
Appeal Decision

Site visit made on 23 July 2019

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2019

Appeal Ref: APP/C1570/W/19/3226701

Newlands, Howe Lane, Hempstead CB10 2NZ

- 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 & Mrs Midgley against the decision of Uttlesford District Council.
 - The application Ref UTT/18/3513/FUL, dated 21 December 2018, was refused by notice dated 14 March 2019.
 - The development proposed is a new dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Despite the description of development set out above, I consider the description found on the Decision Notice and the Appeal Form better reflects the scheme that is before me and that which the Council considered. My findings therefore relate to this description of development.
3. I have not made any judgement as to whether the land encompassing the appeal site is within the residential curtilage of Newlands. This is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. It is open to the appellants to apply to have the matter determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal.
4. The revisions to the design of the dwelling and its location within the site suggested as alternative development by the appellants would change the nature of the proposed development before me and deprive those that have not had the opportunity of consultation. With cognisance of the Wheatcroft principles, I have therefore disregarded these matters in my consideration of this appeal.

Main Issues

5. In this instance the main issues are: -
 - whether the site would be a suitable location for housing, having regard to development plan and national policies;
 - the effect of the proposed development on the character and appearance of the area; and

- the effect of the proposed development on ecology and biodiversity.

Reasons

Location of the development

6. Whilst the appeal site is situated within an area of countryside, in terms of whether the dwellings would be 'isolated' in the language of National Planning Policy Framework (the Framework) and the recent Court of Appeal judgements¹, it is important to have regard to the site's relationship to existing built development as well as accessibility to services and facilities. Paragraph 78 of the Framework seeks to restrict housing in rural areas to locations where housing will enhance or maintain the vitality of rural communities. Taking the physical dimension of isolation first, the dwellings would be located fairly close to other dwellings around Howe Lane and Champions End. Nonetheless they would do little more than add to an enclave of development encircled by open countryside on all sides, some distance away from the settlements of Hempstead, Great Sampford and Steeple Bumpstead.
7. Whilst the development might offer some support to the limited range of services, facilities and businesses that are available locally, this would not be significant due to the scale of the development and the limited range of facilities and services available. The reality is therefore that future residents would be obliged to travel further to other settlements such as Haverhill or Saffron Walden, where there are a greater range of facilities and services available.
8. In terms of accessibility, the appeal site is poorly located. Paragraph 103 of the Framework suggests that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. There are no shops or community facilities or bus transport facilities within a reasonable and convenient walking distance of the site. The local road network lacks street lighting and pedestrian footways. Accordingly, the opportunities to walk or cycle to the services and facilities available nearby are not therefore convenient or realistic ones, particularly after dark or in bad weather.
9. Given the location of the proposed dwelling, future residents would therefore be highly likely to be required to travel regularly by private motorised transport to access education, retail, employment and healthcare. This is the least sustainable travel option available. Whilst the existing occupants of Newlands and nearby dwellings may already choose to make such journeys, the proposed 4-bedroom dwelling could lead to a considerable increase in the use of such travel to and from the site. In the context of Policy S7 of the LP, the appellants have not referred to any special reasons why the development needs to take place in the proposed location, nor have they highlighted any other policies in the LP that would support the case for a dwelling in this location.
10. In light of all of the above, and whilst I accept that the dwelling could be constructed to high environmental standards, I conclude that the site would not be a suitable location for housing. The proposed development would therefore conflict with Policy S7 of the Uttlesford Local Plan Adopted 20 January 2005 (the LP), particularly as the first main issue above referred to the harm that the proposed development would cause to the character and appearance of the

¹ *Braintree DC v SSCLG* [2018] EWCA Civ. 610; and *Dartford BC v SSCLG* [2017] EWCA Civ. 141

area. The proposals would also conflict with the sustainable development objectives of the Framework, which aim to ensure development is in the right places; and minimises waste, pollution and the need to travel.

Character and appearance

11. The site is situated in the countryside, east of Hempstead and to the rear of the dwelling known as Newlands. Along with their plot size and shape, the design of dwellings within the area varies greatly. However, the arrangement of dwellings is coherent, as they are aligned with the streets and incorporate a frontage. The established planting of boundaries creates a verdant character. The space around the dwellings also provides a transition to the agricultural fields beyond. Taken together these stated features create a clear and distinct pattern to development that makes a significantly positive contribution to the character and appearance of the area.
12. The appeal site is substantial in depth and extends as far as Campions End to the north. The access serving the site is in place but terminates a short distance into the site. The proposed dwelling would be situated at the end of a long driveway, some way from Howe Lane. This driveway would be a new form of development that would be visible some distance beyond the street frontage. This would not be akin to the established visual characteristics of Howe Lane.
13. I appreciate that planting could be put in place to soften the appearance of the driveway but this would be unlikely to have a meaningful effect for some time. The proposed driveway would therefore have a significantly detrimental effect on the appearance of the street scene and the surrounding area.
14. I have no reason to dispute the assessment undertaken by the appellants in relation to the visual effect of the proposed dwelling like other dwellings nearby. Views and glimpses of the proposed dwelling would be through intervening planting or set against the backdrop of trees and hedges rather than the skyline. Due to the varied architecture locally, the design of the proposed dwelling would also not offend the appearance of the surrounding area. I also appreciate that the dwelling could be built to a high standard of environmental design, using 'Passivhaus' principles. Nevertheless, the argument that the dwelling would be out of public view is not a good one in principle; it could be repeated too often to the overall detriment of the character and appearance of the area.
15. The backland location of the proposed dwelling some way behind Newlands would also jar with the coherent frontage pattern of development, described above, and substantially reduce the openness of the space to the rear of Newlands. The proposed development would therefore have a significantly detrimental effect on the character of the area.
16. For the reasons outlined above, I conclude that the proposed development would harm the character and appearance of the area. The proposed development would therefore conflict with Policy S7 of the LP. This policy seeks to ensure that the countryside is protected for its own sake and that planning permission will only be given for development that needs to take place there, or is appropriate to a rural area. The policy also suggests 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 or there are

