

Appeal Decision

Site visit made on 9 September 2020

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2020

Appeal Ref: APP/C1570/W/20/3252134

Land at rear of Cavendish, Causeway End Road, Felsted CM6 3LU

- 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 S Cole (Hambleton Luxury Developments Ltd) against the decision of Uttlesford District Council.
 - The application Ref UTT/19/2994/OP, dated 2 December 2019, was refused by notice dated 4 February 2020.
 - The development proposed is construction of 5 dwellings and new access, outline with access considered.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is in outline form with all matters reserved for future consideration other than access, which is to be considered at this stage. Other than the location of the proposed access to the site shown on the 'Proposed Site Plan' drawing¹ I have treated the remainder of the site's layout and the siting of the proposed dwellings on that plan, and the 'proposed elevations' plan as being indicative. I have determined the appeal accordingly.
3. The appellant has submitted a signed and dated Unilateral Undertaking (UU) prepared under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) (the Act). The UU sets out the appellant's undertaking in relation to mitigation measures in respect of the site's location within the Blackwater Estuary Special Protection Area (SPA) and Ramsar zone of influence. I return to this matter below.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the character and appearance of the surrounding area;
 - Whether or not suitable, safe and appropriate access to the site can be achieved;
 - Blackwater Estuary Special Protection Area; and

¹ Drwg No: 2890/20 Rev A

- Whether or not the appeal site is an appropriate location for housing, having regard to the development plan and the National Planning Policy Framework.

Reasons

Character and appearance

5. The appeal site lies beyond the defined settlement limits of Felsted and is defined as countryside in development plan terms. The site, the majority of which is tucked behind the houses and garden plots of properties on Causeway End Road and Jollyboys Lane South, would be accessed via a neck of land from Causeway End Road. The main body of the site is broadly rectangular, bounded on three sides by existing residential garden plots with varying degrees of domestic shrubbery, vegetation and trees on their boundaries. Access to the main body would be by way of a wedge-shaped part of the site with street frontage to Causeway End Road. The eastern boundary of the site, whilst also comprised of a robust field hedgerow, is bounded by fields and paddocks.
6. Causeway End Road from its junction of the B1417 is a residential street of houses of mixed architectural style, scale and age, the prevailing form of which is of ribbon development. There are no footways along Causeway End Road and so the modest detached houses and bungalows with their front gardens extending up to the carriageway create a pleasingly rural feel to the street. The street's built form is continuous on both sides of the road up to the appeal site, and where it stops short on the northern side with the appeal site's open frontage, two further bungalows on the southern side of the road provide a built counterpoint to the appeal site's existing field entrance.
7. The smaller wedge-shaped area part of the site fronting Causeway End Road is, despite the low-key boundary with the neighbouring residential property, distinctly rural in its character and appearance. As such, it shares more in those terms with the paddocks and fields beyond the dense hedgerow to the east than the residential properties with which it shares boundaries. The site is clearly therefore visually and contextually distinct from the managed residential character of the garden plots of the houses on Causeway End Road.
8. So too, the main body of the site. Despite having existing residential garden plots on three sides, the nature of the vegetation along the site's northern boundary in particular is a significant visual and contextual barrier to the lengthy rear garden plots of properties on Jollyboys Lane South beyond. The appeal site thus provides a pleasant rural outlook across the site for properties adjoining it, and an appropriate foreground to the continuing countryside beyond.
9. The form of development shown on the proposed site plan is indicative but it is inevitable that, given the quantum of residential development proposed, it would principally be located within the main body of the site. Although residential properties and garden plots bound the appeal site on three sides, development here would nevertheless be at odds with the prevailing ribbon form of development that is characteristic of much of Felsted and which is particularly true south of the B1417 and along Causeway End Road. The houses would be tucked away from wider view from Causeway End Road, but the dwellings would introduce substantial built development to a setting and context largely devoid of any and would fundamentally alter the character and

appearance of the site. An aerial view of the site may put the site into a degree of context with the lengthy garden plots to the rear, but the appreciation and understanding of the site from ground level and surrounding properties would be of the introduction of significant built form in a manner, position and form that fails to respect the prevailing characteristics and pattern of development typical of this part of Felsted.

10. Although the proposal's indicative layout indicates a dwelling to the east of the last existing house on the northern side of Causeway End Road, the proposal would not unduly or harmfully extend built form eastwards along the lane. Existing housing directly to the south of the site, together with the village name sign and speed limit signs would provide a visual counterbalance to an additional dwelling. However, whilst there would be no harm arising from this element of the proposal, the harm that I have identified above would result in a form of development that would fail to respect the prevailing form and character of development in this part of Felsted.
11. The proposal would cause harm to the character and appearance of the site and the surrounding area as a consequence of failing to protect or enhance the character of the countryside in which the proposal would be set, and failing to respect the prevailing pattern and form of development of the part of Felsted that it directly adjoins. The proposal would therefore be in conflict with ULP policy S7 and FNP policy HN5.
12. The Council acknowledge that ULP policy S7 is only partly consistent with the National Planning Policy Framework (the Framework), the latter being considerably more recent than the ULP. It is also common ground that the Council are currently unable to demonstrate a 5-year housing land supply. In line with Framework paragraph 11, the policies most important for determining the application are out of date and the weight that can be afforded to them is reduced as a consequence. Although ULP policy S7 is not fully consistent with the Framework, it also seeks to protect and enhance the character of the countryside and this is consistent with the Framework's aims with regard to the countryside, such that it may still be given substantial weight.

