these sites is inaccurate. This is notwithstanding that the Council's housing projections¹⁰ may not have accurately reflected completion rates in some preceding years. In any case, these figures show that completion rates have significantly increased since 2013/14. I am therefore satisfied that the Council can demonstrate a five year supply of housing land to meet the housing requirements of the area. Moreover, I do not consider that a lapse rate in respect of the abovementioned sites has been adequately justified and certainly not at a level of 25% as suggested by the appellant. Furthermore, even if a lapse rate of 10% was to be added, the Council would still be able to demonstrate a five year housing land supply with some flexibility.
28. Whilst I recognise that evidence varies in respect of different planning appeals, my findings in relation to the Council's housing land supply situation reflect the majority of the Inspector's findings within other appeal decisions¹¹ to which I have been referred. This includes the most recent appeal decision where the evidence was tested by way of an Inquiry¹².
29. Subsequent to the date of the Hearing, I have been provided with a High Court Judgement¹³ issued in December 2016 in respect of an appeal decision¹⁴ dealt with by way of an Inquiry where the Inspector found that the Council could not demonstrate a five year housing land supply. I have had regard to the comments of the main parties in respect of it. The Judgement supports the findings of the Inspector in that case, with regard to the way he dealt with employment activity rates in relation to the calculation of the Council's OAHN.
30. The Council sets out that at two subsequent Inquiries they put forward a complete case in respect of employment activity rates where the Inspectors in both these cases found a five year housing land supply could be demonstrated. I therefore afford greater weight to the appeal decisions¹⁵ in respect of both these cases than I afford to the Judgement and to the appeal decision it relates to, on the basis that the decisions of the Inspectors were based on more comprehensive and up to date evidence. As such, the Judgement does not alter my findings on the Council's housing land supply situation.
31. In light of my findings, Policies CP5 and DC2 of the FR insofar as they relate to the supply of housing are not out of date and, as a result, the fourth bullet point of Paragraph 14 of the Framework is not engaged in this instance. Moreover, these policies were found to be consistent with the policies of the

¹⁰ As shown on Appendix X: Green Planning Studio – Table 1 – Summary of Chelmsford City Council's AMR Projection and Completion Figures as at November 2016

¹¹ Ref APP/W1525/A/14/2212108; Ref APP/W1525/A/15/3049361; Ref APP/W1525/W/14/3001771; Ref APP/W1525/A/15/3009062; Ref APP/W1525/A/15/3121603; Ref APP/W1525/A/15/3129306; Ref APP/W1525/A/15/3137020; and Ref APP/W1525/A/15/3138723

¹² Ref APP/W1525/A/15/3121603

¹³ Chelmsford City Council v Secretary of State for Communities and Local Government [2016] EWHC 3329 (QB)

¹⁴ Ref APP/W1525/A/15/3049361

¹⁵ Ref APP/W1525/A/15/3129306; and Ref APP/W1525/A/15/3121603

Framework as part of the FR process. As such, I afford these policies significant weight.

32. I therefore conclude that the proposal would conflict with Policies CP5 and DC2 of the FR insofar as these policies seek to direct the type of development proposed to within defined settlements.

The effect of the proposal on the intrinsic character and beauty of the countryside

33. Ladywell Lane is a narrow cul-de-sac which comprises a modest number of sporadically positioned houses and a tennis club. Molrams Lane, which also comprises a modest number of sporadically positioned houses to the south of Ladywell Lane, provides a slip road onto the A1114. The appeal site comprises a large, rectangular shaped plot of land, located to the north of Ladywell Lane. It runs in an eastward direction from the junction of Ladywell Lane and Molrams Lane. The appeal site contains a number of mature trees covered by a Tree Preservation Order¹⁶ and is largely overgrown. Its northern boundary adjoins playing fields associated with Sandon School which is located along Molrams Lane, a short distance to the north.
34. Whilst the appeal site is currently undeveloped, the presence of houses, the tennis club and playing fields within close proximity to it, considerably limit its affinity with the wider countryside. This is noticeable in views from along Molrams Lane to both the north and south of the appeal site where the appeal site is viewed within the context of these suburbanising features. There is also a distinct change in character along the public footpath which runs along Ladywell Lane, from the suburban/residential character of this lane to a strong rural character as it traverses agricultural fields which lie to the north-east, east and south-east of Ladywell Lane.
35. The appeal site is not subject to any local landscape designations. Moreover, whilst it is located within the Parish of Sandon, Ladywell Lane is not specifically referenced within the Sandon Village Design Statement 2011. Furthermore, I note that 'a series of narrow lanes winding down the hillsides' is one of the key characteristics of the Little Baddow and Danbury Wooded Farmland Landscape Character Area (LCA)¹⁷ within which the appeal site is located. However, Ladywell Lane is short in length and is predominantly straight and flat and as such, cannot reasonably be said to demonstrate this characteristic. For these reasons, in combination with its limited affinity with the wider countryside, I do not consider that the appeal site or its immediate surroundings fall within the definition of a valued landscape within the context of Paragraph 109 of the Framework.
36. The Council confirmed, during the Hearing, that the appeal site could accommodate two dwellings without harm arising to any of the protected trees. Whilst I have not been presented with any indicative layout plans, I have no substantive reasons to take a different view on this matter. I acknowledge that the introduction of two dwellings onto the currently undeveloped appeal site would alter its character. Nevertheless, this would be seen within the context of other residential dwellings along Ladywell Lane and Molrams Lane and within the context of the playing fields and tennis club.

