



Appeal Decision

Site visit made on 14 May 2019

by C Beeby BA (Hons)

an Inspector appointed by the Secretary of State

Decision date: 19 July 2019

Appeal Ref: APP/C1570/W/18/3219258

Land at Mill Road/Church Lane, Debden, Saffron Walden CB11 3LD

- 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 Mrs N.S. Fiske against the decision of Uttlesford District Council.
 - The application Ref UTT/18/1007/OP, dated 9 April 2018, was refused by notice dated 19 September 2018.
 - The development proposed is the erection of two dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal seeks outline planning permission, with all matters reserved except access. I have considered the appeal on this basis and have treated any plans in relation to the reserved matters as illustrative.
3. The appellant has requested that I accept drawing number P4082-01 (Revision A) in my determination of this appeal. The drawing does not amend the proposal, but removes details relating to reserved matters shown on an earlier version.
4. In considering whether to accept the drawing I have had regard to the "Wheatcroft Principles". As the drawing makes no amendments to the proposal, there is no alteration on which consultations should have been carried out. The indicative elements which are removed on the new plan relate to matters reserved for later determination. The development is therefore not so changed that to accept the revised drawing would deprive those who should have been consulted of the opportunity of such consultation. Accordingly, I have formally considered drawing P4082-01 (Rev A) in place of drawing P4082-01 in my determination of this appeal.
5. The evidence makes reference to the emerging Local Plan (eLP). The eLP 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 those policies I have not attached full weight to them in my consideration of this appeal.

Main Issue

6. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

7. The appeal site lies outside development limits defined within the development plan and it is consequently in the countryside for local policy purposes.
8. The site is an area of undeveloped wooded land located at the junction of Mill Road and Church Lane. Mill Road is tree-lined for some distance as it approaches the village, and it becomes the High Street and the main road through the settlement where it passes the site.
9. The site lies at the end of the linear High Street and its undeveloped and wooded appearance forms a prominent corner of countryside within distant views along the street. Some views out to open countryside are possible through gaps in the site's vegetated boundaries. The site consequently emphasises the village's rural setting, and echoes the well treed appearance of the wider settlement. Its undeveloped nature also contributes to the quiet "sunken lane" character of Church Lane, and to its verdant and densely vegetated borders. The site is somewhat elevated in relation to Church Lane, and consequently it is also prominent in views from this vantage point.
10. The site is not highly visible when travelling towards the village along Mill Road due to the level of intervening trees and vegetation within the verge, although the natural form along its boundary contributes to the impression of a tree-lined avenue. This creates a verdant and rural approach which contributes positively to the appearance of the village.
11. The proposed two dwellings and associated drives and gardens would introduce significant domestic built form within the setting, which would have an urbanising effect which would cause harm to the area's verdant and rural appearance.
12. The density and height of the site's boundary landscaping is such that it would be likely to offer limited screening of the development in views along the High Street and from Church Lane. However, the development would be highly visible in such views due to the introduction of substantial 4+ bedroom detached properties at a density which would conflict with the prevailing looser pattern of development on the relevant side of Church Lane and Mill Road on a previously rural site. As a result, the development would have undue prominence in distant views along the High Street and those available from Church Lane. Glimpses of the development would also be possible when approaching the village along Mill Road.
13. The detrimental effect of the proposal would occur regardless of the final scale and design of built form at the site, and the lack of any applicable landscape designation at the site. This is because the proposal would be detrimental to a significant and prominent natural element within the village street scene by the alteration of its character from rural and verdant to developed and domestic.
14. The proposal would cause unacceptable harm to the character and appearance of the area, and would consequently conflict with Policy S7 of the Uttlesford Local Plan ("the ULP"), which states that development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set. Further conflict exists with Policy GEN2 of the ULP, which sets out that development will be permitted where it safeguards important environmental features in its setting, enabling their retention and

helping to reduce the visual impact of new buildings or structures where appropriate. Additional conflict exists with the design aims of the Framework.

Other Matters

15. A pond lies across the road from the appeal site, and immediately adjacent to the highway. An initial single protected species survey carried out on 6 May 2018 established the presence of 7 great crested newts ("GCNs") at the pond. GCNs are a European Protected Species ("EPS") under Schedule 2 of the Conservation of Habitats and Species Regulations 2017.
16. Circular 06/2005¹ 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.
17. Whilst the evidence does not establish whether GCNs use the appeal site, a report on a later series of ecological surveys concludes that the appeal site provides woodland habitat which is likely to be frequented by any local newt population. As a result, newts would need to cross the road in order to migrate between the pond and the terrestrial habitat available at the appeal site.
18. Whilst the appeal proposes the retention of the majority of the trees at the appeal site and a scheme of replanting is proposed, the proposal would alter the site's character from undeveloped woodland to built form and domestic gardens. The survey acknowledges that mown grassland and gardens are unsuitable resting/shelter habitat. Furthermore, Natural England's ("NE") species standing advice on GCNs states that private gardens should not be relied upon as compensation for terrestrial habitat which is lost through development. As a result, the effect of the development on the habitat at the site is likely to be one of destruction, which would be unacceptable.
19. The appeal proposes to mitigate any effect on the EPS by the creation of a new wildlife pond that meets the specifications of Natural England's Great Crested Newt Mitigation Guidelines, together with the provision of some compensatory terrestrial habitat and a hibernaculum. The pond and surroundings would lie within land adjacent to the appeal site, which is also within the control of the appellant. The compensatory habitat would be significantly smaller than that currently available at the appeal site, and as a result the appeal results in an overall loss of such habitat.
20. However, whilst it may be possible to address two of the factors (the dense vegetation and predatory fish) which are likely to render the existing pond unattractive to GCNs, traffic on the road which bisects the habitat offered by the existing pond and the appeal site presents a significant hazard to any GCNs migrating between the two.
21. The compensatory habitat would be provided by means of a Unilateral Undertaking ("UU") planning obligation under Section 106 of the Town and Country Planning Act. The signed and dated UU is submitted with the appeal. As site-specific impact mitigation the scheme is unlikely to constitute "infrastructure" and thus the obligation in question does not provide for the funding or provision of infrastructure. There is no evidence before me that the impact mitigation forms infrastructure which may be funded by any Community Infrastructure Levy charging schedule produced by the Council. As a result, I

¹ Biodiversity and geological conservation – statutory obligations and their impact within the planning system

consider that the planning obligation can lawfully be taken into account in the determination of this appeal.

22. Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 states that a planning obligation may only constitute a reason for granting planning permission for a development if it passes 3 tests, which I shall consider in turn.
23. The first is whether the obligation is necessary to make the development acceptable in planning terms. As the development would require the destruction of an area of terrestrial habitat which appears to be used by GCNs, it would have an unacceptable effect on an EPS in the absence of any mitigation of this effect. The obligation proposes measures which are intended to mitigate the proposal's unacceptable effect on an EPS. Thus, the obligation is necessary to make the development acceptable in planning terms, and passes the first test.
24. The second test is whether the obligation is directly related to the development. I have concluded above that the obligation would resolve the specific problem resulting from the proposed development. Thus, the obligation is directly related to the development, and passes the second test.
25. The third test is whether the obligation is fairly and reasonably related in scale and kind to the development. Whilst the compensatory habitat would be smaller than the existing habitat, it would remove the need for migrating GCNs to cross the road. It would provide habitat of a type which would be suitable for GCNs. As a result, the obligation passes the third test.
26. Whilst the UU passes the necessary tests, I have some concerns regarding its effectiveness in providing the intended mitigation. Firstly, the timetable set out in the UU allows for some works, including site clearance, ground investigation and surveying, to be carried out before the creation of the compensatory habitat. However, it seems to me that it would be desirable for the compensatory habitat to be provided prior to the commencement of any works at the site, in order to allow for a suitable nearby location to which any GCNs discovered in the course of works could be transferred.
27. Any development could only proceed if a protected species mitigation licence had first been obtained, and the licensing requirements state that new compensatory ponds should be created at least 6 months before moving any GCNs in such a case. I can see no reason in principle why a licence would not be granted, having regard to the 3 tests which are used when such licences are determined. Therefore the creation of the compensatory habitat prior to any works at the site might be secured by other means than the UU. However, my concerns regarding the inconsistency between the UU and the mitigation licensing requirements remain.
28. My second concern is that the obligation's wording does not state that it has been executed and delivered by the owner, as set out in the relevant guidance². Thirdly, the owner's covenant is positively worded, whereas a valid planning obligation should usually be in the "negative" form in order to restrict the use of the land. Lastly, no evidence of title to the land is provided with the

² Appendix N.2, "Procedural Guide: Planning appeals – England"

appeal, which is necessary in order for me to confirm whether the obligation could take effect.

29. Accordingly, the weight I attach to the scheme's benefits to an EPS is tempered by several factors. There are the 4 concerns regarding the effect of the UU which are referred to above. Furthermore, the 7 newts identified represent only a small population according to the NE advice, and consequently any benefits to an EPS would be limited in scale. Finally, 7 subsequent surveys which were carried out a short time after the initial survey (but still generally within the acceptable period for the survey methods used) did not find evidence of any GCNs at the existing pond. This renders the evidence regarding the extent of any affected GCN population somewhat ambiguous. I would attach only limited weight to the benefits of the proposal to an EPS even if the 4 identified concerns regarding the UU were to be resolved, in light of the 2 further matters referred to above.
30. My 4 concerns regarding the UU are, however, relatively minor. The compensatory habitat would offer a contiguous pond and terrestrial habitat which would be positioned farther away from the road, a feature which is supported by the NE advice. The factors which render the existing pond unattractive to a GCN population could be avoided at the compensatory habitat and as it would be designed to provide suitable habitat the new pond is likely to be attractive to the EPS. Thus, I conclude that the UU meets all 3 tests and therefore it is necessary, and it can be taken into account in my determination of this appeal. I note that the conclusions of the County Council are similar to my own on this matter.
31. The appellant submits that ULP Policy S7 is inconsistent with the provisions of the Framework and that it is out-of-date as a result, citing an assessment of the consistency of the ULP with the Framework (adopted by the Council in September 2012) which found the policy to be partly consistent. 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. Furthermore, the Framework states that development should recognise the intrinsic character and beauty of the countryside and that it should be sympathetic to local character, including the surrounding landscape setting. These provisions are broadly consistent with similar requirements within Policy S7 and, as a result, I do not consider the policy to be out-of-date in this respect.
32. I have had regard to other matters raised, including concerns about highway safety and the potential rerouting of water infrastructure. However, as I am dismissing the appeal on the main issue for the reasons given, I have not pursued these matters further.

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. 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 5Y HLS. Occupiers would also be likely to participate in the local community and use relevant services. The scheme would provide limited benefits to an EPS, as set out above.
35. Against that, the proposed development would cause unacceptable harm to the character and appearance of the area. For this reason 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. This would be the case even if the 4 identified concerns regarding the UU were to be resolved.
36. Thus, the proposal cannot benefit from the presumption in favour of sustainable development. There are no other material considerations to indicate that the proposal should be determined otherwise than in accordance with the development plan, with which I have already found conflict. Therefore, I conclude that for the reasons given above, the appeal should be dismissed.

C Beeby

INSPECTOR