



Appeal Decision

Site visit made on 8 October 2019

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th December 2019

Appeal Ref: APP/C1570/W/19/3233513

Land south of Oxleys Close, Stortford Road, Clavering CB11 4PB

- 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 Mike Sugden of Cambridge & County Developments against the decision of Uttlesford District Council.
 - The application Ref UTT/18/3369/FUL, dated 30 November 2018, was refused by notice dated 28 June 2019.
 - The development proposed is erection of 13 dwellinghouses and associated development.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Mike Sugden of Cambridge & County Developments against Uttlesford District Council. This application is the subject of a separate Decision.

Procedural Matters

3. Within the evidence before me reference has been made to the Council's emerging Local Plan. The Council suggests that the emerging Local Plan should be afforded moderate weight; however, as I am unaware of the extent and content of unresolved objections to the plan, I can only afford its policies limited weight in my decision. I have therefore relied upon the policies within the Uttlesford Local Plan 2005 (LP) in coming to my decision.

Main Issues

4. The main issues are:
 - the effect of the development on the character and appearance of the area;
 - the effect of the proposed access and footway on highway safety, with particular reference to visibility at the junction with the public highway and the safety of pedestrians; and
 - whether the proposal makes appropriate provision for affordable housing;

Reasons

Character and appearance

5. The site is outside of the settlement boundary for Clavering and comprises open countryside and is currently in agricultural use. Immediately adjacent to the site is what appears to be a recently constructed residential development, Oxleys Close. There is also a convenience shop within a short walk of the site. Therefore, whilst the site lies outside of the settlement boundary it is well connected with the services and facilities contained within the village.
6. The existing development of Oxleys Close is visible from the road as you enter the village with the rendered gables of the rear elevations prominent features which have already altered the character and appearance of the entrance to the village.
7. The site is a narrow rectangular shape. The access road would be sited centrally and then extend in an undulating manner through the site with the majority of dwellings positioned fronting the access road. The boundary of the site which would become the new field edge would be prominent when viewed from Stortford Road and would be enclosed by 1.8m close boarded fencing around the plot boundaries with some landscaping along the boundary where the access and turning head are. In places the landscaping would be positioned inside the boundary fencing and therefore the fencing would be visible and create a hard edge to the field boundary, which would differ to the native hedging which currently softens the edge of the development and helps to screen the existing development of Oxleys Close.
8. The introduction of development in this location, with the associated boundary treatment and lack of meaningful landscaping would lead to a further intrusion into the countryside, failing to recognise the intrinsic rural character of the countryside. The development would not follow any logical field boundaries, which adds further to its incongruous impact.
9. I consider that an additional 13 dwellings would further alter the character and appearance of this rural site and the urban form of the development. It would therefore intrude into the countryside, be detrimental to its open nature and would be a prominent feature at the entrance to the village. This would be contrary to policy S7 of the LP which seeks to protect the countryside for its own sake. Development will not be allowed unless it would protect or enhance the particular character of the countryside.
10. However, Policy S7 of the LP is only partially consistent with the National Planning Policy Framework ('the Framework') as it is more restrictive in that it seeks to protect the countryside for its own sake. However, it seeks to protect and enhance the natural environment, which is an important part of the Framework and therefore I consider it should be afforded significant weight when considering development proposals in the countryside.
11. In conclusion, the proposal would result in an inappropriate form of development and would be harmful to the character and appearance of the area contrary to policy S7 of the LP which looks for development to enhance the character of the countryside.

Highway and Pedestrian Safety

12. The development includes the provision of a new access onto the public highway and details before me indicate that the visibility splays cross over areas of land which are not within the appellant's ownership and therefore the appellant would require the agreement of a third party to comply with the details shown on the drawing no PL04 Rev A.
13. The Appellant has not advanced a case that these visibility splays are not required to ensure that a safe and suitable access can be provided for the development and given what I observed on site I consider that the indicated visibility splays are necessary.
14. Whilst I have been provided with a draft deed of variation between the appellant and the landowner, there is no evidence before me which demonstrates that such a deed of variation will be completed. It therefore follows that there is no certainty as to whether the visibility splays can be provided to ensure that the proposed access is safe.
15. The appellant has indicated that this could be dealt with by means of a Grampian condition. However, in the absence of sufficient evidence to indicate that the landowner will complete such a deed of variation I consider that the imposition of a Grampian style condition would not be appropriate.
16. I am also conscious of the guidance contained within the National Planning Practice Guidance (PPG) which states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases.
17. Whilst the PPG goes on to state that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, there should be clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes).
18. However, this is not a particularly complex case nor does this issue go to the heart of the deliverability of the scheme. Indeed, as the appellant intends to sell the site rather than develop it themselves, the lack of completion of the deed of variation appears to be related to the timing of a financial payment to the landowner where the visibility splays would be (amongst other matters). To my mind, this does not provide the exceptional circumstances required to justify the imposition of such a Grampian condition.
19. In addition to the above, the Council have suggested that a footway is required to link the appeal site to the neighbouring development of Oxley's Close (and the village beyond) and details of this have been indicated on PL04 Rev A. However, the appellant has now confirmed that this footpath cannot be delivered as indicated as they do not have control over all of the land and have submitted a revised plan for my consideration, 1807-57 PL09 which shows a footpath provided entirely within highway land. The Council have also been provided with the opportunity to comment on the revised plan.
20. I have considered whether this change would materially alter the nature of the application or prejudice the interests of interested parties and I am happy that

