



Appeal Decision

Site visit made on 8 June 2020

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th July 2020

Appeal Ref: APP/C1570/W/20/3246367

The Hunters, 39 Evelyn Road, Willows Green, Great Leighs, Chelmsford, Essex CM3 1QQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs Goodchild against the decision of Uttlesford District Council.
 - The application Ref UTT/19/2572/OP, dated 15 October 2019, was refused by notice dated 13 January 2020.
 - The development proposed is described as '3 new 1½ storey chalet style houses, replacement garage to parent property and associated works'.
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Decision

1. The appeal is allowed and planning permission is granted for 3 new dwellings, replacement garage to parent property and associated works at The Hunters, 39 Evelyn Road, Willows Green, Great Leighs, Chelmsford, Essex CM3 1QQ, in accordance with the terms of the application, Ref: UTT/19/2572/OP, dated 15 October 2019, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The planning application was submitted in outline with all matters of detail reserved for future consideration. I have assessed the proposal on this basis and treated the drawings as being an illustration of how the proposal could ultimately be configured. Some of the submitted drawings are not up to date as they do not show the recent development to the west of the appeal site, which I was able to see during my site visit.
3. In my formal decision above I have omitted any reference to the proposed dwellings being one and a half storey chalet style houses in the interests of precision. This is because details of scale and appearance are not before me.
4. Since the Council issued its decision the Felsted Neighbourhood Plan (FNP) has been formally made and now forms part of the development plan. The appeal site falls within the area covered by this plan. It is incumbent upon me to base my decision upon the most up to date planning policy. The parties had an opportunity to address this matter in their appeal submissions.

Main Issues

5. The main issues in this appeal are:
 - Whether the appeal site is a suitable location for the proposed development with reference to the spatial strategy for housing in the development plan and the accessibility of services and facilities;

- The effect of the proposed development on living conditions, with reference to noise and disturbance, privacy and outlook; and
- The effect of the proposed development on the Blackwater Estuary Special Protection Area.

Reasons

The Spatial Strategy

6. The appeal site is not located within any settlement boundary defined in the Uttlesford Local Plan 2005 (LP). Therefore, it is within the countryside for the purposes of applying the policies of the LP. Policy S7 of the LP seeks to protect the countryside by strictly controlling development there. In particular, the policy states that planning permission will only be given for development that needs to take place in the countryside or is appropriate to a rural area, such as infilling in accordance with Paragraph 6.13 of the LP.
7. The appeal scheme does not require a rural location but I nevertheless share the view of the Council, expressed in the Officer's report, that Willows Green is a discernible cluster of dwellings and should be considered a settlement for the purposes of Paragraph 6.13 of the LP, and thus Policy S7. There is residential development to the west and north of the appeal site and therefore the appeal scheme would be physically and visually contained. It would therefore constitute infilling within Willows Green. Accordingly, the proposal would adhere to Policy S7 of the LP, being the type of development that it envisages as being appropriate in a rural area.
8. Policy FEL/HN5 of the FNP is also relevant as part of the spatial strategy for the neighbourhood plan area. It sets out the circumstances where development outside the defined village development limits (VDL) will be supported. The negative corollary being that development not listed is not supported. The appeal scheme would be development outside a VDL that would not amount to any of the circumstances listed in Paragraph 79 of the National Planning Policy Framework (the 'Framework') or those listed i) – vi) within the policy, such as a rural exception site, replacement dwelling or allocation. The policy does not list infilling as being an appropriate form of development outside a VDL. The supporting text indicates that the development of infill homes will be addressed through the Council's emerging Local Plan. The proposal would therefore be at odds with Policy FEL/HN5 of the FNP. Policies S7 of the LP and FEL/HN5 of the FNP seem to pull in different directions, but Policy FEL/HN5 is more recently adopted and therefore takes precedence over Policy S7.
9. In conclusion, the proposal would be at odds with, and harmfully undermine, the adopted spatial strategy for housing in the development plan as a whole and the public interest in having a planning system that is genuinely plan led.

