



Appeal Decision

Site visit made on 18 July 2020

by D M Young JP BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 4 September 2020

Appeal Ref: APP/C1570/W/19/3243727

Land to the south of The Street, Takeley, CM22 6LY

- 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 Colin Hart (Rochester Properties) against the decision of Uttlesford District Council.
 - The application Ref UTT/18/2049/FUL, dated 23 July 2018, was refused by notice dated 25 June 2019.
 - The development proposed is the erection of 8 no. residential units and associated parking.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 8 no. residential units and associated parking at land to the south of The Street, Takeley, CM22 6LY in accordance with the terms of the application, Ref UTT/18/2049/FUL, dated 23 July 2018, subject to the conditions set out in the schedule to this decision.

Preliminary Matters

2. An amended layout plan¹ was submitted with the appeal to address concerns raised by the Highway Authority at the application stage. Having regard to the Wheatcroft principles, I am satisfied that the plan does not materially alter the substance of the scheme. Moreover, interested parties have had the opportunity to comment on it as part of these appeal proceedings. Accordingly, I have decided to accept the amended plan.
3. The Council withdrew the emerging Uttlesford Local Plan (eLP) on the 30 April 2020, it therefore carries no weight in my determination of the appeal. I wrote to the main parties seeking their views on the implications of the plan's withdrawal for the appeal. I have taken the Appellant's response into account in my decision².
4. There is no dispute between the parties that the Council cannot demonstrate a five-year supply of housing³. In such situations paragraphs 11 and 73 of the "*National Planning Policy Framework*" (the Framework) state that those policies which are most important for determining the application are to be considered out-of-date. Accordingly, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the

¹ Drawing Ref: 383/P/001E

² The Council did not respond

³ 2.68 years according to the Council's 2019 Five-Year Land Supply Statement

benefits, when assessed against the policies in the Framework taken as a whole. I have approached my decision on that basis.

Policy Context

5. The appeal site is located outside the settlement boundary and within the Countryside Protection Zone (CPZ) around Stanstead Airport. It is therefore in the countryside for planning purposes. Within such areas, Policy S7 of the *"Uttlesford Local Plan 2005"* (the LP) seeks to protect the countryside for its own sake stating that planning permission will only be granted for development that *"needs to be there or is appropriate to a rural area"*. It goes on: *"Development will only be permitted if it protects or enhances the particular character of the part of the countryside within which it is set"*.
6. In a similar vein, Policy S8 takes a restrictive approach towards development in the CPZ. Only development that is required to be there, or is appropriate to a rural area, will be permitted. Permission will not be granted if the new buildings or uses would promote coalescence between the airport and existing development in the surrounding countryside or it would adversely affect the open characteristics of the CPZ
7. The LP itself was adopted in 2005, seven years before the original Framework was published and only covered the period to 2011. Clearly the planning regime in 2005 was very different to the post-Framework era with no requirement to boost significantly the supply of housing, no requirement for identifying an Objectively Assessed Need and no presumption in favour of sustainable development. As is made clear at the beginning of Section 6 of the LP, the settlement boundaries and allocations were drawn up to deliver the housing requirements which were based upon those in the *"Essex and Southend-on-Sea Structure Plan to 2011"* and the *"Regional Spatial Strategy for the South East of England"*⁴. These requirements were derived from household projections which are now about three decades out of date.
8. Based on the above, the LP patently does not meet the requirement for the Council to have an up-to-date local plan and is now painfully out of date in terms of its purpose, its strategy, content, and is not a strong foundation upon which to refuse planning permission. Despite that, it does not mean that Policies S7 and S8 carry no weight. The Framework advises at Paragraph 213 that due weight should be given to relevant policies in plans according to their degree of consistency with the Framework. The closer the policies in the plan are to the policies in the Framework, the greater the weight that may be given.
9. With regards to the consistency of Policies S7 and S8 there are a number of points to make. Firstly, other than 'valued landscapes' the Framework does not impose a blanket restriction on development outside defined settlements. In seeking to control the principle of development beyond settlement boundaries, Policies S7 and S8 are more restrictive than the balanced, cost/benefit approach set out in the Framework. That difference is acknowledged in the Council's 2012 Compatibility Assessment⁵.
10. The balancing of harm against benefit is a defining characteristic of the Framework's overall approach embodied in the presumption in favour of sustainable development. Because of this, where Policies S7 and S8 are used

⁴ 4,620 homes over the period 2000 to 2011

⁵ Full title: Uttlesford Local Plan 2005 - National Planning Policy Framework Compatibility Assessment, July 2012

to restrict housing, they cannot be seen to be consistent with the language of the Framework. Secondly, at paragraph 170, the Framework advises that decisions should recognise the intrinsic character and beauty of the countryside. In my view the 'protection' afforded to the countryside and CPZ in Policies S7 and S8 is not the same as the Framework's 'recognition'. Whilst, I accept the two terms are not necessarily inconsistent, there is clearly tension between them.