¹⁶ TPO/2015/001

¹⁷ As identified with the Chris Blandford Associates *Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Character Assessment 2006*

37. In addition, given the large size of the appeal site, it would, in my view, be able to accommodate two dwellings in a manner characteristic of the sporadic pattern of development along Ladywell Lane. The Council would have control over the design, scale, layout and landscaping of the proposal in a manner that would reflect the characteristics of the area as part of any reserved matters applications. The development of the appeal site would also not affect any views to wooded horizons, another identified characteristic of the LCA. Moreover, whilst there would be some moderate changes to the junction of Ladywell Lane and Molrams Lane to allow the passing of vehicles, these changes would largely maintain the existing planting between the appeal site and Molrams Lane and would be seen in the context of the existing road network.
38. Therefore, any change that would arise to the character of the appeal site, Ladywell Lane and the immediate surrounding area, would not, in my view, result in harm to the wider intrinsic character and beauty of the countryside.
39. I therefore find that there would be no conflict with Policies CP5 and DC2 of the FR insofar as these policies relate to the protection of the intrinsic character and beauty of the countryside. The proposal would also not conflict with the aims and objectives of the Framework which require planning to recognise the intrinsic character and beauty of the countryside and to protect valued landscapes.

Other matters

40. The appellant states that the proposal would accord with the environmental, social and economic dimensions of sustainable development as set out in Paragraph 7 of the Framework. I have found that the proposal would not result in harm to the intrinsic character and beauty of the countryside. I also acknowledge that the proposal would be unlikely to affect any protected species. I recognise that given the close walking distance to public transport routes and other services and facilities in the area, and the close proximity to other dwellings, the proposed dwellings would not be wholly isolated in the context of Paragraph 55 of the Framework. There would also be some short-term construction jobs created and a modest increase in spending within the local area by any future occupiers. In addition, the proposed highway works would improve highway safety at the junction of Ladywell Lane and Molrams Lane. These factors go some way to demonstrating sustainable development. I also recognise the benefit, albeit the modest benefit, of two new dwellings in respect of maintaining housing supply in the area. Nevertheless, I consider the conflict that would arise with the development plan as a whole would outweigh these matters.
41. I acknowledge a number of third party concerns, including in respect of privacy, land ownership and access rights. However, these matters were not raised as a concern by the Council and, based on the evidence before me, I have no substantive reasons to take a different view.

Conclusion

42. Whilst I have not found harm to the intrinsic character and beauty of the countryside, the countryside location for the proposed dwellings would conflict with the relevant policies of the development plan. These policies are consistent with the Framework. Moreover, they are up to date on the basis of

my findings in respect of the Council's five year housing land supply position. Consequently, the fourth bullet point of Paragraph 14 of the Framework is not engaged in this appeal and the conflict that would arise with the development plan as a whole would, in my judgement, outweigh any benefits.

43. Therefore, for the reasons set out above and having regard to all other matters, I conclude that the appeal should be dismissed.

Alex Hutson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Green Planning Studio Ltd
Ruth Reed	Green Planning Studio Ltd
Mr Peter Endersby	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Kirsty Dougal	Planning Officer, Chelmsford City Council
MRTPI MSc	
Jeremy Potter	Planning and Strategy Housing Policy Manager, Chelmsford City Council

INTERESTED PERSONS:

Peter Minney	Ladywell Cottage, Ladywell Lane CM2 7AE
Richard Holmes	Crosslands, Ladywell Lane CM2 7AE

DOCUMENTS SUBMITTED AT THE HEARING

1. Signed Statement of Common Ground
2. Location Plan 14_657_001A
3. Chelmsford City Council Core Strategy and Development Control Policies Focused Review Development Plan Document 2013
4. Appendix X: Green Planning Studio – Table 1 – Summary of Chelmsford City Council's AMR Projection and Completion Figures as at November 2016
5. A table showing lapse rates calculations from Chelmsford City Council
6. Cheshire East Borough Council v Secretary of State for Communities and Local Government and Renew Land Developments Ltd {2016} EWHC 571 (Admin)
7. Drawing titled 'Lland Lying West of Ladywell Lane Sandon' to show highway land under the control of Essex County Council
8. A plans showing public footpaths in the vicinity of Ladywell Lane
9. Location Plan with Highways 14_647_003

DOCUMENTS SUBMITTED AFTER THE HEARING

1. High Court Judgement- Chelmsford City Council v Secretary of State for Communities and Local Government [2016] EWHC 3329 (QB)
2. Comments from the main parties in respect of High Court Judgement- Chelmsford City Council v Secretary of State for Communities and Local Government [2016] EWHC 3329 (QB)