The Planning Inspectorate

Appeal Decision

Site visit made on 16 October 2019

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 13th November 2019

Appeal Ref: APP/W1525/W/19/3232858
Homecroft, Southend Road, Great Baddow, Chelmsford CM2 7AD

- 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 Jesse Pryke against the decision of Chelmsford City Council.
- The application Ref 19/00388/FUL, dated 5 March 2019, was refused by notice dated 8 May 2019.
- The development proposed is described as "New retirement bungalow within the existing grounds of Homecroft site. Infilling area between existing house and neighbouring farm buildings".

Decision

1. The appeal is dismissed.

Procedural Matters

2. I have been made aware of a nearby appeal at Gatesgarth[1]. The decision letter for this appeal has recently been issued.

3. Although the given address states that the site is on Southend Road, the road fronting the site is referred to on plans and in the main parties' documentation as Molrams Lane. I have therefore used this name to identify the road directly fronting the site and have determined the appeal on this basis.

4. The appellant refers to the property to the south of the appeal site that was granted planning permission, Council Ref 13/01116/FUL, for a replacement dwelling, as Brooklands Dairy. I note that the decision notice for this permission refers to "Brookside Farm". I will refer to the property as Brookside Farm in this appeal as that is the name provided on the decision notice.

5. Subsequent to the application being determined by the Council, a Tree Preservation Order (TPO) has been made on 23 July 2019 which protects the two oak trees on the site frontage.

6. Since the application was determined the appellant has provided a financial contribution towards mitigating the effects of the proposal on European Protected Sites. A payment under Section 106 of the Town & Country Planning Act 1990 has been provided to secure the contribution and as a consequence the Council consider that reason for refusal 4 has been addressed. Although this issue is no longer in dispute between the parties, it is a matter that I will return to later in my decision.

[1] APP/W1525/W/19/3231735

7. The Chelmsford Draft Local Plan 2018 (the emerging Local Plan) has been submitted for examination. However, the emerging Local Plan has yet to be examined and found sound and so attracts limited weight as a material consideration.

Main Issues

8. The main issues are: -

- Whether the site is a suitable location for a new dwelling having regard to local planning policy and the character and appearance of the surrounding area;
- The effect of the proposal upon highway safety with particular reference to vehicle movements at the site access onto Molrams Lane;
- The effect of the proposal on the living conditions of occupiers of Homecroft with particular reference to noise and disturbance from passing vehicles and light intrusion from headlights; and: -
- The effect of the proposal on a European Designated Site.

Reasons

Suitable location for a dwelling

9. The appeal site is fronted by Molrams Lane. In the vicinity of the site Molrams Lane is an unlit single carriageway road subject to a 60 MPH mandatory speed limit with a footway on the same side as the site. Much of the site frontage is occupied by a bus layby. The appeal site lies within a small group of buildings in an area of sporadic development, with buildings irregularly spaced along the road.

10. The boundary to Molrams Lane is formed by a fence and mature planting of generally moderate height, including two prominent oak trees, and is occupied by Homecroft, a detached two-storey dwelling set back from the road within a large plot. Access is currently gained at the northern end of the Molrams Lane frontage, towards the end of the bus layby.

11. To the north of the site lies a residential dwelling, Crosslands, whilst to the south lies Brookside Farm and its associated outbuildings. To the east lies an open field associated with the appeal site.

12. The proposed development would sub-divide the plot and introduce a large bungalow into the southern area of the garden of Homecroft, accessed by a driveway leading from the existing access.

13. There is no disagreement between the parties that the proposal lies outside of any defined settlement as identified within the development plan and within the Rural Area as identified on the Proposals Map.

14. Policy DC2 of the Core Strategy and Development Control Policies 2001-2021, adopted 2008, (the Core Strategy) seeks to protect the countryside within the Rural Area for its intrinsic character and beauty. The policy makes provision for development within the Rural Area provided that it does not adversely impact on the intrinsic character and beauty of the countryside and provided it is for,

amongst other things, residential infilling in villages in accordance with Policy DC12.

