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# Appeal Decision

Site visit made on 19 January 2021

**by Richard Aston BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 February 2021**

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**Appeal Ref: APP/C1570/W/20/3259894**

**Pathwoods, Bardfield End Green, Thaxted CM6 3PZ**

- 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 and Mrs Osborn against the decision of Uttlesford District Council.
  - The application Ref UTT/20/1627/FUL, dated 3 July 2020, was refused by notice dated 28 August 2020.
  - The development proposed is erection of a single dwelling.
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## Decision

1. The appeal is dismissed.

## Application for costs

2. An application for costs was made by Mr Adrian Sykes c/o Skye Property Group Limited against Uttlesford District Council. This application is the subject of a separate Decision.

## Main Issues

3. The main issues are:
  - The effect of the proposal on the character and appearance of the appeal site and area.
  - If harm and conflict is identified whether this would be outweighed by other material considerations.

## Reasons

### *Background*

4. The proposal before me follows the refusal of a previous outline application for the erection of 2 detached dwellings on a similar site and the subsequent dismissal of the related appeal<sup>1</sup>.
5. That proposal differs from the one before me, but it is not 'completely irrelevant' as the appellant suggests and is capable of being a significant material consideration. I have been provided with the relevant plans and a copy of the decision and I have had regard to it in the determination of this appeal, where necessary.

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<sup>1</sup> APP/C1570/W/17/3168638.

### *Character and appearance*

6. Pathwoods is a substantial detached property located on the periphery of a cluster of built form centred around a small cricket pitch in an open and agrarian environment beyond the outskirts of Thaxted. It is within the open countryside for planning purposes.
7. Whilst I observed sporadic residential and other development along Bardfield Road to the east, these appeared to be on modest, narrow plots. Pathwoods is the last property in the group separated from North View, a detached dwelling to the east, by a broadly rectangular and grassed field. The appeal site is formed by approximately half of that field and an access drive behind the hedge, the other half is shown as being associated with Pathwoods.
8. There is a mature hedge to the road frontage although I observed it was managed and did not appear as tall as represented on drawing no. 06. To the rear there is a tree lined boundary separating the site from a network of Public Rights of Way ('PRoW') and the open countryside beyond.
9. The appeal site does not appear physically part of the cluster given its location and the openness of the land. Notwithstanding its mown appearance in combination with the lack of any development and its rural character it has a stronger affinity with the open countryside than the dispersed and sporadic built form along Bardfield Road and beyond in Bardfield End Green. It is reflective of the locally distinct settlement pattern with open space and fields to the rear and side of residential development, bordering much larger agricultural fields and open countryside.
10. In certain views the new dwelling would be seen in the context of existing development, and with the hedge in the foreground, Sited centrally on the site and of a significant width with prominent front gable features, the roof and upper parts would be evidently more visible above the existing hedge on approaches along Bardfield Road than the submitted street scene suggests. In my view, there would be a negative impact on the overall landscape in this open countryside location due to the intrusion and consolidation of significant built form along this open and rural road frontage. The resultant plot size and wide road frontage of the plots would not be comparable with the prevailing and more modest size and narrower width of properties within the immediate locality.
11. Further, the inevitable associated requirements for domestic paraphernalia on such a large plot, including garaging, outbuildings, play equipment, hard surfaces, garden furniture etc. would result in the further suburbanisation of the appeal site. This would be to the detriment of the visual interests of its surroundings. Such effects would also be evident during parts of the year from PRoWs that exist to the rear and side.
12. Reference is made to infilling and paragraph 6.14 of the LP refers to opportunities for sensitive infilling of small gaps in small groups of houses outside development limits but close to settlements. However, the site is not to my mind a small gap but provides a significant separation between Pathwoods and the dispersed individual housing plots along Bardfield Road. This is consistent with the findings of the previous Inspector.

13. For these reasons, the proposal would cause harm to the character and appearance of the appeal site and area. Such harm could not be addressed by the imposition of conditions. The proposal would conflict with Policies S7 and GEN2 of the Uttlesford Local Plan 2005 ('the LP') and Policies TX LSC1 and TX LSC2 of the Thaxted Neighbourhood Plan 2017 ('the NP'). Amongst other things and when taken as a whole these require development to protect or enhance the particular character of the part of the countryside within which it is set, be compatible with the layout and appearance of surrounding buildings and contribute to local distinctiveness and sense of place.
14. In National Planning Policy Framework ('the Framework') terms caselaw confirms that development proposals affecting parts of the countryside that are not subject to a statutory landscape designation, nevertheless come within the scope of the provisions of what is now paragraph 170 (b) of the Framework. As a matter of planning judgement this is capable of being harmful and attracting weight in the planning balance<sup>2</sup>. The development would fail to recognise the intrinsic character and beauty of the countryside at this point and in this location.

