
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: 2 March 2021

Appeal Ref: APP/C1570/W/20/3259360

Heritage Cottage, Friars Lane, Hatfield Heath, Essex CM22 7BE

- 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 P Monks against the decision of Uttlesford District Council.
 - The application Ref UTT/19/1244/OP, dated 23 May 2019, was refused by notice dated 27 May 2020.
 - The development proposed is formation of new access and erection of 1 new residential dwelling.
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Decision

1. The appeal is allowed and outline planning permission is granted for formation of new access and erection of 1 new residential dwelling at Heritage Cottage, Friars Lane, Hatfield Heath, Essex CM22 7BE in accordance with the terms of the application, Ref UTT/19/1244/OP, dated 23 May 2019, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The appeal concerns an application for outline planning permission including details of access. Appearance, landscaping, layout and scale are reserved for later consideration. The submitted proposed site plan is entitled 'Indicative' and I have dealt with the appeal on this basis.
3. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties have provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the application form which accurately describes the development proposed.
4. During the course of the appeal and without prejudice to my decision I sought further comments from the parties on conditions relating to restriction of permitted development rights and scale/height. I have had regard to the comments received from the parties in my determination of the appeal.

Main Issues

5. The main issues in this appeal are:

- The effect of the proposal on the character and appearance of the area.
- The effect of the proposal on the living conditions of future and neighbouring occupiers.

Reasons

Character and appearance

6. The appeal site forms part of the rear and side garden of Heritage Cottage, a substantial detached chalet style dwelling accessed directly from Friars Lane. Friars Lane is a long rural lane that leads from Chelmsford Road and in this part, contains a variety of dwelling types and sizes before continuing through open agrarian countryside to the south.
7. Residential development is set out in a cluster at this end of the lane, on both sides and within the settlement limits of Hatfield Heath. I observed what appeared to be backland development had taken place within the lane, including dwellings to the rear of Bramfields. Such a back-land arrangement as proposed in this appeal could not be reasonably said to be uncharacteristic of the pattern of development within the locality.
8. The appeal site is formed by the large rear garden of Heritage Cottage and contains land both within the settlement limit and the Green Belt, backing onto heavily vegetated boundaries. A number of trees would be retained on the site, but the somewhat constrained siting opportunities allowed by the settlement limit would result in the loss of a number of mature self-seeded Oak trees. A section of mature conifer hedgerow would also be removed along the frontage of the site.
9. The specialist advice of the Council's Landscape officer is that the trees are not suitable to be preserved by a Tree Preservation Order due to their lack of sufficient public amenity value and they are not 'veteran' trees. Whether such an order would be made is not for me to determine but as a group the trees do have some value due to their size and age. However, this is in very limited views from public land and nearby rights of way due to the presence of intervening built form and other mature trees and soft landscaping.
10. Their loss would result in some deterioration of the semi-rural character and appearance of the rear garden in what is a transitional area on the semi-rural periphery of the settlement. It would cause some visual harm, but replacement trees and additional soft landscaping could be secured at the detailed stage. Landscaping could also be secured to soften and minimise any visual effects from the proposed access.
11. This is development which seeks to utilise the opportunity provided by the line drawn on the adopted proposals map for the settlement and Green Belt boundary. Be that as it may given the varied pattern, form, size and appearance of dwellings in this part of Friars Lane and the settlement I see no reason why a single, modest 1 ½ dwelling could not be designed to be sympathetic to this mixed rural vernacular and be contained solely on land not within the Green Belt.

12. Nonetheless, the proposal would conflict with GEN2 b) of the Uttlesford Local Plan ('the LP') insofar as it would not safeguard important environmental features in its setting, enabling their retention. I have also been referred to Policy H4 of the LP but H4 is a criteria-based policy stating, '*development of land that does not have a road frontage will be permitted...*' and then refers to 4 criteria, all of which must be met. The policy I have been given does not refer to character or design considerations and it is not therefore relevant to this issue.
13. In terms of national policy, I find this outline proposal should not be regarded as poor design and the opportunity to take a design led approach to secure a high-quality development at reserved matters stage. There would be no conflict with paragraph 130 of the National Planning Policy Framework ('the Framework') as suggested by the Council. I return to other Framework considerations below.

