
Appeal Decision

Site visit made on 8 May 2017

by Jonathan Hockley BA(Hons) DipTP MRTPI

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

Decision date: 31 May 2017

Appeal Ref: APP/X1545/W/16/3160971

Land at Brook Lane, Asheldham, Essex CM0 7DZ

- 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 David Hall against the decision of Maldon District Council.
 - The application Ref OUT/MAL/16/00107, dated 1 February 2016, was refused by notice dated 14 April 2016.
 - The development proposed is construction of four 2 bedroom bungalows.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline, with all matters reserved. I have dealt with the appeal in the same manner, and have thus treated all plans submitted as indicative.

Main Issue

3. The main issue in this case is the effect of the proposed development on the setting of the Asheldham slight univallate hillfort and the character and appearance of the surrounding area.

Reasons

4. The roughly rectangular appeal site consists of a green field/meadow located to the south of 'The Rest', a large detached bungalow. The proposal seeks to construct 4, 2 bedroom bungalows in an indicative linear pattern following Brook Lane, which is an unmade road running along the west side of the site. At its northern end the road has a junction with Southminster Road, a fairly busy route with no footpaths in this location. There are semi-detached houses on the west side of the Lane towards its northern end, with a new property being built between these properties and Tower Bungalow to the south. The lane then tracks around the southern edge of the site, serving another couple of houses before it terminates. It is more built up at its northern end, with the southern reaches of the road more sparsely so, having the overall character of a lane extending into the countryside.
 5. Although not directly adjacent, the Asheldham slight univallate hillfort Scheduled Ancient Monument (SAM) lies to the east of the site. The SAM covers a reasonably sized area and is an early Iron Age defended fort located on a plateau. The Historic England description notes that defences include a
-

- bank and external ditch. These are visible as upstanding earthworks on the east and south sides of the fort.
6. The significance of the SAM can be defined by its age, rarity and survival. The listing notes that there is a low number of such surviving hillforts (around 150). In view of this rarity and their importance in understanding the transition between Bronze Age and Iron Age communities all examples of slight univallate hillforts which have survived comparatively well are of national importance. The listing notes that part excavations of the Asheldham fort indicates that unexcavated parts of the monument may have survived well, and notes that late prehistoric sites in Essex such as Asheldham are very rare.
 7. The SAM is listed under schedule 1 of the Ancient Monuments and Archaeological Areas Act 1979 and is therefore also by definition of national importance. Whilst the Act does not afford statutory protection to the setting of SAMs, paragraph 132 of the National Planning Policy Framework (the Framework) states that great weight should be given to the conservation of such monuments and that substantial harm to them should be wholly exceptional. The Framework confirms that significance derives not only from a heritage asset's physical presence, but also from its setting.
 8. Paragraph 137 of the Framework states that significance of a designated heritage asset, including SAMs, can be harmed or lost through development within its setting. Planning Practice Guidance confirms that setting is the surrounding in which an asset is experienced and that all heritage assets have a setting, irrespective of the form in which they survive.
 9. Policy BE17 of the Replacement Local Plan¹ (the RLP) states that development will not be permitted if it fails to preserve the setting of nationally important archaeological remains. The Local Development Plan (LDP) is at an advanced stage of preparation, having been through public consultation and examination in public in the early parts of this year. Policy D3 of this emerging plan states that all development proposals which affect the setting of a heritage asset will be required to preserve or enhance such setting in a manner which is appropriate to its significance. As no firm conclusions have been made since the examination into the LDP, in line with paragraph 216 of the Framework I give limited weight to this policy.
 10. As the monument lies on a plateau, the setting of the SAM is reasonably significant, with largely open areas remaining to the south and south west towards the Asheldham Brook. A public footpath runs along the western edge of the fort which I walked as part of my site visit. From here the appeal site is clearly visible, being an open green area to the south of the Rest. From the appeal site itself the fort is clearly visible, seen as a raised plateau framed by thick trees on the eastern side of the fort. Historic England note that the western defences visible from the site are thought to have been artificially steepened and heightened.
 11. Although in outline, the indicative plans detail the four proposed bungalows located in a linear form, and given the size and shape of the site and the proposed quantum of development it would seem likely that any final layout would be fairly similar. The appeal site itself lies on slightly higher ground than the intervening land between the site and the SAM, due in part to the

¹ Maldon District Replacement Local Plan, November 2005.

artificially heightened western defences. Views from the monument currently take in the Rest on the east side of Brook Lane, as well as the semi-detached properties and new build on the west side of the Lane, although these properties are somewhat softened and screened by vegetation. The proposal, in introducing a line of residential development would significantly affect this view. Whilst I note that the proposed houses would be single storey and could be built with green roofs, I do not consider that they would appear as low density and spacious in their form, and the number of them proposed would represent a substantial alteration to the largely open setting of the Fort on its western side.