11. Putting that issue to one side, one has to look at how these policies operate in practice as well as their overall intentions. As I have already set out, one of the primary purposes of the LP and the policies therein was to deliver the housing targets of the old Structure Plan. There has been a significant uplift in the housing requirements for Uttlesford since 2011 which the Council has failed to keep pace with. This failure clearly reduces the weight that can be attached to policies which seek blanket restrictions on housing within certain areas. Put another way, it cannot reasonably be claimed that the settlement boundaries applicable in 2005 are still appropriate today or consistent with the Framework's objective of boosting significantly the supply of housing.
12. Moreover, given the parlous position Uttlesford finds itself in with its development plan, it is readily apparent that land beyond settlement boundaries will need to be released if the Council is to rectify the current shortfall in housing land supply. Indeed, according to the Appellant, a number of CPZ sites were included as draft allocations in the withdrawn eLP. In such circumstances the settlement boundaries in Uttlesford cannot be seen as inviolable and rigidly applying the restraints of Policies S7 and S8 in the manner the Council has done in this case, will further frustrate its ability to meet its housing targets.
13. Based on the foregoing, and in common with the appeal decisions that the Appellant has brought to my attention, I am attaching very limited weight to Policies S7 and S8. The fact that the appeal site is outside the settlement boundary and in the CPZ is not therefore a determinative factor in this appeal. The issue is rather whether the development would meet the other relevant requirements of the Framework and thus benefit from the presumption in favour of sustainable development.

Main Issue

14. In light of the above, this is whether the development would represent sustainable development in the terms set out in the Framework.

Reasons

Environmental

15. Relying almost entirely on the 2016 LUC study⁶, the Council argue that the development would have an urbanising influence and result in physical coalescence of the built form particularly when viewed from Flitch Way, a public footpath and local nature reserve, to the south of the site.
16. Section 1 of the LUC study makes clear that its aim was to assess the extent to which the land within the CPZ is meeting its purposes, as set out in Policy S8 thus enabling "*the Council to make informed decisions, should it decide to*

⁶ The Uttlesford Countryside Protection Zone Study 2016

amend the CPZ through the Local Plan". The study was not examined by the Examining Inspectors and there is nothing in the document to suggest it was ever intended to be treated as a determining factor in development management decisions without a further detailed landscape assessment, which the appellant has undertaken in this case.

17. Adding to my concerns about the LUC study is the fact that the eLP has now been withdrawn by the Council following a letter from the Examining Inspectors dated 10 January 2020 in which significant concerns were expressed in relation to the soundness of the eLP. Although I acknowledge that the evidence base underpinning the eLP is still capable of being a material planning consideration, I do not consider that relying solely on the LUC study is a sound basis for dismissing this appeal.
18. In terms of coalescence, the appeal site is located on the south side of the B1256 Dunmow Road towards the outer edge of a ribbon of development that extends westward out of Takeley towards Start Hill. Crucially the appeal site is bounded to the west by a row of five detached houses. The development would partially infill the gap between these houses and those to the east. There are houses opposite the appeal site on the north side of Dunmow Road. Therefore, and as a matter of fact, there would be no physical coalescence between the settlement of Start Hill and Takeley nor between the airport and existing development in the surrounding countryside, the latter being the principle aim of Policy S8. The wider area of intervening land between the two settlements would continue to exist and would protect their separate identities such that they would remain clear and distinguishable from one another.
19. I acknowledge that the development would result in a loss of openness and have an urbanising influence on the appeal site. To that extent there would be conflict with Policy S8b). However, that would be an inevitable consequence of any greenfield development such as this, and it is not as a matter of principle a reason to dismiss the scheme out of hand. Furthermore, viewed in the context of out of date housing policies and the requirement that local planning authorities should boost significantly the supply of housing, it does not automatically follow that such a change would be unacceptably harmful.
20. The site has few if any redeeming features, is not visible over a wider area and has a high degree of visual containment. Its currency extends primarily from the fact that it is an open and undeveloped parcel of land within a ribbon of development. Much of the existing landscaping across the site frontage would be retained. Consequently, the houses would not be unduly prominent from public vantages. Whilst glimpsed views would be possible from Dunmow Road and Flitch Way this would not be in a manner that could reasonably be described as harmful given the location of existing development to the east and west. In my view, given the location of existing development and the site's visual containment, I consider the effect on the "*open characteristics of the zone*" would be strictly limited.
21. My findings above, are not dissimilar to those of the 2015 Strategic Housing Land Availability Assessment which recognised that the site "*does not encroach into the countryside.*" Adding weight to the acceptability of the proposals is the Appellant's Landscape Statement which concluded that the scheme would maintain the rural setting and surrounding settlement pattern in overall terms. Other than to point to the LUC study, the Council have not challenged the

findings of the Appellant's Landscape Statement with any cogent evidence of its own.

22. For the reasons given, I consider there would be a small amount of environmental harm arising from a loss of openness on the appeal site. This would bring the proposal into conflict with LP Policies S7 and S8.

