
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: 16 December 2019

Appeal Ref: APP/C1570/W/19/3235172

Moorlea, Bartholomew Green Lane, Bartholomew Green, Felsted CM3 1QG

- 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 Dobbs on behalf of DBS Contracting Ltd against the decision of Uttlesford District Council.
 - The application Ref UTT/19/1038/FUL, dated 3 May 2019, was refused by notice dated 26 June 2019.
 - The development proposed is demolition of existing dwelling and erection of a pair of semi-detached dwellings with new vehicular access.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Dobbs on behalf of DBS Contracting Ltd against Uttlesford District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Council, via their appeal statement, has introduced an additional reason for refusal, which relates to the adverse impact of the scheme upon a protected tree (the oak tree). It has been confirmed that the relevant Tree Preservation Order was made in September 2019, after the Council's refusal of the planning application that is now the subject of this appeal. Below, I have identified the main issues in this appeal accordingly.
4. I am satisfied from the evidence before me that the emerging Uttlesford Local Plan (the EULP) is at a stage that attracts limited weight. This is because there is no certainty that its policies shall ultimately be adopted in their current form. I shall consider the appeal on this basis.
5. The emerging Felsted Neighbourhood Plan 2018-2033 (the EFNP) is at an advanced stage. The submission version of the EFNP has been independently examined and the examiner's report, dated 29 September 2019, confirms that, subject to specified modifications, it meets the requirements that allow it to proceed to a local referendum, which is now due to take place on 30 January 2020. On this basis, the EFNP's emerging policies can be considered to demonstrate general conformity with the National Planning Policy Framework (February 2019) (the Framework). Nevertheless, the EFNP is at a stage that attracts moderate weight in my consideration of this appeal.

Main Issues

6. The main issues are:

- The effect upon the character and appearance of the rural area, including the likely long-term effect upon a protected oak tree;
- Whether the appeal site represents an appropriate location for housing, having particular regard to access to facilities and services; and
- The effect upon highway safety.

Reasons

Character and appearance, including the long-term effect upon a protected tree

7. The appeal site is situated at Bartholomew Green, a rural hamlet made up of various clusters and sporadic forms of development. The site itself currently contains a single bungalow and is located within a short linear row of residential properties. Nevertheless, development along Bartholomew Green Lane is typically infrequent and the stretch containing the appeal site has retained a green and semi-rural character and appearance. This is contributed to by the oak tree, which is situated to the southern side boundary of the site.
8. 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. The policy 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.
9. In this instance the proposal is focussed upon the redevelopment of an existing residential plot. Indeed, the intended built footprint would occupy a similar position within the site when compared to the existing bungalow's current placement. Whilst a pair of two-storey semi-detached properties would be more prominent in the streetscene when compared to the existing bungalow, the newly proposed houses would be respectful of the scale and form of other properties in the immediate vicinity. Whilst the proposal would have an urbanising influence, the resultant adverse effect upon the countryside's character would be limited when the above-referenced circumstances are factored into consideration.
10. The oak tree is a prominent individual specimen that occupies a visible location adjacent to Bartholomew Green Lane (the Lane). From inspection, it appeared to be in good health and exhibited a strong overall form. It is evidently a specimen worthy of protection that can realistically be expected to make a long-term contribution to the area.
11. The proposal involves the provision of a vehicular drive/turning area in immediate proximity to the oak tree. The appellant has indicated that a no-dig construction technique would be utilised within the oak tree's root protection area. I observed the land level adjacent to the tree to be relatively flat such that only minimal excavation/ground works could realistically be expected as part of any future surface installation. The resultant change in ground conditions necessitated by the installation of a new no-dig surface would be

expected to be limited in extent and would be anticipated to occur over time as any newly installed surface established itself. I am thus satisfied that, should the appeal be allowed, a planning condition could reasonably be applied to secure full details of the intended construction method without placing the tree at unnecessary risk.

12. For the above reasons the proposal would cause some limited harm to the character and appearance of the rural area. The proposal conflicts with saved Policy S7 of the Local Plan, emerging Policy SP10 of the EULP and emerging Policy FEL/HN5 of the EFNP in so far as these policies place strict controls on new building in the countryside and state that development will only be permitted if its appearance protects or enhances the particular character of the countryside within which it is set.
13. The proposal would likely have an acceptable long-term effect upon a protected oak tree and accords with saved Policy ENV3 of the Local Plan and with emerging Policy EN9 of the EULP in so far as the scheme would not result in the loss of a fine individual tree specimen. Furthermore, and for the avoidance of doubt, I do not find conflict with emerging Policies FEL/ICH1 (High Quality Design) and FEL/CW1 (Landscape and Countryside Character) of the EFNP when noting that the proposal is focused upon the redevelopment of an existing residential plot.