The accessibility of services and facilities

10. Save for a small open space there are no everyday facilities at Willows Green that would be within walking distance of the appeal site. Therefore, in order to satisfy everyday functional requirements such as education, employment and shopping, it would be necessary for future residents of the appeal scheme to travel to nearby settlements such as Felsted, Great Dunmow and Braintree. However, these settlements are too far away to walk to on a regular basis.

11. Cycling would be an option, but it cannot be relied upon as future occupants of the appeal scheme may not have the levels of confidence, fitness and proficiency to regularly cycle. The nearest bus stop appears to be on the A131, which is about a mile from the appeal site. Accessing the bus stop would therefore add to journey times thereby reducing the convenience this mode of travel could otherwise provide as alternative to travel by car.
12. Consequently, future residents of the appeal scheme would be highly reliant on private motorised transport. Such journeys would cumulatively add up over the life of the development with the associated carbon emissions. Siting dwellings in such a location would also frustrate attempts to capture the health benefits gleaned from travel by more sustainable means such as walking. Therefore, the appeal site is not particularly well placed to accommodate new homes when considering accessibility to services and facilities. The proposal would therefore be at odds with Policy GEN1 of the LP.

The effect of the proposed development on living conditions, with reference to noise and disturbance, privacy and outlook

13. The vehicular access intended to serve the proposal could be located broadly in the location of that shown on the indicative layout. If this were the case, then it would be closer to the western boundary of the appeal site than the existing driveway and therefore it would be nearer the recently constructed homes. However, it would be possible to retain the existing hedge along the western boundary of the appeal site as part of the final scheme to act as a buffer. Moreover, the new dwellings to the west of the appeal site are set back from the boundary behind a long driveway.
14. As such, there is adequate space to retain a sufficient gap between an access drive and the new dwellings to the west of the appeal site such that an unreasonable level of noise and disturbance, including exhaust fumes or nuisance from headlights, would not occur. Especially so if an appropriate surface material was secured in the reserved matters to suppress the noise of passing vehicles. Similarly, there would be space for landscaped buffer between the access track and the garden retained for the occupants of 39 Evelyn Road. Thus, the use of an access drive by motorists need not result in a harmful level of noise and disturbance to the occupants of this property either.
15. The Council are concerned that future occupants of the proposed dwellings would be able to overlook nearby properties from a first-floor level. However, 'scale' is a reserved matter and therefore the Council would be able to consider privacy when the detailed design of the dwellings is submitted for approval. It may well be that the scheme ultimately advanced at the reserved matters stage proposes three single storey dwellings to alleviate these concerns. If that were the case, it is unlikely a harmful loss of privacy would occur if the dwellings were carefully sited and boundary treatment provided. Thus, a harmful loss of privacy would not be an inevitable consequence of allowing this appeal. Similarly, single storey properties of an appropriate size and scale would not harmfully enclose the outlook of neighbours or future occupants.
16. In conclusion, the appeal scheme would not have a harmful impact on living conditions and therefore it would adhere to Policies H4 and GEN2 of the LP.

The effect of the proposed development on the Blackwater Estuary Special Protection Area (SPA)

