



Appeal Decision

Site visit made on 17 December 2020

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 January 2021

Appeal Ref: APP/W1525/W/20/3257264

Land to the North East and adjacent to 17 Old Bell Lane, East Hanningfield Road, Rettendon Common, Essex, CM3 8EH

- 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 Garrie White against the decision of Chelmsford City Council.
 - The application Ref 20/00089/FUL dated 21 January 2020, was refused by notice dated 1 April 2020.
 - The development proposed is erection of four semidetached two storey dwellings within private access and associated covered and open car parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the application was refused the Council has adopted a new Local Plan¹ (LP) on 27 May 2020. The policies from the previous Core Strategy and Development Control Policies referred to within the decision notice, have therefore been replaced and carry no weight within the determination of this appeal. Compliance with policies which are no longer in force at the point of determination can carry no weight within this appeal. Both the appellant's, and the Council's, appeal statement of case clearly acknowledge these points. The policy position was also clearly outlined within the Council's delegated report.
3. I am satisfied that both parties have had the opportunity to comment as to the impact of the adoption of the new LP, and the relevant policies which refusal is based upon, in relation to the determination of this appeal.
4. The decision notice has a third reason for refusal relating to the effect the proposal would have on the zone of influence identified by Natural England for likely effects to occur to a European Designated Site. I have before me a signed Unilateral Undertaking (UU) (dated 15 December 2020) which the Council states is sufficient to overcome refusal reason three. I have no reason to conclude differently and, as such, there is no reason to consider this particular refusal reason directly within this appeal but it will be returned to under other matters.

Main Issues

5. The main issues are i) whether the proposal is acceptable in principle having had regard for Local Plan policies and ii) the impact of the proposal upon the intrinsic character and beauty of the countryside.

¹ The Chelmsford Local Plan (2013-2036)

Reasons

6. The appeal site is part of a grass field adjacent existing development on two sides off both Salforal Close and Old Bell Lane, to the North and West, respectively. Old Bell Lane itself provides access, in combination with a private drive, to the appeal site. Old Bell Lane is an unmade road and is noted to be public bridleway. There are footpaths adjacent to, and within the vicinity, of the appeal site.

Principle of the development

7. The proposal seeks to erect four semi-detached residential dwellings. No issue has been raised, within the reasons for refusal, in relation to design of the proposal. The site adjoins, but is outside of, the settlement boundary of Rettendon Common. It is therefore, in policy terms, countryside. I do not find that the site forms part of the village of Rettendon Common.
8. There is nothing to legally confirm the appeal site's status as previously developed land (PDL). Reference is made to an application for a Certificate of Lawful Use². I find that, whether or not the land which is the subject of this appeal was included in that application, this carries little weight given that the Council declined to issue the certificate of lawfulness. On the evidence before me the commercial use, acknowledged within 02/02444/FUL, associated with the adjoining site did also failed to include the site which is the subject of this appeal. I find that the planning history, and comments related to the use, of the adjoining site to carry no weight within this appeal. Furthermore it is noted that the adjoining site, which has been developed, also fell within the Defined Settlement and thus not the rural area within which the appeal site stands.
9. I note the appellant's comments that the site has access to bus stops within walking distance. Despite this, it is not clear where the listed services are in relation to the appeal site itself, and the other named villages, with a general reference to services being in "the area". The settlements identified by the appellant, in which it seems the stated services are located, appear to be some distance from the appeal site itself. This appears to be confirmed by submissions made on behalf of third parties. The Local Plan does not anticipate growth in this area with Rettendon Common being classified as a small settlement which is at the bottom of the settlement hierarchy as the least sustainable sites.
10. Whilst each proposal must be considered on its own merits it is stressed that the starting point for determination is the Local Plan in accordance with S38 (6) of the Planning and Compulsory Purchase Act 2004. There is little evidence before me which justifies a departure from an LP which has been found to be sound and subsequently adopted just under eight months ago. The National Planning Policy Framework 2019 (the Framework) is a material consideration, and it is noted to aim to boost housing supply, but it is the LP which is the basis for determination. The Framework does not change the statutory status of the LP for decision-making.
11. The appellant makes reference to paragraph 14 of the Framework setting out a presumption in favour of sustainable development against three sustainability dimensions; economic, social and environmental. Paragraph 14 is clear that it

² 02/01298/CLUED

is applicable to where the presumption at paragraph 11 d) is applicable. Given that there are relevant LP policies for the proposal, that these policies are fully up to date and the Council have a five-year housing land supply (5YHLS) paragraph 11 of the Framework is not engaged. The proposal does not fall to be considered within the context of the tilted balance and whilst 5YHLS is noted not to be a maximum figure this does not override the fact that development should be directed as per the Local Plan.