Whether an appropriate location for housing

14. The appeal site is situated in proximity to existing development such that it does not occupy an isolated location in a purely physical sense. However, it is situated far beyond the defined development limits of nearby settlements and thus in an area where no other similar development is expected.
15. The stretch of the Lane that incorporates the site is unlit and is not served by pathway. I observed several traffic movements along the Lane during inspection such that it does not appear as an attractive route to be navigated on either foot or by bicycle. It is also apparent that the site is not served by closely or conveniently located bus stops. Thus, it is likely that future occupiers would be reliant on private modes of transportation in order to meet their day-to-day needs, whether this be in Rayne, Great Notley or beyond.
16. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that this should be taken into account in decision-making. Indeed, relatively short journeys would be necessitated in order to access the wide range of facilities and services available in nearby Braintree. Nevertheless, the increase in travel by private modes of transportation that would be anticipated sits uncomfortably alongside the Government's objectives of delivering sustainable development in a planned and coordinated manner.
17. I note here that a recent appeal decision¹ elsewhere in the District at Arkesden has been submitted in evidence by the appellant. Arkesden is a village that contains some facilities and services of its own and, for the avoidance of doubt, I must consider the appeal before me based on its own individual merits and site circumstances.

¹ APP/C1570/W/19/3225516

18. For the above reasons, the proposal would cause material harm by virtue of the site not representing an appropriate location for housing, having particular regard to access to surrounding facilities and services. The proposal conflicts with saved Policy GEN1 of the Local Plan in so far as it requires that development will only be permitted where it encourages movement by means other than driving a car.

Highway safety

19. The Lane is subject to a 40mph speed limit, is marked with a centre line and is served by grass verges to both of its sides. There is no footway in place in the vicinity of the site and the Lane is unlit. The Lane bends slightly in its alignment to the southwest of the appeal site. The site itself is not currently served by a vehicular access on to the highway. It is proposed that each of the new dwellings be served by their own new private access.
20. The Highway Authority (the HA) consider that visibility splays that accord with the standards found in the Design Manual for Roads and Bridges (DMRB) should be achieved to either side of each of the access points that are proposed. This, they consider, is important for drivers exiting the site to be able to see oncoming traffic and for drivers on the Lane to be able to see vehicles emerging from the site at sufficient distance to enable them to stop in a safe and controlled manner. Indeed, compliance with DMRB standards is engrained in the HA's own adopted guidance and their objection to the proposal is a matter of importance as they are responsible for the safety of road users on the local highway network.
21. Whilst visibility upon a north-eastern orientation from the site does not cause concern, it was apparent from my own observations that existing vegetation situated alongside the Lane and to the south-west of the site would act as a significant obstruction to visibility with respect to each of the newly proposed access points. Indeed, the extent of visibility that would be achieved on a south-western orientation from the site, based on current site circumstances and the 40mph speed limit that is in place, would fall substantially short of the relevant DMRB standard. This is particularly evident with respect to the southernmost access point that is proposed.
22. As acknowledged by the HA, the maximum achievable visibility splay to the south-west, with respect to each new access point, would be greater should vegetation that currently overhangs the highway be removed. The appellant considers that the requisite visibility splays can be achieved on land owned by them in conjunction with land which is highway. However, from the evidence before me, this has not been clearly demonstrated and is at odds with the HA's stance on this matter. Indeed, the bending alignment of the Lane to the southwest of the site does not readily lend itself to clear visibility.
23. For the above reasons and in the absence of clear evidence to the contrary, it has not been demonstrated that adequate vehicular visibility splays can be achieved. I conclude that the proposal would have an unacceptable effect upon highway safety and would cause harm. The proposal conflicts with saved Policy GEN1 of the Local Plan in so far as it requires that the design of the site must not compromise road safety.

Other Matters

24. It has been brought to my attention that the site is situated within the 22km Zone of Influence for the Blackwater Special Protection Area and RAMSAR site. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to explore the implications of this any further here.
25. I have noted objections raised by interested parties with respect to matters including biodiversity, construction management, the effect upon neighbouring living conditions and to personal circumstances. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to explore these matters further here. Furthermore, any dispute relating to matters of land ownership would constitute a civil matter to be resolved outside of this appeal.

Planning Balance

26. 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.
27. 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 EFNP has not yet been made. In any event, 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.
28. 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 and note that only a limited degree of harm would be caused by the proposal in the context of the Framework's provisions for conserving and enhancing the natural environment.
29. I have also identified conflict with saved Policy GEN1 of the Local Plan, which is broadly consistent with the Framework in so far as it seeks to encourage movements by means other than private car. Even so, whilst the Framework promotes opportunities for walking, cycling and public transport use to be identified and pursued, opportunities to maximise sustainable transport solutions will be limited in rural areas when compared to urban areas and that the proposal before me is at small scale. I thus apportion moderate weight to the conflict I have identified with saved Policy GEN1 in this context and to the associated harm.
30. I have found further conflict with saved Policy GEN1 to the extent it relates to highway safety. The policy is broadly consistent with the Framework in so far as it seeks to ensure safe and suitable access can be achieved for all site users.

Considering the site-specific circumstances discussed above, I apportion significant weight to the conflict I have identified with saved Policy GEN1 in this context and to the associated harm.

31. Turning to the scheme's benefits, it would deliver accommodation suitable for family occupation and an additional residential unit (when compared to current site circumstances) in a District where there is currently a significant shortfall in housing land supply. Whilst this represents a meaningful contribution in such circumstances, the delivery of only one additional unit would not make a clear and noticeable difference to the overall housing land supply position in the District. I thus apportion this benefit of the scheme moderate weight. The scheme would also generate expenditure in the local economy and support for local community facilities in the area both during its construction and once occupied, these are benefits that attract limited weight given the modest scale of development under consideration.
32. 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

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

Andrew Smith

INSPECTOR