the scale of the change is such that it can be accepted and that interested parties, in particular the Council, have had the opportunity to consider the revised proposal and therefore I can accept this plan as forming part of the appeal proposal.

21. The revised plan shows a footway which does not extend around the radius of Oxley Close and therefore pedestrians would be required to cross at the bell mouth of the junction. To my mind, this arrangement would result in a less than ideal situation for pedestrians and would be a safety concern for those trying to access the services within the village from the proposed development. This is particularly important as this route would be the only way for pedestrians to gain access to local facilities from the appeal development.
22. In the alternative, if I consider the footway as originally indicated, this would lie on land outside of the appellants control and therefore the deliverability of the required pedestrian route could not be achieved. Either way, an acceptable pedestrian route to the village would not be provided for the use of the future occupants of the development.
23. In coming to the above views I have also had regard to the previous appeal decision for the same site, APP/C1570/A/13/2198770. However, it is significant that the appellant for the previous appeal is not the same as the one before me and therefore the land ownership issues regarding provision of the visibility splays and pedestrian access will have been different.
24. Taking all of the above factors into account, the proposal would not result in a safe and suitable access from the development for both cars and pedestrians contrary to policy GEN1 of the LP which seeks to ensure that development must not compromise road safety and take account the needs for all users, including pedestrians.

Affordable Housing

25. The development would provide 6 affordable dwellings, which is 40% of the total number of dwellings to be provided and would therefore meet the requirements of policy H9 of the LP. The affordable dwelling mix includes three 2 bedroom units and three 3 bedroom units which the Council's housing enabling officer has confirmed is acceptable to meet identified need provided two of these properties be offered for shared ownership.
26. The unilateral undertaking before me confirms that the appellant is content to accept these requirements and as I have not been provided with comments from the Council on the details of the unilateral undertaking, I have nothing to suggest this is in dispute. I am satisfied that the affordable housing provision is reasonable and necessary to ensure the appropriate delivery on site and is directly related to the development proposed.
27. In conclusion, having regard to the unilateral undertaking provided, I consider that the development would make appropriate provision for affordable housing in compliance with policy H9 of the LP which sets out the requirements for affordable housing provision.

Planning balance

28. It is common ground that the Council is unable to demonstrate a deliverable five year supply of housing and that the Framework indicates that planning

decisions should apply a presumption of sustainable development. For decision taking, where Development Plan policies which are the most important for determining the application are out of date¹, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

29. In this case, I have found that the proposal would give rise to some harm to the character and appearance of the area and would it would not provide for a safe and suitable access. To my mind, these factors weigh heavily against the proposal.
30. In favour of the development, I consider that the site is well located in terms of its proximity to services and being of a scale appropriate to the size of the existing village and as such consider that the appeal site lies within a sustainable location. There is no dispute that the site has been allocated for residential development within the emerging Local Plan and this adds weight to my conclusions on the suitability of the location for residential development. There is no evidence that local infrastructure would be unable to meet the needs of the development.
31. The site would give rise to some economic benefits during the construction phase and beyond in supporting the services within the village and I consider that there would be modest social benefits arising from the contribution to the Council's housing supply, noting paragraph 64 of the Framework highlights the contribution small and medium sized sites can make to meeting the housing requirement in the area. The evidence before me indicates that other more recent approvals within the village do not provide affordable housing due to their smaller scale and therefore the delivery of six affordable houses from this development will result in social benefits, to which I have attributed great weight.
32. Notwithstanding the above, I consider that the harm arising from the lack of a safe and suitable access is such that it significantly and demonstrably outweighs the benefits of the development when assessed against the policies in the Framework when taken as a whole. The proposal cannot therefore be considered to be sustainable development.

Conclusion

33. Therefore, I conclude that the appeal should be dismissed.

G. Pannell

INSPECTOR

¹ Footnote 7 includes situations where the local planning authority cannot demonstrate five year supply of deliverable housing sites.