



Appeal Decision

Site visit made on 20 May 2019

by **Graham Chamberlain BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7th June 2019

Appeal Ref: APP/C1570/W/18/3205544

Adare, Beaumont Hill, Great Dunmow, Essex CM6 2AP

- 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 Richard Lockwood against the decision of Uttlesford District Council.
 - The application Ref UTT/17/1967/FUL, dated 3 July 2017, was refused by notice dated 11 January 2018.
 - The development proposed is described as '4 new dwellings with parking and access road'.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of four new dwellings with parking and an access road at Adare, Beaumont Hill, Great Dunmow, Essex CM6 2AP, in accordance with the terms of the application, Ref: UTT/17/1967/FUL, dated 3 July 2017, subject to the conditions set out in the attached schedule.

Application for Costs

2. An application for an award of costs was made by Mr Richard Lockwood against Uttlesford District Council. This application will be the subject of a separate Decision.

Preliminary Matter

3. The concerns relating to land ownership expressed by interested parties are civil matters outside the scope of this appeal. The appellant has signed Certificate A in the application form to confirm he owns all of the land required to undertake the development.

Main Issues

4. The main issues in this appeal are:
 - Whether the appeal site is a suitable location for the proposed development, with particular reference to development plan policies concerned with the location of housing;
 - The effect of the proposed development on other matters, specifically the character and appearance of the countryside, heritage, the living conditions of neighbours, biodiversity and highway safety; and

- If there is a conflict with the development plan, whether there are material considerations which indicate a decision should be taken other than in accordance with the development plan.

Reasons

Whether the appeal scheme would be in a suitable location

5. The appeal site encompasses part of the rear garden of Adare, a detached dwelling accessed from Beaumont Hill, the rear garden of which is located outside the development limits of Great Dunmow. It therefore follows that the appeal site is in the countryside for the purposes of applying Saved Policy S7 of the Uttlesford Local Plan 2005 (LP).
6. Policy S7 has a broadly restrictive approach to development in the countryside. It states that in order to protect the countryside for its own sake there will be strict control over new development in it. In particular, only development that needs to be in a countryside location will be permitted to take place there. The appeal scheme does not require a rural location and therefore it would be at odds with Policy S7. Moreover, as the appeal site is not a gap between existing buildings the erection of housing within it would not amount to infilling in accordance with Paragraph 6.13 of the LP.
7. The Great Dunmow Neighbourhood Plan (NP) was made in 2016 and Policy DS1 identifies a 'Town Development Area' (TDA). The policy directs new development to sites within this boundary in order to protect the rural setting of Great Dunmow and contain the spread of the town by promoting infilling. The appeal site is not located within the TDA and is therefore not a location where the NP directs new development.
8. Accordingly, the proposal would be at odds with, and harmfully undermine, the adopted spatial strategy for the location of housing in the development plan and the consistency and relative certainty that should ordinarily flow from a genuinely plan led approach to the location of new development.

Other matters

9. Even though the proposal would breach the settlement boundary of Great Dunmow in the vicinity of the Chelmer Valley it has not been supported by a Landscape and Visual Impact Assessment as required by Policy LSC3 of the NP. Nevertheless, the encroachment into the countryside would be limited to an urbanisation of the rear garden of Adare, the boundaries of which are marked by dense belts of landscaping. This landscaping would markedly soften the impact of the appeal scheme. There is nothing to suggest the longevity of the existing boundary landscaping worthy of retention would be at risk during construction or afterwards. Thus, the visual impact of the appeal scheme on the countryside of the Chelmer Valley would be insignificant and similar to that of the other properties on the eastern side of Beaumont Hill, such as Phoenix House.
10. Moreover, the use of a sensitive pallet of natural materials, a vernacular style and articulated massing would further soften the presence of the dwellings. In this respect, the appeal scheme would not appear as a strident, awkward or discordant incursion into the countryside when viewed from the nearby public footpath. As such, the proposal would not result in harm to the character and

appearance of the countryside or the Chelmer Valley landscape and thus adhere to Policies LSC2 and LSC3 of the NP.

11. The appeal site is part of the setting of the Great Dunmow Conservation Area, most notably the area at Parsonage Down, the character of which is principally evident in the grain of loose frontage development arranged around a large green. The appeal scheme would not be consistent with this pattern of development being in a 'backland' location. Nevertheless, the new houses would be largely screened in views from much of Beaumont Hill and Parsonage Green by existing buildings and boundary landscaping. Accordingly, the dwellings would have little visual presence in the setting of the conservation area, the character and appearance of which would be preserved.
12. The proposal would also be within the setting of Beaumont Cottage, a Grade II listed building which is a modest thatched dwelling that exhibits the local vernacular. Plot 3 would be visible behind the listed building in views from Beaumont Hill, albeit at a distance. However, Beaumont Cottage is already experienced in the context of nearby development. Again, the proposed use of a sensitive and harmonious pallet of materials, forms and style would soften the impact on the setting of the listed building. The orientation of Plot 3 side on to the listed building would prevent an over bearing juxtaposition. Owing particularly to the separation distance and its complementary design the proposal would preserve the setting of Beaumont Cottage.
13. The distance between the proposed dwellings and existing properties, along with the single storey form of Plot 4 and the additional mature boundary landscaping that would be planted behind it, would ensure the proposal would not result in a harmful loss of privacy and outlook for existing neighbours. There would be some noise and disturbance during construction, but this would be short lived given the modest size of the development.
14. The wildlife surveys submitted by the appellant and endorsed by the Council demonstrate there would be no harm to biodiversity and there is no substantive evidence before me to the contrary. Similarly, the evidence presented¹ indicates the access would be safe and suitable, even for lorries during construction. Nothing of substance has been submitted that demonstrates the appeal scheme would have a severe impact on traffic generation in the wider road network.

Whether there are material considerations which indicate a decision should be taken other than in accordance with the development plan

15. The Council are currently unable to demonstrate a five-year housing land supply, with the shortfall being reasonably serious at around 3.29 years. In such circumstances Paragraph 11 of the National Planning Policy Framework (the 'Framework') states that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole².
16. The only adverse impact of the proposal would be the conflict with Policy S7 of the LP. However, this policy pre dates the Framework, and therefore in line with Paragraph 213, due weight should be given to this policy according to its degree of consistency with the Framework.

¹ Drawings 484.15 and 484.01F and the comments of the Local Highway Authority and the Council

² In this instance there are no policies in the Framework that give a clear reason for refusing the proposal

17. To this end, the Council have adopted a study by Anne Skippers Associates dating from 2012, which has reviewed the consistency of the policies in the LP with the 2012 Framework. This has concluded that Policy S7 is only partially consistent with the original version of the Framework because it takes a prohibitive approach rather than a protective one. This analysis is also relevant when considering Policy S7 against the wording in Paragraph 170 of the current Framework, which seeks to protect valued landscapes rather than the countryside for its own sake. This inconsistency marginally reduces the weight I afford the conflict with Policy S7, as this recognises the intrinsic character and beauty of the countryside and therefore adheres to another aim of the Framework.
18. More significantly, a rigorous application of both Policy S7 of the LP and Policy DS1 of the NP, in all instances, would frustrate attempts to address the Council's current housing supply deficit. On this point, it is unclear how the Council are seeking to remedy the housing shortfall and its timeframe for doing so. Additionally, the appeal scheme would not conflict with some of the underlying aims of Policies S7 and DS1 as it would not harm the character or appearance of the countryside beyond the urbanisation of the appeal site. Hence, the conflict with these development plan policies embodying the adopted spatial strategy attracts only moderate weight as an adverse impact of the proposal.
19. Paragraph 14 of the Framework states that the adverse impacts of allowing development that conflicts with a neighbourhood plan (Policy DS1 of the NP in this instance) is likely to significantly and demonstrably outweigh the benefits of a housing development. This is only the case if all four of the listed criteria apply. However, the NP became part of the development plan more than two years ago and therefore the guidance in Paragraph 14 is not engaged.
20. When considering the benefits of the appeal scheme it is apparent that the proposal would not be isolated because the appeal site is residential garden land adjacent to a large settlement and close to existing housing. In fact, the residents of the appeal scheme would be able to access the town centre via a comfortable and safe walk. There is also a large secondary school nearby. Accordingly, future residents of the appeal scheme would be well placed to support local facilities without reliance on private motorised transport. However, given the modest scale of the development this benefit carries limited weight, particularly as I have seen nothing of substance to suggest the contribution from future residents would make a significant difference to the local economy or the vitality of the community.
21. Similarly, the small size of the development means the contribution to housing land supply would be modest, especially when considered in the context of the significant housing development already planned for the town. Nevertheless, this attracts moderate weight given the serious housing supply shortfall. The proposal would also provide benefits to the construction industry, but these would be modest and short lived. The proposal would also provide for people wishing to commission or build their own homes³. This is a benefit of moderate