12. Due to the distance from the SAM and the presence of other development within its setting I consider that the adverse effect on the setting of the SAM would not reach the high bar of substantial harm. Nevertheless, harm would be caused to the setting and therefore the significance of the SAM. Paragraph 134 of the Framework, and as quoted by Historic England in their email to the appellants states that such harm should be weighed against the public benefits of the proposal.
13. For similar reasons, I also consider that the proposal would cause harm to the character and appearance of the area. The appellant considers that the site is surrounded on three sides by residential development and that the site could be well screened, building on the existing substantial hedge on the sites western boundary. However, such residential development is fairly spread out and of a low density, and as such the site does not appear as an infill plot visually. The proposal in creating a line of 4 dwellings would change the character of Brook Lane, altering its feel at the southern end of the lane from an area on the fringes of the countryside to a more built up character, and I agree in this respect with the findings of an previous Inspector who considered a proposal for 2 3 bedroom and 2 2 bedroom bungalows, who considered that that case with a single point of access through the thick hedgeline would have an urbanising effect on the rural character of the site and openness of the countryside setting of the settlement.
14. The proposal would result in 4 new bungalows, which would provide economic and social benefits through their construction and through the activities of their future occupants. I note in this respect that the appellant states that 4 written declarations of interest have been received for the dwellings, that the units could be considered as windfall dwellings and that the Council's Strategic Housing Market Assessment identifies requirements for 1 or 2 bed units. I place material weight on such evidence; nevertheless I do not consider that the public benefits of the scheme would outweigh both the less than substantial harm that the proposal would cause to the SAM and the harm that the proposal would cause to the character and appearance of the area. Less than substantial harm to a heritage asset does not equate to a less than substantial objection.
15. There is disagreement between the parties over whether the Council are able to demonstrate a five-year supply of deliverable housing land. Various appeal decisions are supported in respect of this view from either side. However, even if I were to conclude that there is a shortfall in the 5 year supply of the scale suggested by the appellant and that relevant policies for the supply of housing should not be considered up-to-date, I consider that the adverse impacts of granting permission would significantly and demonstrably outweigh the

benefits. Furthermore, given my conclusions above concerning the effect of the proposal on the SAM, the fourth bullet point of paragraph 14 and footnote 9 of the Framework indicates that development should be restricted.

16. I therefore conclude that the proposed development would have an adverse effect on the setting of the Asheldham slight univallate hillfort and upon the character and appearance of the surrounding area. The proposal would be contrary to the Framework and Policies BE17 of the RLP, and D3 of the emerging LDP. The scheme would also be contrary to policies BE1 and CC6 of the RLP which together state that development will be permitted if it is compatible with its surroundings, and that the natural beauty of the District's landscape will be protected, conserved and enhanced. In this context I note the age of this plan but consider such policies to be largely consistent with the Framework core planning principles that planning should take account of the different character of different areas, recognising the intrinsic character and beauty of the countryside. As such I accord them significant weight.

Other Matters

17. The appellant raises concerns that the consultation response from Historic England was reported as an objection to the Planning Committee, instead of advice. I have treated the information from Historic England as such and have considered the aspects of the proposal relating to the SAM in the same manner. Complaints over the Council's handling of the planning application should be made in the first instance through the Council's own complaints procedure.
18. Reference is made to the site being considered as brownfield, due to former waterworks. However, the Framework defines previously developed land as land which is or was occupied by a permanent structure and its curtilage, but excludes land that was previously developed but where the structure has blended into the landscape in the process of time. The appeal site at present has the character of an open green space and there was no visual evidence on the site of previous uses.
19. A range of evidence relating to other sites both in the District and in Asheldham where permission has been granted for residential development has been submitted to me. However, I note that the Council considered that such proposals to be infill developments; I have agreed above that I do not consider this site to be similarly infill. I also note that consents were also granted when the Council acknowledged a lack of housing land supply. Furthermore, each case must be considered on its own merits.

Conclusion

20. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jon Hockley

INSPECTOR