Highways matters

13. The appeal site's road frontage lies between a slight S-bend in Causeway End Road's alignment as it heads beyond the existing built-form towards Cobbler's Green. Works carried out previously have created a crossing of the roadside ditch to allow access from Causeway End Road into the site, to which I have been directed towards an approval by Essex County Council under the provisions² of the Land Drainage Act 1991. This, I am advised, corresponds with the proposed location of the access to the appeal site.
14. Although the application was submitted in outline form with most matters reserved for future consideration, approval was sought for the access to the site at this stage. The proposed site plan shows the proposed access road into the site intersecting Causeway End Road at broadly 90°. The appellant's traffic survey indicates that surveyed traffic speeds at the site entrance broadly correlate with the 30mph speed limit which starts a short distance to the east of the appeal site and that appropriate visibility splays could be achieved.

² Section 23

15. The Council have not provided further comment upon the appellant's Grounds of Appeal and so have not updated the initial consultation response from Essex County Council on highways matters. Albeit somewhat briefly, this is what the Council's officer report subsequently relies upon with regard to highways matters.
16. Causeway End Road to the west of the site is of a reasonable width, but parked cars, which were prevalent at the time of my site visit, restricted width and ensured extra care and reduced speed was necessary along the road. Beyond the houses and the speed limit sign, the road is narrow with substantial hedgerows and banks alongside the road, meaning that caution is required when passing other vehicles.
17. Whilst noting the concerns of local residents, I have no particular reason to doubt the findings and conclusions of the appellant's traffic survey regarding traffic speed or available visibility splays. The nature of the road in the vicinity of, and beyond, the site provides its own constraints in terms of speed of approach towards and past the site entrance. However, whilst the proposed site plan shows the intersection of internal estate road and Causeway End Road, it does not set out details of the junction or its geometry. Nor does the submitted plan appear to respond to existing impediments to the access being able to be constructed.
18. I cannot be certain therefore that a suitable, appropriate and safe junction could be created in the position shown on the proposed site plan. Furthermore, without that detail, I cannot be certain that the proposal would provide adequate visibility, particularly in a westerly direction. The visibility splay shown on the revised site plan³ submitted as an appendix to the appellant's final comments shows the recommended splay in a westerly direction, but without certainty over the detail of the junction, and from where to assess the splay, it has not been adequately demonstrated that a safe and suitable access could be provided. Given the relationship of the splay with land beyond the site boundary, and indeed land within it on the banks of the existing ditch, further uncertainty regarding the suitability of the proposed access remains.
19. A development of five dwellings would be unlikely to create significant levels of traffic and there would be sufficient space within the site to allow a road and site layout with adequate parking and manoeuvring space. However, as access is a matter to be determined at this stage, and as it has not been adequately demonstrated that the proposal would provide safe access to the road network, the proposal would fail to accord with ULP policy GEN1.

Blackwater Estuary SPA

20. The SPA is one of four within the District which are noted collectively for their exceptional wildlife including large numbers of wintering birds, a range of breeding species and habitats. However, the coastal and estuarial nature of the SPA has been identified as a strong draw for visitors, and the birds, coastal species and habitats can be vulnerable to disturbance from recreation.
21. The appeal proposal would result in an increase of five dwellings, with a corresponding and consequent increase in the number of local residents living within the SPA's zone of influence. This would be likely, in turn, to increase

³ Drwg No: 2890/20 Rev B

recreational pressure upon the SPA such as, but not limited to, dog walking and recreational walking, leading to increased disturbance of overwintering species and other species supported within the SPA. It is therefore likely that the proposal, taken both in isolation and cumulatively, would have a significant adverse effect on the integrity of the SPA and, as the competent authority, it is necessary for me to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the SPA.

22. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy was published as a draft Supplementary Planning Document (SPD) in January 2020. The SPD's mitigation strategy sets out the approach to avoiding or mitigating significant effects on the SPA by securing a financial contribution towards a range of strategic mitigation measures. The UU sets out a financial contribution in accordance with the SPD's mitigation strategy and tariff, and as the Council has not challenged the content of the UU it is clear that there is no dispute regarding the level of mitigation it provides for. I am therefore satisfied that the proposal, with the mitigation contribution set out in the UU, would not adversely affect the integrity of the SPA.

