
Appeal Decision

Hearing Held on 21 February 2018

Site visit made on 21 February 2018

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th March 2018

Appeal Ref: APP/J1915/W/17/3181774

Land adjacent to The Old Rectory, Baldock Road, Cottered, Hertfordshire SG9 9QP

- 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 & Mrs Robert Taussig against the decision of East Hertfordshire District Council.
 - The application Ref 3/17/0387/OUT, dated 15 February 2017, was refused by notice dated 24 May 2017.
 - The development proposed is 15 dwellings with associated access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with all matters of detail reserved for future consideration save for the appearance of the dwellings and the landscaping of the site¹. I have taken the section drawing as confirming the maximum ridge and eaves heights of the buildings and the site layout plan as showing their maximum depths and widths. The appellants have substituted the originally proposed starter homes for affordable housing and therefore the description of development has been amended to reflect this change.
3. The Council submitted a copy of its Annual Monitoring Report (AMR) for the period April 2016 – March 2017 before the hearing opened but after the deadline for cases to have been submitted. This was not unreasonable as the AMR has only recently been adopted by the Council and is important to my deliberations. All of the parties have had an opportunity to review the AMR and therefore it has been accepted as late evidence as no party would be prejudiced by me doing so.
4. A planning obligation was submitted at the hearing by the appellants but the Council had not previously seen it. Therefore, the Council were afforded an opportunity to consider the document and the appellant to make any subsequent changes that may have been necessary following the Council's review. I received the final planning obligation on the 2 March 2018.

¹ See the Interpretation section of *The Town and Country Planning (Development Management Procedure) (England) Order 2015* for the full definition of each of the five reserved matters

Main Issues

5. The main issues in this appeal are:

- Whether the proposed dwellings would be in a suitable location with particular reference to local policies concerned with housing in rural areas;
- The effect of the appeal scheme on the character and appearance of the area; and
- Whether the appeal scheme would make adequate provision for infrastructure (education and community facilities²) and affordable housing.

Reasons

Rural housing policy

6. The extant development plan includes the East Herts Local Plan Second Review 2007 (LP) and the Buntingford Community Area Neighbourhood Plan 2014 – 2031 (NP). Policy SD2 of the LP outlines the spatial strategy for development in the district in the form of a settlement hierarchy. The strategy in the LP is, in part, to concentrate development in the larger main settlements where services can be reached and supported through sustainable modes of transport. The strategy also includes opportunities for limited development in smaller settlements to support and address the local needs and services within them.
7. The spatial strategy is further developed through Policies OSV1, OSV2 and OSV3 of the LP. These policies divide the district's settlements into three categories. The level of services and facilities available in each settlement informs which category it is placed within. Within the confines of Category 1 villages, which have the greatest range of services and facilities, Policy OSV1 permits limited small scale and infill development. Within Category 2 villages only infill housing development is permitted. Guidance in the LP defines limited small scale development as typically comprising schemes of up to 15 dwellings (but rarely more than 30 homes) and infill housing is defined as proposals of up to 5 small dwellings.
8. Cottered has a handful of local services including a village hall, public house, church and recreation ground. These are, or can be made, reasonably accessible to the appeal site by a short, safe and comfortable walk. Nevertheless, the village is devoid of most everyday services such as schooling and shops and employment opportunities are very limited.
9. The services and facilities in neighbouring settlements are beyond a comfortable walk and due to the busy nature of the A507, its winding alignment, and the undulating topography, cycling would require a level of confidence, fitness and proficiency that residents may not possess. A bus route serves the village but the frequency of buses is limited to a handful of trips a day. Consequently, villagers are largely car reliant. Cottered is only a short car journey from everyday services but daily journeys to work and school would soon add up to a high number of miles travelled with the associated carbon emissions. As such, Cottered is not defined in the LP as either a Category 1 or Category 2 village.

² The Council confirmed at the hearing that it no longer considers it necessary to provide fire hydrants through a planning obligation and consequently this is no longer a point in dispute.

