



Appeal Decision

Site visit made on 14 May 2019

by C Beeby BA (Hons)

an Inspector appointed by the Secretary of State

Decision date: 17th July 2019

Appeal Ref: APP/C1570/W/18/3216010

3 Mole Hall Cottages, Mole Hall Lane, Widdington CB11 3SS

- 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 P Mascaux against the decision of Uttlesford District Council.
 - The application Ref UTT/18/1563/OP, dated 6 June 2018, was refused by notice dated 8 August 2018.
 - The development proposed is a pair of semi-detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal seeks outline planning permission, with all matters reserved. I have considered the appeal on this basis and have treated any plans in relation to the reserved matters as illustrative.
3. The appeal makes reference to an emerging Local Plan ("the eLP"). This has not yet been formally adopted by the Council. Therefore in accordance with paragraph 48 of the National Planning Policy Framework 2019 (the Framework), whilst I have had regard to the eLP I have not attached full weight to it in my consideration of this appeal.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the character and appearance of the area;
 - Whether the proposal would have an effect on a protected species or its habitat; and
 - Whether the proposed development would provide a suitable location for housing, having regard to the accessibility of services and facilities from the site.

Reasons

Character and appearance

5. The appeal site comprises a double garage and garden land which are associated with the host dwelling, No 3 Mole Hall Cottages. It lies a short

distance from the village of Widdington along Cornells Lane. Paddocks and open countryside interspersed with sporadic dwellings lie along the lane, and the appeal site is separated from the village by these.

6. Policy S7 of the Uttlesford Local Plan (2005) ("the ULP") states that planning permission in the countryside will only be given for development that needs to take place there, or is appropriate to a rural area. No evidence to indicate that the proposal needs to take place at the appeal site is before me, and therefore in this instance Policy S7 only permits the proposed development if its appearance protects or enhances the particular character of the part of the countryside within which it is set.
7. The single storey height and limited footprint of the garage at the site allows for views from the lane of the generous garden of the host dwelling, which contains a number of mature trees. The host dwelling consequently has a spacious appearance which is in keeping with its rural setting and the surrounding loose pattern of generally residential development within well sized plots. The site's natural features provide the lane with a rural setting.
8. Cornells Lane is designated as a Protected Lane in the Uttlesford Protected Lanes Assessment. Such lanes are protected for their historic, ecological and recreational value. The assessment concludes that the lane has a variety of aesthetic features or forms/alignment and/or a significant view.
9. The demolition of the garage and the construction of two dwellings of a significant size at the site would erode its spacious and natural appearance. The dwellings would be likely to occupy much of the site's breadth given the relatively narrow plots available, with a resulting mass of built form which would be inconsistent with the prevailing loose and spacious pattern of development. The lane's rural setting would be eroded by the replacement of the majority of the view of garden trees with built form.
10. Thus, the proposal would cause harm to the character and appearance of the area, with resulting conflict with Policy S7 of the ULP and the design aims of the National Planning Policy Framework ("the Framework").

Protected species

11. The garage has weather boarding, a feature which makes it more likely to be used by bats according to Natural England's ("NE") standing advice. Horseshoe and typical bats are a European Protected Species under Schedule 2 of the Conservation of Habitats and Species Regulations 2017.
12. Circular 06/2005 states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that it '...is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision'.
13. The NE advice sets out that survey reports are required for development projects that could affect protected species. It states that visual inspections are an acceptable method to survey for bats, and that these can be carried out all year round.