³ A planning obligation has been submitted to ensure this benefit is secured. This is necessary given the weight I have afforded this benefit in my planning balance

weight given the number of people on the Council's self-build register⁴. Overall, the benefits of the proposal are cumulatively of moderate weight.

22. Consequently, the adverse impacts of the appeal scheme, which are of moderate weight, would not significantly and demonstrably outweigh its moderate benefits when assessed against the policies in the Framework taken as a whole. This is a material consideration of significant weight in favour of the proposal that indicates a decision should be taken other than in accordance with the development plan.

Conditions

23. Having regard to the advice in the Planning Practice Guidance and the conditions suggested by the Council and appellant it is necessary in the interests of safeguarding the character and appearance of the area to secure and safeguard a landscaping scheme, tree protection during construction, for the development to be implemented in accordance with the submitted drawings and for samples of external finishing materials to be approved.
24. Moreover, in the interests of highway safety it is necessary to secure the vehicular access prior to occupation. To minimise the risks from surface water flooding it is necessary for a drainage scheme to be approved. In order to adhere to the development plan⁵, it is necessary to construct the dwellings to Part M4(2) of the Building Regulations. To protect the living conditions of neighbours' and future occupants it is necessary to exceptionally remove permitted development rights for roof alterations at Plot 4 and secure a scheme investigating the risks from land contamination. A programme of archaeological investigation is necessary in order to protect potentially unknown archaeological heritage.
25. The requirements of some of the conditions are triggered at a pre commencement stage because they seek to mitigate impacts arising during the construction phase, such as the loss of landscaping and archaeology to ground clearance and preparatory construction works. The appellant has provided comments on the appropriateness of imposing the pre-commencement conditions suggested by the Council but has not formally objected to any.

Conclusion

26. Paragraph 12 of the Framework establishes that permission should not usually be granted where a planning application conflicts with an up-to-date development plan, including any neighbourhood plan. That is the case here, but in this instance material considerations, principally the absence of a 5 year housing land supply, the consequent weight to be given to the conflict with the relevant restrictive policies and the provisions of the Framework, indicate that the appeal should be determined other than in accordance with the development plan. Accordingly, for the reasons given, the appeal succeeds.

Graham Chamberlain
INSPECTOR

⁴ See Appendix D of the appellant's statement – although I acknowledge that the demand may be modest in Great Dunmow given the lack of activity at St Edmunds Lane - a self-build scheme of 22 homes (Ref. UTT/17/3623/DFO)

⁵ Policy GEN2 of the LP supported by the Council's Accessible Homes and Playspace Supplementary Planning Document