#### *Material considerations*

15. The harm and conflicts are such that the proposal should be regarded as being in conflict with the development plan, as a whole. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.
16. The Framework is simply one such consideration and in this case the presumption in favour of sustainable development set out within paragraph 11 d) ii. of the Framework applies by virtue of Footnote 7 and is not disapplied by 11 d) i. Paragraph 14 of the Framework is not a consideration for me given the Council has confirmed the supply of deliverable housing sites is below 3 years.
17. The appellant contends that Policy S7 has 'no relevance' and 'should have no bearing' on the decision but that is not the correct approach as confirmed by recent caselaw<sup>3</sup>. Policy S7 pre-dates the Framework but the fact that a particular development plan policy may be chronologically old is, in itself, irrelevant for the purposes of assessing consistency with the Framework and the weight to be attached to any conflicts with it.
18. The Framework no longer seeks to protect the countryside for its own sake, taking a more positive approach in seeking to significantly boost the supply of housing. There is some consistency however with the general objective of conserving and enhancing the natural environment and recognition and acknowledgement of the intrinsic character and beauty of 'ordinary' countryside. Even having regard to an associated reduction in weight as a consequence of a significant lack of supply, weight is a matter for the decision maker. The harm and conflict in terms of character and appearance are still significant.
19. In carrying out the required balancing exercise the Council have specifically referred to the location and accessibility of the appeal site. The site should not

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<sup>2</sup> Cawrey Limited v SoS and Hinckley and Bosworth BC [2016] EWHC 1198.

<sup>3</sup> Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government & Ors [2021] EWCA Civ 104. Case No. C1/2020/0542/QBACF.

- however be considered as isolated in terms of paragraph 79 of the Framework given the presence of neighbouring development and having regard to established caselaw. Nonetheless, that does not automatically equate to it being an accessible or suitable location and that no harm would arise.
20. The appeal site is somewhat remote from the rural services and facilities in Thaxted. There are some opportunities for pedestrians and cyclists, but these are unlit and narrow rural roads and footpaths. Both are unlikely to be a realistic option other than for experienced walkers and cyclists. Such a journey would also not appeal to all.
  21. Opportunities to maximise sustainable transport solutions will vary from urban to rural areas and vehicle journeys between rural settlements are to be expected. However, with no public transport options future occupants would realistically have no choice but to rely on private vehicles in order to access day to day facilities and services further afield. There would also be additional visitor and delivery trips associated with the occupation and servicing of the dwelling.
  22. Such reliance would ultimately cause some minor environmental harm because the proposal would not be located where it would contribute to a cumulative reduction in harmful greenhouse gas emissions, improve air quality and public health. An electric vehicle charging point could be secured by condition but whilst electric vehicle usage is increasing the wider infrastructure is not sufficient to make any determinative impact or demonstrate it would be taken up other than on a limited individual basis.
  23. Set against this, the proposal would result in an additional dwelling in a district where there is a significant shortfall in housing<sup>4</sup> and the ELP has been recently withdrawn. A single-family sized dwelling would however make a minimal contribution. There would be short-term economic benefits during construction and in the longer term, from future occupants spending in the local economy. It could therefore assist in maintaining the vitality of rural communities although there is little substantive evidence to qualify or quantify this. The appellant makes a general reference to self-build housing demand and the family needs of the landowner, but no details are provided so the weight I give to this is limited.
  24. The appellant also refers to the appeal site being curtilage to Pathwoods and used as garden land to support alternative views that it is Previously Developed Land ('PDL'). It is not for me to determine the lawfulness of any existing or proposed development as part of a section 78 appeal and applications for lawful use certificates for this were also refused by the Council in 2017 and 2018.
  25. Although a title plan has been submitted that only shows the general position and extent of boundaries of land under ownership. That plan also shows a single black line close to the host dwelling and running across the full depth of the site at that point.
  26. The evidence before me and my own observations does not indicate the appeal site should be considered as curtilage or private residential garden, and therefore PDL. The Framework is also clear that decisions should promote an

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<sup>4</sup> 2.68 years of supply within delegated officer report.

effective use of land while safeguarding and improving the environment. That would not be the case here and as such the land should not be considered suitable land for housing for the purposes of this particular appeal.

27. The dimensions of sustainable development in paragraph 8 of the Framework are not criteria which every decision can or should be judged. Nonetheless, and whilst there is accordance with some elements of the Framework overall, the proposal would fail to fulfil the environmental and social dimensions.
28. Taking everything together and whilst there are benefits that weigh in favour of this proposal, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As such, the proposal would not be the sustainable development for which Paragraph 11 d) ii. of the Framework indicates a presumption in favour.

### **Other Matters**

29. My attention has been drawn to a number of other developments<sup>5</sup> in the wider locality and appeal decisions from other administrative areas. For the local examples I have been provided with web links to those documents and as such I have not been able to access and consider that specific information any further.
30. In any event and on the evidence before me some general similarities can no doubt be drawn with such cases, but I do not have the full details and cannot be certain they are directly comparable to the proposal before me. Each case must also be determined on its own merits and such proposals are subject to various site-specific and bespoke considerations and judgements. Having done so in this appeal, on their own or in combination such considerations do not outweigh the harm and conflicts I have identified and do not alter my decision to dismiss the appeal.

### *Conclusion*

31. For the reasons set out above, the proposal would conflict with the development plan, when read as a whole. Material considerations, including the Framework do not indicate that a decision should be made other than in accordance with the development plan.
32. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

*Richard Aston*

INSPECTOR

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<sup>5</sup> UTT/18/3395/FUL, UTT/19/1603/FUL, UTT/16/2600/FUL.