15. Policy DC12 of the Core Strategy allows residential infilling outside the Urban Areas or Defined Settlements provided, amongst other things, that the site is a small gap in an otherwise built up frontage and the development does not detract from the intrinsic character and beauty of the surrounding countryside. The aims of DC2 and DC12 are broadly consistent with the aims of the National Planning Policy Framework -2018- (the Framework).

16. The Framework does not impose a blanket restriction on development outside defined settlements, nor does it explicitly prevent the use of development boundaries. The appeal site is located in close proximity to existing dwellings and is not isolated and so the countryside location does not conflict with paragraph 79 of the Framework. Paragraph 78 supports new housing where it will enhance or maintain the vitality of rural communities and so, whilst the site is outside any defined settlement boundary this in itself does not persuade me that the site is in an unsustainable location.

17. Whilst the site lies within a group of buildings fronting Molrams Lane this development is sporadic, loose knit and has significant gaps of varying size between buildings. Further, the gap between Homecroft and Brookside Farm is not small and, given the irregular spacing of structures along Molrams Lane, the development does not complete an otherwise built up frontage as the residual gaps would need further development to complete the built-up frontage.

18. The site has a domestic character, forming part of the garden of Homecroft. However, this is not out of keeping with rural character, particularly in the countryside where development is sporadic and other open land, including sizeable gardens associated with residential development, contribute to the space between buildings. The proposal would introduce a sizeable dwelling to the gap between Homecroft and Brookside Farm. The dwelling would be of a single storey in height and largely screened from the public realm by the existing hedge and fence fronting the site. However, there would still be views of the dwelling from the public realm above and through the hedge and from Homecroft itself. Thus the increase in built form would also result in a noticeable urbanisation of the locality.

19. The two existing oak trees on the site frontage are prominent in views along and from Molrams Lane and make a positive contribution to the rural character of the street scene and are protected by a TPO. A Tree Survey Report (TSR) was submitted in support of the planning application. This identifies both trees as having a retention category of high quality.

20. The TSR identifies that both trees are at risk should traditional 'dig' techniques be used in the construction of the driveway. One of these trees, identified as T2 in the TSR, is close to the proposed shared access and its root protection area (RPA) extends across the access and proposed drive.

21. Whilst, subsequent to the construction phase, the increase in vehicle movements would, on a daily basis, be small, the access would be likely to experience an overall increase in vehicle movements. The TSR identifies that there is a particular risk of soil compaction from construction vehicles.

22. The proposal would strengthen the surfacing for the driveway using a no dig construction. However the new hard surface extends significantly into previously unsurfaced ground within the RPA. The proposed additional depth of surfacing during the construction period is considerable and, although half of this depth will be removed following completion of the construction phase, half will remain.

23. Given this additional surfacing and its weight, both during the construction phase and subsequently, together with additional loading from construction vehicle movements, I cannot be certain that the proposed no dig construction would be sufficient to protect the trees from harm.

24. The loss of the trees would significantly alter the rural character of the street scene, bringing the built forms of the buildings into greater prominence. The development would, therefore, be contrary to Policies DC2 and DC12 of the Core Strategy.

25. Great Baddow has a range of services and facilities. However, whilst the edge of the built up area is relatively close, these services are some distance away. The intervening roads are, in parts, unlit and subject to a 60 MPH speed limit. There is a continuous footway between the appeal site and the services in Great Baddow. There is a bus service serving the village providing connection to Chelmsford and Southend-on-Sea with a full range of shops and services and access to the wider public transport network. However, on the basis of the evidence before me, the service is restricted in frequency.

26. The nature of the local roads with their lack of lighting and vehicular speeds and the distances involved are such that they would deter pedestrians and cyclists, particularly after dark, with children or during inclement weather and so residents of the site would still rely heavily upon the private car for their day-to day needs.