special reasons why the development in the form proposed needs to be there. It is the aspects of this policy that refer to character that would be offended, the other aspects of the policy that focus on the location of development are referred to in the second main issue.

17. The Framework is a material consideration and the main parties have referred me to it. In the context of development in the countryside, the Council refer to Paragraph 170, and I find that the proposed development would not accord with its requirement for planning decisions to contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Ecology and biodiversity

18. The Council is concerned that the proposed development would have a harmful effect on protected species, specifically in relation to grassland within the site and nearby ponds. The appellants have provided a second report in support of their original Ecological Survey and Assessment report which specifically seeks to address those concerns. The Council have referred to this report in their statement but it is unclear whether they maintain their concerns or withdraw the reason for refusal.
19. Nonetheless, having considered the content of both reports together, I find them to be well reasoned and address the matters raised by the Council. I have no reason to doubt the conclusions or the recommendations made, or the requirements for mitigation and enhancement of biodiversity. In particular, the assessment of nearby ponds dismisses their suitability as terrestrial dispersal habitat for great crested newts. Similarly, both reports allude to the site not being grassland and I observed on my visit that the grass was primarily cut short, so would not appear to be grassland.
20. In light of the above, I conclude that the proposed development would not adversely affect protected species within or near to the site. Hence, the proposals would be compliant with Policy GEN7 of the LP. This seeks to ensure that development that would have a harmful effect on wildlife or geological features will not be permitted unless the need for the development outweighs the importance of the feature to nature conservation. The policy requires nature conservation surveys to be provided, as well as measures to mitigate and/or compensate for the potential impacts of development and enhancement of biodiversity through the creation of appropriate new habitats.
21. The proposals would also accord with Paragraph 170 of the Framework. This requires that decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

Other matters

22. The appellant has suggested that the proposed development would help to build the 'critical mass' required to attract further infrastructure such as high speed fibre broadband. However, I am not provided with any tangible evidence of the requirements and commitments from providers, including the work that would be necessary to deliver such services. I therefore afford these matters limited weight in the determination of this appeal.

23. The appellants have referred to the conduct of the Council in the determination of the planning application, including the nature of the advice given and the approach to its decision-making. However, these are not matters for me to consider as part of this appeal.

Planning Balance

24. Whilst the Framework introduces a presumption in favour of sustainable development, this does not change the status of the development plan. Moreover, Paragraph 47 of the Framework states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
25. The Framework is a material consideration and the Council's supply of deliverable housing land available in the District is some way short of the five years required by the Framework (Paragraph 73). In the absence of five years supply of housing, policies for the supply of housing should be considered out-of-date, which the main parties do not dispute. The aspects of Policy S7 of the LP which refer to the effect of development on character and appearance are generally consistent with the aims of Paragraph 170 of the Framework. However, for the purposes of Paragraph 11(d) of the Framework, the policy is out of date in so far as the control over development in the countryside. I therefore afford it limited weight in this specific regard.
26. In light of this, the normal planning balance does not apply and the 'tilted balance' is engaged. Permission should therefore be granted, unless there are specific policies in the Framework which provide a clear reason for refusing the proposed development (Paragraph 11(d)(i) of the Framework). In this instance, there are no such policies in place. Permission should also be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole (Paragraph 11(d)(ii) of the Framework).
27. In the context of Paragraph 8 of the Framework, there would be economic and social sustainability benefits that would be brought to bear from the proposed development but given the scale of the development these benefits would be modest in their extent. Nonetheless, due to the Council's housing land supply deficit, I attach moderate weight to these benefits.
28. Weighing against the development would be the lack of sustainable travel options and significant harm caused to the character and appearance of the area. This would conflict with the environmental objective of sustainable development to protect and enhance natural and built environments and to minimise waste, pollution and the need to travel. I attach significant weight to these harms. Meanwhile, the absence of harm to the biodiversity of the area and possibility of biodiversity enhancements would have limited benefits in terms of environmental sustainability, particularly as many of the enhancements could be carried out without the proposed development.
29. Having regard to the above, I consider the harm would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The development would not therefore constitute sustainable development.

Conclusion

30. For the reasons given above I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR