
Appeal Decision

Site visit made on 13 November 2019

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2019

Appeal Ref: APP/C1570/W/19/3235257

Land at Bigods Lane, Great Dunmow, Uttlesford CM6 3BE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Calum Morris on behalf of GVD against Uttlesford District Council.
 - The application Ref UTT/18/3157/OP, is dated 3 October 2018.
 - The development proposed is outline permission for residential development of up to 50 units, including 50% affordable (25 units).
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Decision

1. The appeal is dismissed and outline planning permission is refused.

Procedural Matters

2. The appeal proposal is for outline planning permission with access only to be determined at this stage and with appearance, landscaping, layout and scale reserved for future approval. Whilst not formally part of the scheme, I have treated the details relating to the matters reserved for future approval submitted with the appeal application as a guide to how the site might be developed.
3. I have identified the main issues in this appeal having reviewed the Council's appeal statement, which sets out their main concerns with respect to the proposal.
4. I understand that the emerging Uttlesford Local Plan (the EULP) has reached examination. However, the main parties agree that the EULP is at a stage that attracts limited weight and I have no reason to disagree. I shall consider the appeal on this basis.

Main Issues

5. The main issues are:
 - The effect upon the character and appearance of the rural area; and
 - Whether or not the proposed development makes an adequate contribution towards affordable housing and other infrastructure requirements.

Reasons

Character and appearance

6. The appeal site is situated outside of the defined settlement limits of Great Dunmow as well as outside of the Town Development Area as defined in the Great Dunmow Neighbourhood Plan 2015-2032 (made December 2016) (the GDNP). It is thus defined as countryside in local planning policy terms. It is situated to the north-eastern edge of Church End, which itself is an area/settlement situated to the eastern edge of Great Dunmow and located beside the Chelmer River. The site forms a part of the river valley and is located on ground that rises in an approximate west to east direction.
7. Policy DS1 of the GDNP seeks to contain the spread of the town within existing built-up areas and to protect the rural setting of Great Dunmow. Saved Policy S7 of the Uttlesford Local Plan (January 2005) (the Local Plan) sets out that in the countryside, which will be protected for its own sake, planning permission will only be given for development that needs to take place there or is appropriate to a rural area. Saved Policy S7 is clear that there will be strict control on new building and that development will only be permitted if its appearance protects or enhances the particular character of the countryside within which it is set.
8. The appeal site itself is inherently rural in its character and appearance and is formed of part of an arable field that is situated alongside considerable areas of neighbouring agricultural land. It reads as a part of the countryside around Great Dunmow and is prominently located in the sense that it is sandwiched between The Broadway and Bigods Lane. Both serve as approaches into the settlement. From inspection, I observed The Broadway to be a popular route regularly used by vehicles.
9. Indeed, the stretch of The Broadway where development is proposed to occur is currently clear of built development to both of its sides and only scattered forms of development can be observed across areas of countryside in proximity. In this context the proposal would have a strong urbanising influence at an important approach into Church End and Great Dunmow. Whilst located upon a rising valley slope, I noted, from inspection, that views of the site were available from a considerable distance when approaching on The Broadway.
10. It is also the case that the development would be seen from public rights of way. A footpath runs an approximate east-west axis on the opposite side of The Broadway to the site and a further footpath connects to Bigods Lane and runs an approximate southwest-northeast axis to the north of the site. From both these rights of way the development would be seen and experienced against a fundamentally rural backdrop and would appear as a prominent excursion into the open countryside.
11. I acknowledge that the site has no formal landscape designation. It nevertheless forms part of an attractive rural valley landscape. Whilst a substantial area of open space (including a drainage pond) is depicted to the site's northern side on the indicative masterplan layout plan that is before me, even if this were to ultimately be delivered it is still the case that a significant extent of development is proposed and that a not insignificant geographic extent of the local landscape would be influenced by it.

12. A Landscape and Visual Appraisal (October 2018) (the LVA) accompanied the planning application that is now the subject of this appeal. I do not agree with the LVA's finding that the scale and nature of development would be in keeping with Church End. Indeed, it would protrude a substantial distance to the east along The Broadway in a location typified by open agricultural fields and of inherent rural character and would not appear as logical, discreet or well-planned extension to the area/settlement. Any landscape screening that could be put in place to the site's outer boundaries, if substantial in extent, would be unlikely to allow the development to integrate effectively with its receiving environment and, in any event, would take time to properly establish.
13. For the above reasons the proposal would cause harm to the character and appearance of the rural area. The proposal conflicts with saved Policy S7 of the Local Plan and with Policies DS1, LSC1 and LSC3 of the GDNP in so far as these policies states that there will be strict control on new building in the countryside, that development will only be permitted if its appearance protects or enhances the particular character of the countryside within which it is set, that the rural setting of Great Dunmow shall be protected and that development will always, where appropriate, seek to enhance and protect the floodplain and the setting of the Chelmer Valley.