17. The appeal site is located within the 'zone of influence' established around the SPA as identified in the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (Essex RAMS). New housing development within this zone would result in a permanent increase in people living reasonably close to the SPA. The evidence in the RAMS suggests that this would result in an increase in recreational visits to the SPA from future residents and this would harmfully disturb breeding and non-breeding birds. Natural England (NE), as the Statutory Nature Conservation Body, shares this view as do I.
18. Accordingly, and when following a precautionary approach, the proposal, in combination with other plans and projects such as other planned and permitted development, would be likely to have a significant effect on the SPA. Hence, an appropriate assessment, in accordance with Regulation 63 of the Habitat Regulations¹, is required to consider the implications of the proposal on the SPA in view of the conservation objectives.
19. NE has confirmed that the SPA has been designated because it includes habitats that support an important water bird assemblage, which are the SPA's qualifying features. The overarching conservation objective for the SPA can be summarised as, amongst other things, seeking to maintain and restore the structure and function of the habitats of the qualifying features.
20. The appellant has confirmed a willingness to provide a financial contribution in line with the methodology in the Essex RAMS. The contribution would be pooled with others and used for access management and monitoring at the SPA in the way outlined in Essex RAMS. This approach is supported by the Council and NE and would ensure the proposal would not adversely affect the integrity of the SPA, as its condition need not deteriorate as a result of the appeal scheme.
21. The contribution would be secured through the Planning Obligation submitted by the appellant and would be directly related to the impacts of the proposal on the SPAs. It is necessary to make the development acceptable and the contribution would be fairly and reasonably related in scale and kind to the development, as it follows the methodology in the Essex RAMS. Accordingly, the contribution is an obligation that can be taken into account.

Other Matters

22. Policy H3 of the LP has been referred to in the Officer's report, which forms the basis of the Council's appeal submissions. However, this policy relates to new residential development within the defined development limits of a settlement listed in the policy. Willows Green is not listed in Policy H3 and therefore the policy is not relevant to my considerations. Similarly, the emerging policies listed by the Council in its reasons for refusal are no longer relevant as the Council has withdrawn the draft plan from examination.
23. The new development to the west has been arranged in depth and includes an assertive installation of perimeter fencing. The homes are locally prominent and arranged over two floors. The appeal scheme would not appear out of place in this context, particularly as there is already a collection of buildings to the rear of 39 Evelyn Road as well as a long driveway.

¹ Conservation of Habitats and Species Regulations 2017.

24. I have considered the proposal in the specific context of the appeal site and its environs and therefore no generalised precedent would be set by this permission. Substantive evidence has not been provided that demonstrates the proposal would result in localised flooding.

Planning Balance

25. The proposal need not result in harmful living conditions, but it would be at odds with the FNP and it would be located in a location away from services and facilities. When taken as a whole, it would be contrary to the development plan. A proposal should be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration of significance.
26. The Council are currently unable to demonstrate a five-year housing land supply at odds with Paragraph 73 of the Framework. The supply is presently around 2.68 years. The Council are therefore failing to significantly boost the supply of housing. In such circumstances, Paragraph 11 of the Framework states that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole.
27. As an adverse impact, the proposal would undermine the spatial strategy in the development plan but a rigorous application of Policy FEL/HN5 would frustrate attempts to remedy the housing shortfall. On this point, it is unclear how the Council are seeking to remedy the housing shortfall and its timeframe for doing so now the LP has been withdrawn. That said, Policy FEL/HN5 is part of a locally prepared and carefully balanced spatial housing strategy that has been recently made. It also addresses some of the aims in the Framework, such as recognising the intrinsic character and beauty of the countryside.
28. Likewise, Policy GEN1 of the LP is broadly consistent with the aims of promoting sustainable transport set out in Paragraphs 103, 108 and 110 of the Framework. However, this needs to be balanced with the guidance in Paragraph 78 of the Framework that housing should be located to enhance or maintain the vitality of rural communities such as Willows Green. Nevertheless, given the acute housing supply position I afford only moderate weight to the conflict with Policies FEL/HN5 and GEN1 in this instance.
29. Moreover, as the housing land supply is currently below 3 years the guidance in Paragraph 14 of the Framework, which states that the adverse impacts of allowing development that conflicts with a neighbourhood plan is likely to significantly and demonstrably outweigh the benefits of a housing development, is not engaged
30. Conversely, the proposal would deliver several benefits. It would contribute to housing supply and choice at a point in time when there is a significant shortfall. There is nothing to suggest the proposal could not be delivered quickly. However, it would only deliver three homes. In the circumstances, the provision of housing is a moderate benefit.
31. In addition, the housing would not be isolated being surrounded by existing development and the proposal would infill previously developed land in a suitable way within a discernible settlement. Paragraph 118 of the Framework suggests substantial weight should be given to the value of doing this.