Social

23. The scheme would provide benefits in terms of fulfilling the social dimensions of sustainable development through a welcome contribution towards the Council's housing stock. Given the Council's acknowledged housing land supply position and the aims of the Framework, I attach significant weight to this benefit.
24. The Council's reason for refusal refers to the site's '*unsustainable location*'. That argument seems to rest almost entirely on a 2014 appeal decision⁷ at a site known as Lolands some 65m to the west of the appeal site. A copy of that decision has not been provided. Nonetheless, the Appellant points out that the appeal site adjoins Takeley, identified as a Key Village in the Council's settlement hierarchy. As I saw on my site visit there are a good range of local services including public transport. The site is also close to Stansted Airport, a major employer in the area.
25. Despite that, I concede that future occupiers are still likely to depend on a private motor car to access higher order services in other larger settlements nearby. However, the Framework makes clear that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making. In this case I do not consider that the number and distance of car-borne trips by future occupants would exceed that envisaged in paragraph 103 of the Framework.

Economic

26. The development would support the economic role through the purchase of materials and services in connection with the construction of the dwelling as well as an increase in local household expenditure. The Council also accept that the development will support the ongoing viability of local services. I give the economic benefits of the scheme moderate weight.

Other Matters

27. Local residents have expressed a wide range of concerns including but not limited to the following: loss of wildlife habitats, inadequate drainage, noise and vibration and the effect on users of the Public Right of Way. However, whilst I understand the concerns of local residents, there is no compelling evidence before me which would lead me to conclude differently to the Council on these matters.
28. Various appeal decisions have been drawn to my attention. However, there was no suggestion that the facts of any one case were so aligned with the facts here that the previous decision indicated that this appeal should be either dismissed or allowed. I have therefore had regard to the various decisions insofar as they are relevant to my consideration of this appeal.

⁷ PINS Ref: APP/C1570/A/13/2207306

Overall Conclusions and Planning Balance

29. I am required to determine this proposal in accordance with the development plan, unless material considerations indicate otherwise. The starting point is therefore that the development of the site for market housing would conflict with LP Policies S7 and S8. However, in this instance I have found that there would be no coalescence, nor would there be any significant harm to the open characteristics of the CPZ.
30. Given the Council's failure to provide sufficient housing outside the CPZ and countryside, there is a strong case for concluding that residential development '*needs to be there*'. Accordingly, and given the inconsistency of Policies S7 and S8 with the Framework, I attach only very limited weight to the development plan conflict in this case.
31. In light of the Council's housing land supply deficit, the default position identified in paragraph 11d)ii) of the Framework is engaged. This shifts the planning balance in favour of the grant of consent unless any harm would '*significantly and demonstrably*' outweigh the benefits.
32. I have found that the development would contribute significantly to the economic and social dimensions of sustainability. Collectively these benefits carry significant weight. Although I have identified limited landscape harm, relative to the scale of the benefits arising, I find that this harm would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
33. I consider this to be a significant material consideration sufficient to outweigh the conflict with the development plan. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should succeed.

Conditions

34. The Council has suggested a number of planning conditions which I have considered against the advice in the "*Planning Practice Guidance*" (the PPG). In some instances I have amended the suggested conditions in the interests of brevity and to ensure compliance with the PPG.
35. Those conditions covering time limits and specifying the approved plans are necessary in the interests of proper planning and to provide certainty. To ensure the satisfactory appearance of the development I have attached conditions relating to external materials and landscaping. I have however omitted some of the requirements of the landscaping conditions as these are either covered by other legislation or are already shown on the approved plans and therefore captured by the plans condition. I have imposed an archaeology condition to protect any archaeological assets that may be present.
36. An ecology condition is necessary to secure compliance with the relevant legislation. The appellant has queried the need for a full Biodiversity Management Plan. Having reviewed the submitted Ecological Appraisal and Reptile Report, I am satisfied that the enhancements and protective measures contained in each and captured by Condition 6 below would be commensurate to a development of this size. I have omitted the suggested condition accordingly. As the Ecological Report also recommends a Construction Management Plan, I have also omitted this suggested condition.

37. The location of the access and bin store as well as the relevant visibility splays, junction radii and footway widths are all shown on the submitted plans and therefore captured by the plans condition. I have therefore omitted the suggested highway conditions. However, to ensure the works are provided prior to first occupation I have imposed a condition relating to the delivery of the aforementioned works.

D. M. Young

Inspector

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 383/P/001E, PR130 01, 383/P/002, 383/P/003 A and 383/P/004.
- 3) No development above ground level shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) Prior to first occupation details of both hard and soft landscaping works shall be submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include proposed finished levels and boundary treatments. Soft landscape works shall include [planting plans; written specifications, schedules of plants, noting species, plant sizes and proposed numbers where appropriate; implementation programme].
- 5) No development or preliminary groundworks can commence until a programme of archaeological trial trenching and excavation has been secured and undertaken in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Local Planning Authority.
- 6) All ecological mitigation, enhancement measures, and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal Report (T4 Ecology Ltd, April 2018) and the Reptile Survey Report (T4 Ecology Ltd., July 2018).
- 7) The access works and parking and manoeuvring areas shown on the approved plan ref: 383/P/001E shall be provided prior to first occupation of any dwelling and thereafter retained.