Affordable housing and other infrastructure requirements

14. Saved Policy H9 of the Local Plan and its supporting text make it clear that the appeal proposal should provide 40% affordable housing. The Council's Housing Enabling Officer has confirmed this requirement and has set out a requested mix and tenure split, which would provide a range of affordable rented and shared ownership properties. The appellant has confirmed an intention to deliver 50% of the proposed new dwellings as affordable homes, which is in excess of the Council's policy requirement. However, no detail of the intended mechanism to secure this level of provision is before me.
15. Indeed, no planning obligation has been provided and no potential planning condition has been advanced. I also note that the National Planning Practice Guidance (the Guidance) is clear that only in exceptional circumstances will a negatively worded planning condition, requiring a planning obligation or other agreement to be entered into before the commencement of development, be appropriate. I do not find exceptional circumstances to apply here. In the absence of an appropriate mechanism to secure affordable housing, I have no alternative but to determine the appeal based on no affordable housing provision being secured.
16. Furthermore, saved Policy GEN6 of the Local Plan makes it clear that development will not be permitted unless it makes provision at the appropriate time for community facilities, school capacity, public services, transport provision, drainage and other infrastructure that are made necessary by the proposed development.
17. The Local Education Authority has requested contributions towards primary education and early years and childcare based on their standard formulae. The Highway Authority has requested a financial contribution to contribute to a bus strategy for Great Dunmow in the interests of providing a regular service to the proposed development. The appellant has confirmed that a figure has been negotiated and agreed with the Highway Authority. For the avoidance of doubt, the Guidance makes it clear that no payment of money can be positively

required via condition when granting planning permission and no planning obligation to secure the agreed financial contribution is before me.

18. I am satisfied that a policy-compliant level of affordable housing as well as the various contributions requested by the Highway and Local Education Authority are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind. Thus, the failure to secure these contributions weighs heavily against the proposal.
19. I note that the Council has also referenced that no mechanism is in place to secure a contribution towards health care facilities as well as the provision of open space and its subsequent maintenance. However, from the evidence before me, such requests have not been substantiated. Indeed, in these contexts I have not been provided with correspondence from any relevant statutory authority. Nor have I been made aware of any strategy related to the delivery of public open space in the District. I cannot be certain therefore that such contributions/provisions are necessary to make the development acceptable in planning terms.
20. Nevertheless, in the absence of an appropriate mechanism to secure affordable housing as well as highway and education contributions, I find that the proposal does not make an adequate contribution towards affordable housing and other infrastructure requirements. The proposal conflicts with saved Policies H9 and GEN6 of the Local Plan in so far as these policies require an element of affordable housing of 40% of the total provision of housing and the provision of infrastructure to support development.

Planning Balance

21. I am of the understanding that a 2.68 year housing land supply currently exists in the District, which represents a significant shortfall. The Framework is clear that where a five-year supply of deliverable housing sites cannot be demonstrated the presumption in favour of sustainable development, as set out under paragraph 11 of the Framework, is engaged. For decision making this means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework's policies taken as a whole.
22. Whilst paragraph 14 of the Framework identifies different considerations where a neighbourhood plan is present, its provisions would not apply in this case because the GDNP was made in excess of 2 years ago. Furthermore, one of the Framework's provisions refers to a 3-year supply of deliverable housing sites and the supply in the District is lower than that.
23. I have identified conflict with saved Policy S7 of the Local Plan. However, this policy is not consistent with the Framework in terms of its approach to countryside protection. This is because the Framework does not imply that protection from development be given to the countryside in its totality, rather that recognition be given to the intrinsic character and beauty of the countryside. I apportion only limited weight to the conflict I have identified with saved Policy S7.
24. Policy DS1 of the GDNP, with which I have also identified conflict, acknowledges the value of protecting Great Dunmow's rural setting.

Nevertheless, it has the effect of restricting the supply of housing by directing future housing growth to within a defined Town Development Area. I apportion only limited weight to the scheme's conflict with Policy DS1. Nevertheless, I apportion significant weight to the conflict I have identified with Policies LSC1 and LSC3 of the GDNP, which are broadly consistent with the Framework's requirement that developments are sympathetic to local character and recognise the beauty of the countryside.

25. In the context of the Framework, the proposal would cause harm by virtue of failing to recognise the intrinsic character and beauty of the countryside which, when noting the site circumstances under consideration here as outlined in my reasoning above, attracts significant weight in the planning balance.
26. Furthermore, I have identified conflict with saved Policies H9 and GEN6 of the Local Plan. These are broadly consistent with the Framework in so far as it expects planning policies to specify the type of affordable housing required and for it to be delivered on-site. The Framework acknowledges that planning obligations can be used to make otherwise unacceptable development acceptable, when applied in accordance with the relevant CIL tests. I apportion significant weight to the conflict I have identified with saved Policies H9 and GEN6 and to the associated harm.
27. Turning to the scheme's benefits, it would deliver 50 additional residential units in a District where there is currently a significant shortfall in housing land supply. The delivery of 50 homes would make an important contribution towards the overall housing land supply position in the District. I thus apportion this benefit of the scheme significant weight. The scheme would also generate jobs and investment during the construction phase and expenditure in the local economy and support for local community facilities in the area once occupied, these are benefits that attract moderate weight given the non-strategic scale of development under consideration.
28. Having considered the benefits and adverse impacts of the scheme before me, I conclude that the harm and policy conflict that I have identified would significantly and demonstrably outweigh the proposal's benefits when assessed against the Framework's policies taken as a whole. The presumption in favour of sustainable development, as set out in the Framework, does not apply therefore. The proposal conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conclusion

29. For the reasons set out above, the appeal is dismissed.

Andrew Smith

INSPECTOR