27. The Framework promotes sustainable development in rural areas, requiring that housing should be located where it will enhance or maintain the vitality of rural communities especially where this will support local services. The Framework recognises that rural housing development in smaller settlements can support services in a village nearby and that sustainable transport solutions will vary between urban and rural areas. However, in this instance, there is no meaningful alternative to using the private car to satisfy the day-to-day needs of future occupiers. Given the modest scale of development there is very limited scope to improve connections for walking, cycling or public transport, therefore dependency upon private motor vehicles would be likely to be almost total.

28. I therefore find that the site is not a suitable location for a new dwelling, having regard to local planning policy and the character and appearance of the surrounding area. The development would therefore be contrary to Policies DC2 and DC12 of the Core Strategy. It would also be contrary to the aims and objectives of the Framework which seek to locate development in locations that promote sustainable travel and limit future car use and support a prosperous rural economy.

29. I have been made aware of a development at Star House in Bicknacre, Council Ref 17/00372, and an appeal decision at Paglesham House in Broomfield, PINS Ref APP/W1525/W/17/3189854. However, I have limited information before me

regarding the planning background to these proposals upon which to decide the degree to which they are contextually similar to the proposal before me. I have, in any case, determined this appeal on its own merits.

Highway safety

30. Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

31. The existing access to the site is located towards the northern end of the bus layby and serves a single dwelling. This access would be shared by the proposed dwelling. The additional dwelling would add to the vehicular movements associated with an additional household to the existing use.

32. Molrams Lane is a road providing access to the development fronting it, but also serves as a slip road onto, and off of, Southend Road. In the vicinity of the appeal site it is subject to a 60 MPH speed limit and carries two-way traffic.

33. The Highway Authority have, in the absence of a supporting traffic speed survey to justify a reduction in the required visibility, requested visibility splays providing 215 metres visibility at a set back of 2.4 metres from the edge of the running carriageway. This would accord with the requirements of the Design Manual for Roads and Bridges (DMRB).

34. Given the nature of the road in regard to its function, layout and the degree of active frontage I consider the use of DMRB as the basis for required visibility to be, in this instance, a reasonable approach.

35. Visibility splays are required to ensure that emerging and approaching drivers have sufficient warning of each other's presence and intentions to allow safe manoeuvring. To ensure the availability of visibility splays they should be either under the control of the owner of the access, or in public ownership.

36. The appellant has not provided a vehicular speed survey to justify a reduction in the design speed for the road, nor shown the visibility splays that can be achieved on a plan. However, the Highway Authority have confirmed that their visibility standards are met for the splay to the south.

37. The Highway Authority have measured the maximum visibility that can be achieved to the north within highway land as being 49 metres. This would be significantly short of the distance required within DMRB.

38. The traffic associated with an additional dwelling would intensify the use of the access, albeit the increase in the number of vehicle movements would be small and turning space is provided within the site to allow egress in forward gear. No accident history has been identified at or in the vicinity of this junction. Nevertheless, based upon the evidence before me, given the significant shortfall in available visibility to the north and increased use of the junction as a result of the development I find that the increase in risk to highway users would be significant.

39. Concerns have been raised that use of the access would conflict with buses using the layby and that visibility to the south would be obstructed for emerging vehicles by buses when occupying the bus stop.

40. Given the relative infrequency of the bus service and small numbers of additional vehicles using the access the increased risk to highway users resulting from this particular aspect of the development would be very low.

41. Whilst I find that the development would not result in material harm to highway safety as a result of increased conflict with buses using the layby, I conclude that it would result in material harm to highway safety with particular reference to vehicle movements at the site access contrary to the objectives of the Framework which, amongst other things seek to ensure provision of safe, practicable access to development and create places that are safe, secure and attractive which minimise the scope for conflicts between pedestrians, cyclists and vehicles.

Living conditions of occupiers of Homecroft

42. The front and south-facing facades of Homecroft contain windows at ground floor level. The proposed driveway would pass between the front façade of Homecroft and the existing hedge fronting Molrams Lane.