Schedule of Planning Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following list of approved plans:
 - Site location plan – 484.17
 - Site plan layout – 484.01F
 - Plans and elevation Plot 3 – 484.03
 - Plans and elevations – Plot 1 (handed) and Plot 2 – 484.02
 - Cart lodge to Plot 3 – 484.16a
 - Plans and elevations – Plot 4 Bungalow – 484.04a
 - Arboricultural Plan 5679-D-A
 - Entrance to site indicating lorry tracking – 484.15
3. Notwithstanding the submitted details, prior to the commencement of development, including ground clearance and compound set up, or any works pursuant of any other condition within this planning permission, full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. Subsequently, these works shall be carried out as approved. The landscaping details to be submitted shall include:- a) ground, slab and finished floor levels b) means of enclosure c) car parking layout d) vehicle and pedestrian access and circulation areas e) hard surfacing, other hard landscape features and materials f) existing trees, hedges or other soft features to be retained g) planting plans, including specifications of species, sizes, planting centres, number and percentage mix h) details of planting or features to be provided to enhance the value of the development for biodiversity and wildlife i) details of siting and timing of all construction activities to avoid harm to all nature conservation features j) location of service runs k) management and maintenance details l) Stock trees (species and size to be approved) to be planted along the southern (frontage) boundary of the site as indicated on approved drawing 484.01F.
4. All hard and soft landscape works shall be carried out in accordance with the approved details. All planting, seeding or turfing and soil preparation comprised in the above details of landscaping shall be carried out in the first planting and seeding seasons (Oct – March) following the occupation of the buildings, the completion of the development, or in agreed phases whichever is the sooner.

Any plants which, within a period of five years from the completion of the development, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation. All landscape works shall be carried out in accordance with the guidance contained in British Standards, unless otherwise agreed in writing by the local planning authority.
5. Prior to the commencement of development, including ground clearance (or any works pursuant of any other condition within this planning permission), tree protection measures for those trees to be retained shall be implemented in accordance with the recommendations as set out in the

Tree Survey, Arboricultural Impact Assessment, Preliminary Arboricultural Method Statement & Tree Protection Plan (Hayden's, 25/10/2016).

6. Prior to commencement of development, no works shall take place until a scheme to minimise the risk of off-site flooding which may result from surface water run-off and groundwater from the site during construction works and the built development thereafter has been submitted to and approved in writing by the local planning authority, which shall incorporate sustainable drainage principles. The scheme shall subsequently be implemented as approved.
7. The dwellings approved by this permission shall be built to Category 2: Accessible and adaptable dwellings M4(2) of the Building Regulations 2010 Approved Document M, Volume 1 2015 edition.
8. Prior to commencement of development, no works shall take place until the following has been submitted to and approved in writing by the Local Planning Authority:
 - A Phase 1 Desk Study report documenting the ground conditions of the site with regard to potential contamination;
 - A Phase 2 Site Investigation (where shown as necessary by the Phase 1 Desk Study);
 - A Phase 3 Remediation Scheme (where shown as necessary by the Phase 2 Site Investigation).All such work shall be undertaken in accordance with BS:10175:2011 or other appropriate guidance approved by the Council. The work shall be sufficient to ensure that measures will be taken to mitigate any risks to human health and the wider environment.
9. In the event of the ground conditions of the site requiring a remediation scheme, prior to any permitted dwelling being occupied a validation report shall be submitted to and approved in writing by the Local Planning Authority to demonstrate the effectiveness of any agreed Remediation Strategy. Any such validation shall include responses to any unexpected contamination discovered during works
10. Prior to commencement of development, the developer shall have secured and undertaken a programme of archaeological trial trenching and excavation in accordance with a written scheme of investigation which has been submitted by the developer and approved, in writing, by the local planning authority.
11. Prior to the commencement of development beyond slab level for any individual building hereby approved, a sample of the materials to be used in the construction of the external surfaces of that building shall have been submitted to and approved in writing by the local planning authority. The development shall be implemented using the approved materials. Subsequently, the approved materials shall not be changed without the prior written consent of the local planning authority.
12. Prior to first occupation of the dwellings the vehicular access with associated visibility splays, parking and turning areas shall be implemented as shown on submitted drawings 484.01F and 484.15 and shall be maintained in perpetuity thereafter.

13. The dwelling on Plot 4 shall be constructed as single storey with ground floor accommodation only. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and reenacting that Order with or without modification), no windows, dormer windows, or other form of extension shall thereafter be installed to the roof of the dwelling.