14. The appellant provides a bat, barn owl and nesting bird visual survey report of the garage which was carried out on 3 October 2018. The survey found no external or internal indications of bat activity and negligible bat roost potential.
15. The NE advice states that surveys should ascertain whether bats travel through or near features likely to be used as commuting routes, such as hedgerows, tree lines or water courses. Checks should also establish whether bats are active in habitats where they are likely to forage or feed.
16. The site's garden contains a significant number of relatively mature trees, in an approximately linear layout. The survey report concludes that foraging or commuting bats are likely to use the site to some extent, due to the habitats present within the site and the local landscape. Whilst the report considers that the immediate site is relatively isolated by the bordering arable fields, it notes that it contains tree lines, hedgerows, grassland and ornamental plants and shrubs within the garden which would contain an abundance of flying insects. It concludes that protected species are unlikely to be affected by the development because the proposed works are confined to the footprint of the existing structure, bare ground and mown grassland.
17. However, the trees would cast shade over a significant proportion of the rear garden area of the dwellings as a result of their position, height and crown spread, and would also lie close to the new dwellings. Whilst the proposal's layout and landscaping are matters reserved for future determination, much of the site is affected by the tree line and it is consequently likely that trees at the site would require alteration or removal in order to enable the development.
18. Furthermore, two 3-bedroom dwellings are likely to require a minimum of 4 parking spaces. Turning space for vehicles associated with both the new dwellings and No 3 Mole Hall Cottages would additionally be desirable so as to enable vehicles to leave the site in a forward gear, given the narrowness of the lane at this point and the restricted available visibility. Whilst the illustrative plans suggest that use of the current access is envisaged and therefore that these arrangements may be unchanged, it is likely that the trees within the front garden would be affected by the provision of parking and turning arrangements.
19. The intensification of use of the rear garden area by the occupants of 2 additional dwellings would additionally result in an increased level of disturbance by noise and artificial light which is likely to affect bats using the area.
20. As a result of these factors, I consider that the proposed works are unlikely to be confined to the footprint of the existing structure, bare ground and mown grassland, but would also affect the site's trees. The suggested provision of bat boxes and bat sensitive lighting does not provide sufficient assurance that any harmful effects on bats could be mitigated. The proposal consequently does not demonstrate whether it would have a harmful effect on a protected species or its habitat. It therefore conflicts with Policy GEN7 of the ULP, which sets out that development which would have a harmful effect on wildlife or geological features will not be permitted. Further conflict exists with the biodiversity aims of the Framework.

Location of development

21. The Council additionally considers the site to have an isolated location which is inconsistent with provisions within the Framework in respect of development in rural locations with reasonable access to services and facilities. These set out that planning decisions should avoid the development of isolated homes in the countryside unless certain circumstances apply. The word “isolated” in that phrase connotes a dwelling that is physically separate or remote from a settlement¹.
22. The appeal site is separated from the edge of built form in Widdington by fields and lies some distance from it along the lane. As such, it is physically separate from the settlement rather than part of an extension to it.
23. Widdington has a public house and village hall, but few other services and facilities. More are available at Newport, which lies beyond Widdington and has a railway station, a doctor’s surgery, schools, recreation ground, shops and a garage, amongst other facilities. The lanes between the site and Newport are narrow, unlit, and lack a footway. National speed restrictions apply to much of the route. These factors are likely to render it unattractive to pedestrians or cyclists.
24. However, the Framework notes that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that this should be taken into account in decision-making. Journeys by private car to Newport would be of a relatively short duration. A range of local services and facilities are consequently accessible from the site, and, whilst it is in an isolated location, there is no conflict with the aims of the Framework with regard to the creation of communities with adequate access to facilities and services.
25. The 3 dwellings which lie adjacent to the site form sporadic linear development along the lane, rather than a distinct settlement. It therefore differs materially from sites which were the subject of two appeal decisions² in other districts which have been submitted by the appellant.
26. The appellant also provides details of a recent planning permission³ for two dwellings at land west of The Willows, which lies closer to Widdington than the appeal site. The proposal was considered to lie sufficiently close to existing linear development within the village to comply with the rural housing aims of the Framework, and took into account a further recent permission⁴ which would extend the edge of built form in the village closer to the first site. Taking the resulting changing character of the local pattern of development into account, the location of the two permissions is dissimilar to that of the physically separate appeal site.
27. Although the site is physically isolated in accordance with the “Braintree” judgment, it has reasonable access to local services and facilities. There is consequently no conflict with the rural housing aims of the Framework in this regard. However, the appeal does not provide any special reasons for the location of the proposed development at this site, with resulting conflict with

¹ Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

² APP/W3520/16/3152003 and APP/Z1510/W/16/3148072

³ UTT/18/1806/FUL

⁴ UTT/18/1031/FUL

Policy S7 of the ULP. Further conflict exists with Policy H1 of the ULP, which identifies locations for housing development, and does not include the appeal site within these.