12. The Framework does seek to make effective use of land and promote development of under-utilised land; however, substantial weight is given to using brownfield land within settlements and support is given for under-utilised land especially where it would meet identified needs for housing where land supply is constrained. Given the site is not brownfield, is outside a settlement boundary and I have no evidence to suggest an identified need for housing nor constrained supply I place little weight on this in relation to this appeal.
13. On the evidence before me the site does not present as a sustainable location for new residential development. The contribution of future occupiers, to the rural economy, would likely be limited in the case of four dwellings and would not overcome the in-principle conflict found with the LP. I do not find there would be impact upon the local economy as a result of refusing consent.
14. LP Policy S1 sets out the Council's spatial principles and seeks to focus development to higher order settlements as well as respecting the existing development pattern and hierarchy of development. The site is, therefore, not in a Key Service Settlement or growth area and is not a previously developed site. The appellant's final comments acknowledge that the proposal would be contrary to the strategic approach to development in the LP.
15. I find that there are no material considerations which justify a departure from the adopted LP in this case. The proposal is, in principle, in conflict with the up-to-date development plan. The proposal would be contrary to LP Policy S1 which requires all new development to accord with the stated Spatial Strategies.

Impact of the proposal upon the intrinsic character and beauty of the countryside

16. The appeal site benefits from a mature hedge and tree boundary to the North and East. There is development to the West. It is noted as being essentially enclosed on three sides but it is open in terms of views into the site from the South. There are a number of public footpaths within close proximity to the site and the land immediately to the South is open fields. I find that this contributes to the open setting, and character of the area, on the edge of the settlement and that the site is part of the intrinsic character of the countryside. Furthermore the submitted landscape assessments, regardless of their age, acknowledge pockets of pasture and pony paddocks as a key characteristic.
17. From my site visit it appeared that 11a Salforal Close is single storey and largely screened by the mature boundary to the appeal site when considering existing views from the South. No. 11a Salforal Close is also stepped back from no. 23 and no. 17 Old Bell Lane which creates a softer edge to the development boundary. The appeal proposal would bring two storey development and general domestication into the appeal site which would notably alter the character and appearance of what presents as a rural paddock, which is open with no buildings, on the edge of the settlement.

18. I find that this would be notable for users of the public rights of way by bringing development much closer than the current residential development boundary, which is which partly stepped back as a result of the open nature of the appeal site, as well as being screened vegetation. I find this would present as an urban encroachment into the countryside, would be harmful in terms of appearance and would make the development boundary prominent as a result of it levelling up. I find that this would result in development in a rural area where the introduction of built form would be harmful to the rural character and appearance of the edge of the settlement.
19. Paragraph 170 of the Framework requires decisions to contribute to and enhance the natural and local environment and I do not find that the proposal does this when taking into account the natural character of the countryside adjoining the settlement. The proposal would be in conflict with LP Policy S1 which requires proposals to respect the character and appearance of landscapes.
20. Even if I had agreed with the appellant's contention that the proposal was acceptable in this regard the appeal would still be dismissed as a result of the in-principle policy conflict I have already identified. Furthermore the proposal would fail to be sustainable as a result of this conflict with the environmental dimension of sustainable development.

Other Matters

21. I note the Council's inclusion of a number of policies within their appeal submissions, however, only one relevant policy was specifically stated within the decision notice itself. It is not uncommon for adopted LP policies to be re-named following formal adoption of the emerging policy and I suspect that this is where the confusion lies between the decision notice, the Council's submissions and the appellant's contention that the stated policies do not exist. I do not have clarification on this matter but in any case the conflict identified with LP Policy S1 would, either way, result in the appeal being dismissed.
22. The site stands within a zone of influence identified by Natural England for likely significant effects to occur to a European Designated Site (the Blackwater Estuary Special Protection Area and RAMSAR site). As outlined under procedural matters at the start of this decision letter the appellant has submitted a completed UU to secure appropriate mitigation. Were I minded to allow the appeal, it would have been necessary for me to consider the matter within an appropriate assessment, however, given I am dismissing the appeal for other reasons it is not necessary for me to consider this matter further.
23. A number of objections have been received in relation to the proposal. I have dealt with the principle of the development already within the main issues of this decision letter. The Council's reasons for refusal do not raise concern with loss of privacy, overlooking or amenity, flooding or ecology. There is no legal right to a view. Based on the evidence before me I have no reason to conclude differently on such matters. Highways, as consultees, have not raised any objection to the proposal subject to conditions which could have been applied had this appeal been allowed. I note correspondence from Journey Transport Planning, however, given a lack of objection from Essex County Council Highways, a reason for refusal on highways ground cannot be substantiated.

24. Concern relating to the actual construction process could have been managed with a condition for a Construction Management Plan which would have dealt with matters such as noise and disturbance. The maintenance of Old Bell Lane, as a private lane, is a private matter which does not fall to be considered as a planning matter within this appeal.
25. How this appeal proposal compares to the previous scheme (19/01013/FUL), or addresses reasons for refusal in that previous scheme, are not relevant to this appeal. It falls to consider the proposal as submitted before me. A lack of objection on other matters is a neutral consideration.
26. I note the appellant's contention that the Council have failed to approach the application(s) for the site reasonably. Concerns regarding the processing and/or handling of the application are not issues which I can assess as part of this appeal. The validity or not of such matters does not affect the planning merits or impacts of the proposal before me.

Conclusion

27. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be dismissed.

Eleni Randle

INSPECTOR