43. The new dwelling would be accessed past the host dwelling and locate its parking, with associated manoeuvring of vehicles, close to the side garden of Homecroft. Whilst the number of vehicle movements accessing the proposed development would be small, this would introduce comings and goings, close to habitable rooms on the front of the dwelling, with increased noise and disturbance, which would be out of the control of the occupiers of Homecroft.

44. Concerns have been raised regarding light intrusion from the headlights of vehicles passing Homecroft to access the development. Such light intrusion could be contained and mitigated by the provision of a suitable boundary treatment between the proposed dwelling and Homecroft and so, were I minded to allow this appeal this effect of development could be controlled to an appropriate level by a suitable planning condition requiring the submission of boundary details.

45. I therefore conclude that subject to the imposition of a suitable planning condition, the proposed development would not result in material harm to the living conditions of occupiers of Homecroft in terms of light intrusion from headlights. However, it would result in material harm to the living conditions of occupiers of Homecroft with particular reference to noise and disturbance from passing vehicles. The proposal is therefore contrary to Policy DC42 of the Core Strategy which requires, amongst other things, that development does not cause unacceptable effects on adjoining sites, property or their occupiers.

Effect on European Protected Site

46. The site is located within the zone of influence of the Essex Estuaries Special Area of Conservation (the SAC), which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Policy DC13 of the Core Strategy seeks to protect such sites from harm and, where necessary, seek mitigation against any adverse effect of development. Within the emerging Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (the Essex Coast RAMS) strategic mitigation measures are incorporated to be delivered to avoid adverse impacts. The appellant has provided a financial contribution towards

mitigating the effects of the proposal on the SAC. This has been secured by a payment under Section 106 of the Town and Country Planning Act 1990.

47. However, the Court of Justice of the European Union recently ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage[2]. This responsibility now falls to me within this appeal. Such an assessment is necessary regardless of the status of the policies of the development plan.

48. Had I been minded to allow the appeal, it would have been necessary for me to seek additional information from the parties and consult Natural England in order to undertake the AA. The AA is required on a case-by-case basis to determine whether or not the project will adversely affect the integrity of the site. It would also have required a consideration of whether or not any proposed mitigation would be adequate, effective, could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

Other Matters

49. My attention has been drawn to the recently dismissed appeal at Gatesgarth. In that case the Inspector concluded that the proposed development could not be considered as an infill plot. I therefore consider that, whilst the development at Gatesgarth is not contextually similar in terms of scale, in this respect, there is no conflict between my conclusions and the approach taken by the Inspector in that case.

50. The development is described as a "retirement bungalow", however, once built, there is nothing before me to show how future occupation could be controlled and so I have given limited weight to that part of the description.

Planning Balance

51. The development would provide benefits in terms of delivering an additional home to boost local housing supply. Whilst the Council is able to demonstrate a five year supply of housing land, this is not a maximum figure and there is no evidence to suggest that a small development of one dwelling would result in a significant oversupply of housing in the area. There would be minor benefits to the local economy in terms of short term employment in the construction industry and longer term support to shops and businesses. Taken together, given the limited scale of the development these benefits carry limited weight.

52. Given the location of the site and the lack of access to safe walking and cycling routes or public transport to provide for day-to-day needs it is likely that future occupants of the development would be heavily reliant on private motor vehicles to access local shops and services. This, together with the harm that I have found by virtue of the proposal undermining the adopted settlement strategy set out within the Core Strategy, the character and appearance of the area, highway safety and the living conditions of occupiers of Homecroft are significant factors weighing against the scheme.

[2] People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

53. Whilst the issue of the effect of the site on European Sites remains unresolved the effects could only be, at best, neutral in my considerations.

54. In conclusion the identified harm would significantly and demonstrably outweigh the limited benefits provided by the scheme when considered against development plan policies and the Framework when read as a whole.

Conclusion

55. For the reasons given above, and having regard to all other matters raised, the appeal is dismissed.

I Dyer

INSPECTOR