32. There would be some benefits to the local economy and the vitality of the rural community from the occupation of the dwellings, but there is little evidence before me to suggest this would amount to notable economic or social effects. The proposal would provide some support to the construction industry, but this would be modest in scale and short lived. Accordingly, the potential socio-economic benefits are of limited weight.
33. Nevertheless, the adverse impacts of the appeal scheme in combination would not significantly and demonstrably outweigh its cumulative benefits. This is a material consideration of force in this instance that indicates the appeal should be determined otherwise than in accordance with the development plan.

Conditions

34. I have had regard to the advice in the Planning Practice Guide and the conditions suggested by the Council. It is necessary in the interests of safeguarding highway safety, the character and appearance of the area and the living conditions of neighbours to ensure that the reserved matters are submitted and approved. Additionally, it is also necessary to impose conditions dealing with any as yet unknown land contamination that may be present in the interests of safeguarding living conditions.
35. In the interests of safeguarding biodiversity, it is necessary to impose conditions requiring the implementation of the mitigation and enhancement measures in the appellant's biodiversity report, a Biodiversity Method Statement and a lighting strategy. To ensure the development adheres with the development plan (Policy GEN2 (c) of the Uttlesford Local Plan 2005 and the subsequent Supplementary Planning Document on Accessible Homes and Playspace) it is necessary to secure the dwellings are constructed in accordance with Building Regulations optional requirement M4(2).
36. I have not been directed to any planning policy that specifically requires electric vehicle charging points or any other evidence justifying their installation and therefore I am not satisfied, based on what is before me, that a condition requiring them would be necessary and reasonable.

Conclusion

37. In conclusion, the proposed development would not adhere to the development plan but material considerations, namely the Framework, indicate that the appeal should be determined otherwise than in accordance with the development plan. Accordingly, the appeal should succeed.

Graham Chamberlain
INSPECTOR

Schedule of Conditions

1. Approval of the details of access, layout, scale, landscaping and appearance (hereafter called "the Reserved Matters") must be obtained from the Local Planning Authority in writing before development commences and the development must be carried out as approved.
2. Application for approval of the Reserved Matters must be made to the Local Planning Authority not later than the expiration of three years from the date of this permission.
3. The development hereby permitted must be begun no later than the expiration of two years from the date of approval of the last of the Reserved Matters to be approved.
4. In the event that contamination is found at any time when carrying out the approved development, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall then be undertaken by a competent person, in accordance with 'Model Procedures for the Management of Land Contamination, CLR 11'. A written report of the findings shall be forwarded for approval to the Local Planning Authority. Following completion of remedial measures a verification report shall be prepared that demonstrates the effectiveness of the remediation carried out. No part of the development shall be occupied until all remedial and validation works are approved in writing.
5. Prior to first occupation of any dwelling hereby permitted, all mitigation and enhancement measures and/or works shall have been carried out in accordance with the details contained in the Ecological Survey and Assessment (Essex Mammal Surveys, November 2019).
6. No development shall take place (including any demolition, ground works, site clearance) until a Biodiversity Method Statement for protected and Priority species has been submitted to and approved in writing by the local planning authority. The content of the method statement shall include the following:
 - a) purpose and objectives for the proposed works;
 - b) detailed design(s) and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used);
 - c) extent and location of proposed works shown on appropriate scale maps and plans;
 - d) timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction.
 - e) persons responsible for implementing the works;

- f) initial aftercare and long-term maintenance (where relevant);
- g) disposal of any waste arising from works.

The development/works shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter.

7. Prior to first occupation of any dwelling hereby permitted a lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority.

The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting would be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the approved scheme and maintained thereafter in accordance with the scheme. Under no circumstances shall any other external lighting be installed without prior consent from the local planning authority.

8. The dwelling(s) shall not be occupied until the Building Regulations Optional requirement M4(2) (of the Building Regulations 2010 Approved Document M, Volume 1 2015 edition) has been complied with.