Other Matters

28. The appellant considers provisions within the Framework in respect of previously developed land to lend support to the proposal. The Framework defines previously developed land as land which is or was occupied by a permanent structure, with some exceptions. As land which is occupied by a garage, the appeal site forms previously developed land for the purposes of the Framework.
29. The Framework endorses the inclusion of previously developed land in brownfield registers for residential development, its use to meet local business and community needs in rural areas, and sets out circumstances in which its use is acceptable in the green belt. However, it provides no specific support for the re-use of previously developed land which does not appear in a brownfield register outside urban areas. Accordingly, I do not concur with the submission that the proposal is supported by provisions within the Framework in respect of previously developed land.
30. Paragraph c) of Policy H1 of the ULP provides support for the re-use of previously developed land outside urban areas. Due weight should be given to development plan policies according to their degree of consistency with the Framework. As the generalised approach of paragraph c) to previously developed land is inconsistent with the more specific provisions of the Framework in this regard, I attach only limited weight to the relevance of paragraph c) of the policy in determining the appeal.
31. However, there is nothing in the Framework to indicate that the definition of settlement boundaries is no longer a suitable policy response and therefore that such policies are bound to be out-of-date, having regard to Framework paragraph 213. The supporting text to Policy H1 states that the allocation of sites has taken their location and accessibility into account, which is consistent with support within the Framework for development in rural locations with reasonable access to services and facilities. I therefore attach moderate weight to the identified conflict with other locational requirements of Policy H1 of the ULP, despite the inconsistency of provisions within paragraph c) of the policy with the Framework.
32. The appellant refers to two appeal decisions⁵ which are considered to lend support for the proposal. The first would secure the long-term future of a listed building and associated structures, and consequently was considered against different circumstances to the current appeal. The second was issued prior to the handing down of the Braintree judgment by the Court of Appeal, and consequently different considerations applied. Moreover, even if these developments and circumstances were identical to those of the current appeal, they would not provide an example which should necessarily be followed even if harm were to result.

⁵ APP/W0530/W/16/3152125 and APP/Z1510/W/17/3189624

Planning Balance and Conclusion

33. As the Council cannot currently demonstrate a 5-year housing land supply (5Y HLS), in accordance with paragraph 11 d) of the Framework, and this is an application for the provision of housing, the development plan policies which are most important for determining the application are considered out-of-date. I am therefore required to consider, as stated in Framework paragraph 11 d) ii, if any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
34. There would be some economic uplift during construction through short-term employment and the purchase of building materials. Future occupiers would also contribute to the local economy. Socially, the development would add to the supply of housing in a location with reasonable access to services and facilities. That would be in accordance with the Government's objective of significantly boosting the supply of homes, especially in a context where there is no 5-year HLS. Occupiers would also be likely to participate in the local community and use relevant services.
35. Against that, the proposed development would cause unacceptable harm to the character and appearance of the area, the proposal does not establish whether it would result in harm to a protected species or its habitat, and the scheme conflicts with locational policies within the development plan, with resulting harm to the achievement of the spatial strategy for the area.
36. For these reasons the harm caused by the development would significantly and demonstrably outweigh the relatively modest benefits when assessed against policies in the Framework taken as a whole.
37. I have applied the "tilted balance" and have found that the proposal's benefits are outweighed by the identified harm. As such, the Framework, as a material consideration, indicates that the appeal should be dismissed. There are no other material considerations to suggest that the proposal should be determined otherwise than in accordance with the development plan, with which I have already found conflict.
38. Therefore, I conclude that for the reasons given above, the appeal should be dismissed.

C Beeby

INSPECTOR