Appropriate location

23. The appeal site directly adjoins the residential garden plots of properties on Jollyboys Lane South and Causeway End Road. Whilst lying beyond the village development limit (VDL) for the Causeway End Road area of Felsted⁴ within the defined settlement boundary for Felsted, it directly adjoins it along two sides of its perimeter. It is not, as the appellant erroneously claims the Council have suggested, an isolated location.
24. The supporting text to Felsted Neighbourhood Plan (FNP) policy HN5 recognises that new housing development will come forward in Felsted during the plan period adjacent to or outside the VDL. FNP policy HN5 deals with such matters and sets out a range of exceptions in which proposals outside the VDL will not be resisted.
25. There has been no argument advanced that the proposal would benefit from the exceptions set out by this policy and so the proposal would be contrary to FNP policy HN5. However, the Council acknowledge that they do not have a 5-year housing land supply and offer no counter argument to the appellant's assessment of housing land supply drawn from previous appeal cases⁵. At a supply level in the region of 2.68 years, the Council's housing supply falls significantly short of a 5-year supply.
26. The Council have not challenged this position, and also acknowledge that Uttlesford Local Plan (ULP) policy S7 does not fully comply with the Framework's approach to countryside protection. Thus, the policies most important to the determination of this application are, in the words of Framework paragraph 11(d), out of date. That paragraph goes on to state that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
27. There are limited services and facilities within the Causeway End Road / Jollyboys Lane South area of Felsted, but a wider range are available on Station

⁴ Map 12 – Felsted Neighbourhood Plan (FNP)

⁵ APP/C1570/W/19/3238120; APP/C1570/W/19/3234739; APP/C1570/W/19/3243843; APP/C1570/W/20/3246367

Road / Braintree Road within the main body of the village. The Council are concerned that the appeal site is in an unsustainable location relative to those services and facilities, but I am advised that there is a bus route along the B1417. Furthermore, although a walk of reasonably moderate length along Causeway End Road and the B1417 to the main body of the village, it is level and with a pavement for the length of the B1417. That Causeway End Road does not benefit from a pavement would not be a deterrent to walking given the its pleasant and quiet, rural-fringe character. Walking, and indeed cycling, options would not be unpleasant and conditions would not in my judgement be an undue deterrent in their uptake. I am not persuaded therefore that future occupiers of the proposed dwellings would be solely reliant on the private car for accessing local services and facilities, particularly in the context of a rural settlement setting such as Felsted and its parish.

28. Setting aside matters of character and appearance, which I have considered separately above, the site is clearly not isolated. The proposed dwellings would not be isolated new houses in the open countryside. The site directly adjoins the VDL on two sides and, although not particularly evident in terms of character or appearance, there are lengthy rear garden plots to the north of the site as well. Access by residents to the services and facilities offered elsewhere in Felsted would not be materially worse, or more of a disincentive to access by way of walking or cycling, and would not be any more dependent on access by private car to those services than elsewhere along Causeway End Road or might be expected in a rural settlement such as Felsted.

Planning Balance

29. Although the Council have not quantified the extent of the shortfall against a 5-year housing land supply, nor has it challenged the appellant's conclusions that the supply only amounts to 2.68 years. I have however been presented with other recent appeal decisions which have considered that figure and no further evidence has been presented to me that would lead me to conclude that the level of supply has materially changed in the intervening period. I do not disagree with the appellant's conclusion that paragraph 11(d) is engaged and the policies most important to the determination of the application, notably ULP policy S7 are out of date.
30. The proposal would add 5 dwellings to the Council's housing supply and work towards the government's aim, expressed in the Framework, or significantly boosting the supply of homes, although the benefit that this would provide in the context of such a significant shortfall would be heavily tempered by the limited scale of the proposal. Those five dwellings would also provide social and economic benefits during both the construction period and also from their subsequent occupation. Those benefits would, for the same reasons, be modest and only attract moderate weight. The site is not isolated and is directly adjacent to existing residential areas of Felsted where alternatives to the private car to access services would not be so inconvenient or unpleasant as to deter those as viable means of accessing services and facilities. This weighs in support of the proposal, but only modestly so.
31. It may well be possible to design the proposed dwellings in such a manner that they would demonstrate good design, but such matters are reserved and not therefore before me at this stage. On the basis of the indicative site layout, dwellings located within the main body of the site may not be widely visible

from Causeway End Road, but that would not overcome the harm that would arise to character and appearance from the introduction of built development in this location.

32. However, the proposed development would cause unacceptable harm to the pleasant, rural character of the appeal site arising from built development of a form and location at odds with the prevailing character and form of Causeway End Road and Felsted more widely. Nor has it been adequately demonstrated that the proposal would secure safe and satisfactory access to the local road network. The adverse impact arising from the harm I have identified significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole and, whilst Framework paragraph 11(d) is engaged I conclude that the exception provided for by paragraph 11(d)(ii) applies in this instance.

Conclusion

33. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Graeme Robbie

INSPECTOR