



Appeal Decision

Site visit made on 2 September 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th September 2019

Appeal Ref: APP/W1525/W/19/3231735

Gatesgarth, Ladywell Lane, Sandon, Chelmsford, Essex CM2 7AE

- 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 Harrison against the decision of Chelmsford City Council.
 - The application Ref 18/02090/FUL, dated 14 December 2018, was refused by notice dated 15 February 2019.
 - The development proposed is described as 'redevelopment of site to provide 3no. detached dwellings including demolition of existing dwelling and alterations to access road'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - Whether the appeal scheme would be in a suitable location with reference to development plan policies concerned with housing in rural areas; and
 - The effect of the proposed development on the character and appearance of the area and protected species, namely bats.

Reasons

Whether the appeal scheme would be in a suitable location

3. To prevent the erosion of the intrinsic character and beauty of the countryside Policy CP5 of the CSDCP¹ seeks to contain urban growth to the defined physical limits of the urban areas and settlements. As part of this broader spatial strategy in the development plan, Policy DC2 of the CSDCP states that planning permission will be granted for development within the Rural Area beyond the Metropolitan Green Belt, within which the appeal site is located, provided it is for a closed list of development types.
4. The appeal scheme is for the erection of three dwellings that would be unconnected to a rural business or rural worker(s). Nor would they be affordable housing. As three dwellings are proposed in place of a single dwelling, the proposal, as a whole, cannot be considered a replacement dwelling in accordance with Policy DC11 of the CSDCP. The only remaining

¹ Core Strategy and Development Control Policies 2001-2021 Adopted 2008 and updated 2013

potentially relevant criteria in Policy DC2 is whether the proposal would be residential infilling in a village in accordance with Policy DC12 of the CSDCP.

5. The appeal site is located in Ladywell Lane, a narrow no through road with a handful of loosely arranged buildings along it. Development in the vicinity of Ladywell Lane cannot reasonably be described as a village. The nearest being Sandon, which is separated from Ladywell Lane by playing fields. Nevertheless, Policy DC12 permits infilling within the countryside (rather than just infilling within villages) subject to criteria, including that the site is a small gap in an otherwise built up frontage.
6. The properties within Ladywell Lane are irregularly spaced and interspersed amongst hedges, trees and gardens. Much of the appeal site encompasses the side garden of Gatesgarth, which adjoins the rear garden of Crosslands, a detached house to the west. The gap between these buildings is verdant and extensive. Accordingly, the appeal site is not a small gap within a built-up frontage and would not glean support from Policy DC12.
7. Thus, the proposal would not be in a suitable location as it would be at odds with Policy DC2 of the CSDCP. The proposal would therefore be at odds with, and harmfully undermine, the adopted spatial strategy in the development plan. Policy DC2 is consistent with the aims in the National Planning Policy Framework (the 'Framework') to recognise the intrinsic character and beauty of the countryside within a genuinely plan-led planning system.

The effect on the character and appearance of the area

8. Ladywell Lane is a narrow no through road that is also a public footpath. It is flanked by hedges and trees. The handful of dwellings along the lane are irregularly spaced and sited and generally situated in large plots. These aspects afford the lane several rural characteristics. However, the presence of a tennis club with a car park, other driveways and parking areas, ornamental planting and areas of boundary treatment provide some suburbanising influences. Accordingly, Ladywell Lane has a mixed character, but its setting amongst fields, its narrow configuration and the abundance of soft landscaping results in a sense of being in the countryside rather than a settlement.
9. The proposal would result in three tall, identically designed detached houses located in a row with comparatively little space in between. This would jar with the sporadic and irregular pattern of existing development along the lane. In this respect, the proposal would be a stark and discordant addition that would harm the character and appearance of Ladywell Lane. This limitation would be inherent to the scheme and therefore the imposition of a planning condition requiring a redesign of the three houses would be imprecise and unreasonableness. The proposal would also require the removal of much of the frontage planting and the paving over of most of the frontage. The combined effect of this would be to erode the verdant appearance of the lane and the continuity of the frontage hedge, to the detriment of the street scene.
10. An appeal² relating to a proposal for two dwellings across the road from the appeal site was dismissed in 2017 for being at odds with the spatial strategy in the development plan. The Inspector concluded that Ladywell Lane is not a narrow lane winding down a hillside and therefore does not demonstrate one of

² APP/W1525/W/16/3143960

the key characteristics of the Little Baddow and Danbury Wooded Farmland Landscape Character Area. He therefore concluded that the proposal before him would not take place in a valued landscaped, which the Framework seeks to protect. He found no harm to the wider landscape. The appeal scheme before me would likewise have a limited presence in the wider rural landscape.