10. Although not well served by everyday services and facilities Cottered has a settlement boundary in order to facilitate some limited forms of development. It is a Category 3 village and thus subject to Policy OSV3, which does not permit development other than that listed in Policy GBC3 of the LP, including affordable housing required to meet the identified needs of the village or parish. The appeal scheme, which is for the erection of 15 houses, would be well beyond the size of development envisaged in the LP at a Category 3 village. Moreover, the appeal site is positioned outside the defined boundary of the settlement and would fail to adhere to any of the stated exceptions in Policy GBC3 that may otherwise justify this. Thus, the proposal, due to its size and location, would be at odds with the spatial strategy in the LP.
11. The LP pre dates the National Planning Policy Framework, which seeks to locate housing in rural areas to enhance or maintain the vitality of rural communities, recognise the intrinsic character and beauty of the countryside and seeks to facilitate sustainable transport and travel choices, mindful of the fact that opportunities to maximise sustainable transport solutions will vary from rural to urban locations. The rural housing policies in the LP are not wholly at odds with these aims but they lack flexibility. As such, the conflict with Policies SD2, OSV3 and GBC3 carries only moderate weight.
12. The NP postdates the Framework and has therefore developed the spatial strategy outlined in the LP. Policy HD1 of the NP takes a more flexible approach than the rural housing policies in the LP. It directs housing development to sites within the settlement boundaries of Buntingford and Cottered. Nevertheless, Policy HD1 states that outside these defined settlements small scale infill development within or immediately adjoining existing clusters of development will be permitted. Policy HD1 is not wholly consistent with Policies OSV3 and GBC3 but it is more up to date. As such, and within the NP area, Policy HD1 supersedes aspects of Policies OSV3 and GBC3³.
13. The NP is consistent with the Planning Practice Guide which states that all settlements can play a role in delivering sustainable development and that blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided unless their use can be supported by robust evidence. In this instance the evidence before me suggests Cottered is not well served by services and facilities and therefore a policy that restricts the size of housing proposals outside the settlement boundaries to a 'small scale' are justified.
14. The appeal site immediately adjoins the settlement boundary of Cottered, which is a significant cluster of development in the NP area. Consequently, the key issue in this instance is whether the appeal scheme would be 'small scale infill development'. This term is not defined in the NP and therefore the appellants have suggested that the appeal scheme, which would amount to the village growing by around 6%, would be 'small scale'. However, Policy HD1 does not advocate a strategy based on housing growth as a percentage and therefore I have not defined small scale infill development in this way.
15. It is apparent that the NP expects Cottered to accommodate some development being one of only two settlements specifically identified in Policy

³ It is acknowledged within Policy HD1 of the NP that more recently adopted policies can supersede older one. This is embodied in Policy HD1, which indicates that it may need to be updated following the adoption of the emerging District Plan (DP).

HD1. Therefore, the NP appears to elevate the status of Cottered above that of a Category 3 village. However, it is a stretch to suggest the NP intends to treat Cottered as the equivalent of a Category 1 village, within which limited small scale development of up to 15 homes is generally permitted. The reference to small scale *infill development* in Policy HD1 would suggest to me that the NP has altered the status of Cottered to the equivalent of a Category 2 settlement. It is therefore logical to apply the definition of 'infill development' in the LP in so far as it relates to Category 2 villages. This being a scheme comprising up to 5 small dwellings. In this respect the NP has been future proofed, having been prepared with one eye on the emerging District Plan (DP).

16. The emerging DP includes draft Policy VILL2. This policy has been examined and modifications are currently being consulted upon. If adopted in its modified form then Cottered would retain a settlement boundary, which would be expanded, and the village would be elevated to a Category 2 settlement within which limited infill development will be permitted, as will small scale development identified in an adopted neighbourhood plan. The appeal scheme is not specifically identified or allocated in the NP. The emerging DP is still being prepared and therefore it cannot be afforded full weight. However, the intention to upgrade Cottered to a Category 2 village can be afforded significant weight as, arguably, this upgrade has already occurred through the NP.
17. Therefore, in applying Policy HD1, I have interpreted small scale infill development to be development of a similar scale to the definition of 'infill development' in the LP, that being up to five homes. This more limited definition is reasonable when considering the emerging DP no longer sets a target to provide 500 homes in the Category 2 villages. As such, the appeal scheme would be of a scale beyond that envisaged in the NP and therefore too many houses would be proposed in a location with limited travel choices and everyday services and facilities. The proposal would provide facilities for homeworking but it cannot be guaranteed that future occupants would work from home or use electric vehicles.
18. I therefore conclude that the appeal scheme would not amount to a small scale infill development and thus housing in a suitable location when applying the local policies concerned with rural housing. More houses than that permitted in the development plan would be provided at a settlement with few facilities and services. As such, the proposal would not adhere to Policies SD2, OSV3 and GBC3 of the LP or Policy HD1 of the NP. As such, the proposal would be at odds with, and thus undermine, the strategy for the location of housing set out in the development plan.

The effect on the character and appearance of the area

19. The appeal site is approximately 0.9 hectares in size and broadly encompasses the southern half of a larger field. The field is surrounded on all sides by hedgerows, some of which are gappy, and has a frontage onto the busy A507.
20. The historic core of Cottered is located to the west of the appeal site and this is broadly characterised by period properties of different ages and styles set within plots of differing shapes and sizes. The dwellings are not set in discernible building lines but they are generally orientated with the principle, front elevation facing and framing the main thoroughfares. These active edges give a pleasing grain to the development in the village. The central green, mature trees and wide grass verges afford the village a verdant character. The

extensive landscaping and the orientation of the properties bind the built form together. Consequently, and rather paradoxically, the historic core of the village is characterised by its variety and its harmony.

21. The more immediate context of the appeal site is dominated by the contrast between the regular layout, scale and orientation of the semi-detached properties on the southern side of the A507 and the open rural landscape to the north, which the appeal site, as an undeveloped meadow, is viewed as being part of. Thus, the appeal site is a finger of open countryside that provides a break in the built form of the village and thus a visual bridge with the rural landscape beyond. In this respect the undeveloped appearance of the appeal site contributes to the rural character and appearance of the area and the bucolic setting of the village.
22. The introduction of fifteen dwellings, the associated domestic paraphernalia, a formal highway access and internal roads would inherently urbanise the appeal site and harm its open appearance and rural character when viewed from surrounding vantage points. Moreover, by spanning the entire width of the appeal site the development would inhibit the visual connection between the village and the rural landscape beyond.
23. However, some form of incursion into land beyond the settlement boundary may be necessary to enable the village to grow in the way suggested in the development plan as there appears to be limited opportunities within the settlement boundary, much of which is a Conservation Area. Moreover, the presence of a continuous row of houses across the road, and housing either side, provides a built context and an opportunity to bridge the village centre with the pocket of development east of Magpie Farm. As such, the inherent urbanisation of the appeal site would only result in moderate harm to the character and appearance of the area.
24. More significantly, the harm that would arise from the urbanisation of the appeal site would be compounded by the layout of the development, which has not been arranged with active edges. Instead, the detached houses would have an inward looking insular arrangement with rear elevations and boundary treatment presented to the edges of the site. This would significantly harm the street scene along the A507.
25. The Old Rectory and the dwelling to its immediate west do not face the A507 but these are isolated examples that do not justify the proposed layout. The southerly aspect of some of the proposed gardens would not be a determinative benefit as the arrangement would expose those gardens to road noise and the other detached properties would have shallow north facing gardens. The density of the proposal would not be high but this alone is not a useful indicator of whether the development would respond to local character as it does not consider the layout or size of the buildings.
26. The roadside hedge would not successfully screen the development due to the scale of the houses, the presence of large gaps between groups of plants, the largely deciduous nature of the foliage, which would be less successful as a screen when not in leaf, and because the hedge could die or be removed in the future. Thus it should not be relied upon to hide a development that would be injurious to the street scene. Moreover, an alternative, outward looking arrangement need not result in the frontage hedge being removed.