11. More significantly, the previous Inspector found that the two houses then proposed (in outline) could be set in large plots in a manner consistent with those elsewhere in the lane and that existing landscaping could be retained. This would not be the case with the appeal scheme before me, as the three dwellings would be sited in comparatively small plots, close to one another and with relatively limited amounts of planting in between and along the frontage. In this respect, the appeal schemes are not similar and therefore my findings are not inconsistent with those of the previous Inspector.
12. The proposal would have a harmful impact on the character and appearance of Ladywell Lane because the stark and urban appearance of the development would seriously erode the sense users of Ladywell Lane have of being in a countryside location. In this respect, it would fail to recognise the intrinsic character and beauty of the countryside contrary to Policy DC2 of the CSDCP. It would also be unsympathetic to local character contrary to Paragraph 127 of the Framework.

The effect on bats

13. The appeal site is located amongst mature trees and close to hedges that form part of a wider network near Sandon Brook. This is the sort of area within which bats could be present. The existing building within the appeal site appears reasonably old, albeit significantly altered, and includes tile hanging. The method of construction offers a potentially suitable environment for roosting bats. Accordingly, there is a reasonable likelihood of protected species being present even though I have not been directed to any historic local records of this being the case. If present, roosting bats would be affected by the development because the existing building would be demolished.
14. The appellant has not provided any bat surveys because he considers they could be secured through a planning condition in the event the appeal was allowed. However, Circular 06/2005³, states that ecological surveys should only be left to a planning condition in exceptional circumstances. There are none in this case. It is necessary to identify the presence or otherwise of protected species before granting planning permission so that any impacts and potential mitigation can be identified and fully understood as material considerations. The absence of bat surveys is therefore a significant omission as there is an unacceptable risk that the proposal could harm bats, which are a protected species. A programme of measures for wildlife protection and enhancement, set out in a planning obligation, is not before me and therefore the appellant's assertion that this would outweigh any risk to bats is of negligible weight.
15. As such, I cannot be certain the development would attach appropriate weight to protected species and thus adhere to Policy DC13 of the CSDCP. Moreover, The Framework requires proposals to minimise impacts on, and provide net gains for, biodiversity. There is no evidence before me to suggest the proposal would achieve this requirement.

³ Biodiversity and Geological Conservation – see footnote 56 of the National Planning Policy Framework

Other Matters

16. The Council's third reason for refusal relates to the possible effect on the Blackwater Estuary Special Protection Area (SPA). Given my overall conclusion, it is unnecessary for me to consider this point further as the appeal has failed and therefore the proposal will have no effect on the SPA. The absence of harm in respect of this matter would not affect the outcome of the appeal.
17. The appellant has not provided substantive technical evidence that demonstrates the Council is unable to demonstrate a five-year housing land supply. Accordingly, I favour the Council's evidence on this point, as set out in its Land Supply Position Statement of April 2019, that it has a healthy supply of 6.61 years. Thus, the tilted balance in Paragraph 11 of the Framework is not engaged due to an inadequate housing land supply.
18. The housing requirement in the emerging Local Plan is likely to be greater than currently set out in the CSDCP, particularly as the Council are attempting to plan for a 20% buffer. It may be that a greater number of windfall sites will be necessary to meet the emerging housing requirement. The Framework seeks to promote the use of small sites as a means of delivering local housing requirements. However, although the housing requirement in Policy CP2 is below that in the emerging Local Plan, which is yet to be adopted, the strategy that flows from it is delivering enough housing as demonstrated by the healthy five-year housing land supply. Accordingly, the tilted balance is not relevant on account of the housing requirement in the emerging Local Plan being greater than that in Policy CP2 of the CSDCP.
19. The appeal scheme would deliver several benefits as it would be an apparently deliverable windfall development that would provide limited support to the local economy through construction jobs and the circulation of funds. In addition, the proposal would make a more efficient use of land and modestly boost housing supply. Nevertheless, the proposal would undermine the spatial strategy for housing in the CSDCP, harm the character and appearance of the area and potentially harm biodiversity. This conflict with the development plan is a point of significant weight against the appeal scheme. Thus, the adverse impacts of the proposal would outweigh its modest cumulative benefits. This does not indicate that the proposal should be determined other than in accordance with the development plan.

Conclusion

20. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Graham Chamberlain
INSPECTOR