27. The northern edge of the appeal site would be defined by boundary treatment and the gable end of a property. This could be softened by landscaping outside of the appeal site but this would take time to mature and would not obscure the rear elevations of the properties, which would be visible from the area planned for allotments and the parking area for the 'village day'.
28. The houses to the east of the affordable homes would present a discordant suburban layout being detached, similar in style, laid out with large garages and driveways, set in broadly similar sized plots and arranged around a central spine road that creates a conventional cul-de-sac layout. This would not reflect the varied historic grain of development in the centre of the village and would present an unseemly juxtaposition with the properties across the road. As such, the appeal scheme would appear as a stark and discordant departure from the local pattern of development.
29. The appeal scheme has attempted to echo the layout and character of the rural lanes in the village that branch off the A507. The lane immediately to the south west of the appeal site is a pleasing example of this street typology, with a verdant entrance loosely framed by housing that tapers off towards Brook End. This provides a gentle transition from the A507 to the countryside beyond the village. However, the appeal scheme, in its current form, would not successfully achieve this as the development would appear to run parallel with the A507 rather than branch off it and the large houses would be located too close together to give a loose verdant character.
30. The affordable housing would frame the approach to the area that has been suggested as a possible location for parish allotments but a run of six terrace houses would not create the sense of a lane. Overall, the proposed development would not reflect the character or appearance of the rural lanes found elsewhere in the village. As such, the appeal scheme would not be a natural extension of the village but would instead appear as a small housing estate bolted onto it. In this respect it would not reflect local distinctiveness.
31. The appellants have suggested that the appeal site is not an important undeveloped space in the village because it is not identified as being so in the emerging Cottered Conservation Area Appraisal and Management Plan. However, this document is still at a formative stage and thus subject to change. As such, I afford its findings limited weight.
32. I acknowledge that there is a possible contradiction between the Council's conclusion that the appeal scheme would harm the eastern approach into the historic core of the village but would not harm the setting of the Conservation Area (CA). However, it transpired at the hearing that the Council's Conservation Officer had not been consulted on the planning application and therefore this conclusion was formed without specialist input. I consider the appeal scheme would harm the eastern approach into the village for the reasons already given and the Council's assessment in respect of the impact on the setting of the CA does not alter my findings on this point.
33. I therefore conclude that the appeal scheme would result in some inherent but moderate harm to the rural character of the site. Notably, this would be compounded by a very poor layout. Overall, the proposal would significantly harm the character and appearance of the area. This would place it in conflict with Policy ENV1 of the LP, which is consistent with Paragraphs 58 of the

Framework, and Policy HD2 of the NP, which seek to secure development of a high standard of design and layout that reflects local distinctiveness.

Whether the appeal scheme would make adequate provisions for infrastructure (education and community facilities) and affordable housing

34. The submitted Unilateral Undertaking (UU) aims to secure financial contributions towards meeting the need for additional facilities and services that would arise from the development. The contributions towards education and youth facilities would mitigate the pressures the development would place on local infrastructure, would be proportionate to the size of the development and would be spent on specific projects, the funding of which has not exceeded five pooled contributions.
35. I consider the various sums have been justified through evidence provided by the County Council, which the appellants have not challenged. The requirements are also supported by Policy IMP1 of the LP. Thus, the contributions would be necessary, directly related to the development and fair in scale and kind. As such the obligations would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework.
36. The UU would also secure the provision of 40% affordable housing for general needs. This would be consistent with the requirements of Policies HSG3 and HSG4 of the LP and therefore it is necessary to make the development acceptable. There is nothing before me to suggest this level of affordable housing would be unviable and therefore it would be fair in scale and kind. The requirement also arises out of the development so it is directly related to it. As such the obligations would accord with the tests set out in the National Planning Policy Framework.

Other Matters

37. A planning application should be determined in accordance with the development plan unless material considerations indicate otherwise. The appellants have advanced a number of potential benefits of the appeal scheme as material considerations to be considered.
38. The appeal scheme would deliver 15 homes, including six affordable homes, and this would benefit the district's housing supply. However, the benefit is moderate as I have seen nothing of substance to suggest the market houses proposed would be addressing a local need, such as that envisaged in Policy HD7 of the NP. Moreover, the affordable housing would be for general needs. There is a shortage of this type of affordable housing in the district but it, as opposed to local needs housing, can be located anywhere in the district. As such, there is no pressing need to locate the proposed houses at Cottered when doing so would conflict with the development plan.
39. The provision of housing would support the local economy and the vibrancy of the local community. However, I have seen nothing of substance to suggest the existing village facilities, organisations and clubs are struggling for a lack of local residents. Thus, the boost to the local population from the appeal scheme would not be a notable benefit. The proposal may support facilities in villages and towns nearby but I have seen nothing to suggest the proposed housing could not be located in or around these settlements where the benefits could

- be realised without the harm I have identified to the character and appearance of the area and from a general reliance on private motorised transport.
40. The provision of allotments to the immediate north of the appeal site is advanced as a benefit of the appeal scheme. The NP identifies a need for allotments and therefore their provision could be a material benefit that needs to be weighed against any harm. If the provision of the allotments is a determinative matter in favour of the proposal then they would need to be secured. This is best achieved through a planning obligation as the allotments are not shown on the application drawings, would be outside the appeal site and their delivery may require some form of land transfer. Consequently, securing them through a planning condition would be unreasonable.
41. The appellants have not suggested that they would operate the allotments so the land earmarked for them would need to be leased or transferred to an organisation that would, such as the Parish Council. This organisation would need to be party to the planning obligation to ensure the allotments are delivered and retained. The obligation would also need to identify the specification of the allotments, including the number. A financial sum may also be necessary to set up the allotments and provide facilities such as parking, water and fencing. The planning obligation as drafted does not address any of these points. It merely requires land to be 'provided' for the allotments but there is nothing that would secure the delivery or retention of them. As such, the planning obligation in its current form would be ineffective in delivering allotments and consequently their potential provision cannot be given anything more than very limited weight as a benefit. It is also unclear why fifteen houses need to be built to secure this benefit.
42. The provision of an 'honesty shop' has also been advanced as a benefit as it could, in a very modest way, offset the lack of a village shop. The planning obligation seeks to secure the honesty shop by stating that it must be provided prior to the occupation of the development. However, the size and precise position of the shop is not defined and it is unclear who would own and operate it. Moreover, the obligation does not state that the shop must be retained once provided. As such, the obligation is vague and imprecise and is not drafted in a way that would allow the provision of an honesty shop to be given anything more than very limited weight as a benefit.
43. There has been significant local support for the proposal, much of which was due to the potential to deliver the allotments and community shop. However, given the uncertainty over the delivery and ongoing management of these facilities the public support is not determinative.
44. The houses could be constructed to ensure a high environmental performance but the detailed design of the properties is a reserved matter and therefore this is best described as an aspiration rather than a notable benefit. The appeal scheme has the potential to provide biodiversity enhancements but this has not been quantified and therefore the extent of the benefit is unclear.
45. A footpath would be provided through the development linking the properties to the east of the site with the centre of the village. It would present a poor pedestrian experience due to a sense of enclosure from being sandwiched between garden fences and the hedge along the A507. Moreover, the link would be incomplete as it would not stretch across the frontage of Magpie Farm. In any event there is already a footpath on the southern side of the

A507. For these reasons I do not find the potential for a pedestrian route through the site, in the way designed, to be a benefit.

46. The proposal would upgrade the bus stops but I have seen nothing to suggest the use of the bus stops is inhibited by their current configuration and condition. The development may also provide some over spill parking for existing residents of the village but it was clarified at the hearing that this would amount to only around four unallocated spaces. This would only be a modest benefit in the absence of substantive evidence to suggest on street parking is currently a significant problem.
47. When the Council issued its formal decision it was unable to demonstrate a five year housing land supply. It has since stated in its submissions that it is now able to demonstrate an adequate housing supply over 6 years. The appellant has not challenged this. I am therefore content to rely on the Council's conclusions. Thus, the Council's policies for the supply of housing are not out of date and the tilted balance in Paragraph 14 of the Framework is not engaged. It is therefore unnecessary for the Council to demonstrate that the adverse impacts of the proposal would significantly and demonstrably outweigh its benefits. Instead, the totality of the harm I have identified would be outweighed by other material considerations, namely the benefits of the scheme, which individually and cumulatively carry only moderate weight.

Conclusion

48. The appeal scheme would mitigate its impacts on local infrastructure and make adequate provision for affordable housing. However, these matters do not outweigh the impact upon the character and appearance of the area and the conflict with the spatial strategy for housing in the development plan, which is to direct only small scale infill development to settlements with limited services. Consequently, the proposal would be contrary to the development plan taken as a whole and material considerations do not indicate planning permission should be forthcoming in spite of this. Accordingly, I conclude that the appeal should be dismissed.

Graham Chamberlain
INSPECTOR

APPEARANCES

FOR THE APPELLANT

Robert Taussig	Appellant
Debbie Taussig	Appellant
Alan Gunne-Jones	Planning and Development Associates
Tom Routh	Gatti Routh Rhodes
Stefanie Rhodes	Gatti Routh Rhodes
Richard Gatti	Gatti Routh Rhodes

FOR THE LOCAL PLANNING AUTHORITY

David Snell Dip TP DMS	Principal Planning Officer
George Pavey	Senior Planning Officer
Mike Slimmon	

INTERESTED PARTIES

John Harwood-Bee	Local Resident
Jeffery Lawton	Local Resident
Carol Lawton	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Planning obligation submitted by the appellant
2. The Council's vehicle parking standards
3. Main modifications for emerging Policy VILL2 of the District Plan