Living conditions

14. The distance between the likely siting of the dwelling and Heritage Cottage is likely to be fall below the 25-metre requirement within the Essex Residential Design Guide albeit not substantially so. Although guidance, compliance with this is a requirement of Policy GEN2 f) but I also note the extract I have been provided with refers to privacy being achieved through design being usually more effective than remoteness.
15. Having visited the site Heritage Cottage sits at a slightly higher level than the appeal site. The likely distance between the dwellings, including neighbouring dwellings, and a restriction of no more than 1 ½ storeys for any future dwelling would mean that although it would be evident from neighbouring properties it would not be overbearing to outlook from them, including from private garden spaces. Any future dwelling could also be designed to avoid an unacceptable outlook for future occupiers.
16. A dwelling could be designed to avoid first floor windows that could cause an unacceptable loss of privacy to the occupiers of neighbouring dwellings, in particular Heritage Cottage and Pheasants Roost. Given the siting of neighbouring dwellings there would be no material loss of light to neighbouring properties and being a 3-bed dwelling, the proposal would not result in unacceptable noise and disturbance from use of the access. Whilst parking spaces are shown abutting the boundary with Oakhanger which accounts for its width, that plan is indicative only and further details would be required and would fall to be assessed further by the Council at a later stage.
17. Ultimately, it would be for the appellant to produce a suitable and high-quality design that pays attention to these issues and I am satisfied it could be achieved. The Council would also retain the discretion to refuse to approve the details of any proposal where any effects have not been satisfactorily addressed in the detailed design of the proposal.
18. Overall, the proposal would result in no material harm to the living conditions of neighbouring occupiers and this would not therefore equate to conflict with Policy H4 of the LP insofar as it requires no material overlooking or overshadowing of nearby properties and that development should not be overbearing. However, the proposal would conflict with Policy GEN2 f) in terms of a failure to have regard to adopted minimum guidance on layout. Given this

can be addressed at the reserved matters stage through design, the weight I give to this conflict is minimal.

Other Matters

19. The red line of the proposal relates to part of the existing private garden of Heritage Cottage which is located within the Green Belt. I am satisfied that a dwelling could be accommodated on land not within the Green Belt and the use of all of the appeal site that lies within the Green Belt would remain the same as existing. The subdivided plot would still be compatible with the existing character and appearance of properties in the area. There would be no conflict with Policy S6 of the LP and the Council did not raise such effects as an issue, considering the proposal not inappropriate. I have not therefore considered it necessary to consider this in any more detail.
20. My attention has been drawn to a number of other decisions within the district. However, I have not found it necessary to make specific comments on any of those conclusions but as a general point, each decision turned on their own evidence, as has my decision. Further, the appeal decision referred to by the Council appears to be for a site solely within the Green Belt so is subject to different considerations and judgments. In reaching this view the plans submitted by the appellant showing a proposal submitted to the Council for full planning permission on the same site have not been determinative and I have formed my own view.
21. The width and need for the access have been questioned in third party representations but this would appear to have been agreed, in discussions with Essex County Council as highway authority. I am satisfied that highway safety would not be harmed. Any concerns regarding stability of land not within the application site is not a matter for me to address as part of this appeal.
22. Sewage disposal and drainage can be addressed and conditioned at the reserved matters stage once the layout is confirmed. There is nothing substantive in the evidence before me or from my visit to indicate that protected species would be harmed. Whilst reference has been made to precedent for future proposals on adjoining land, that is not a matter before me and any application for development of neighbouring land would fall to be assessed on its merits and in accordance with its relevant development plan designation.

Conditions

23. I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. Statutory outline conditions relating to timing and submission of reserved matters are necessary. As all matters are reserved apart from access it is necessary to impose a condition securing compliance with the relevant plans.
24. I observed a large Oak tree within the boundary of Pheasants Roost that is not shown on the plans. Noting proximity of that tree to the area where the dwelling would be sited, a condition clarifying the landscape details of the reserved matters to include further details of retained trees and protection measures is necessary to protect character and appearance.
25. To protect the character and appearance of the area and the openness of the Green Belt a condition is also necessary to restrict the dwelling to land not

within the Green Belt and no more than 1½ storeys. In the interests of highway safety conditions requiring the access and visibility splays to be provided, along with the parking and turning areas prior to occupation are necessary. For a similar reason and to protect living conditions during construction conditions relating to the position of any future gates and a Construction Method Plan are also necessary.

26. Having regard to the Planning Practice Guidance, I consider that there are exceptional circumstances in this case given the particular constraints and nature of the proposal to restrict the further enlargement, improvement or other alterations to the dwelling including those to the roof, under Classes A, B and C¹. Such proposals should fall to be considered by the local planning authority and would be in the Green Belt. It would not be reasonable to remove Class E however as the appeal site is currently residential curtilage and there is nothing to suggest it does not currently benefit from such rights.

Planning balance and conclusion

27. Policy GEN2 of the LP requires all of its criteria to be satisfied and as set out above there would be some harm and although limited, the proposal would conflict with the development plan, when read as a whole.
28. It is therefore necessary to consider whether there are any other material considerations which indicate that permission should be granted. In this appeal the presumption in favour of sustainable development within paragraph 11 d) ii of the Framework is triggered because the Council cannot demonstrate a 5-year housing land supply, in accordance with Footnote 7 of paragraph 11. It is not disapplied by 11 d) i. This means granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
29. The adverse impact in this case is the harm from the loss of the mature trees and the associated failure to contribute to and enhance this part of the natural and local environment. This would be localised harm however and additional landscaping, including replacement trees, landscaping and biodiversity enhancements could be secured at the reserved matters stage as part of the landscaping details. As set out above, the conflict with adopted design guidance would be minimal.
30. Set against this there would be social and economic benefits, including the support future occupiers would give to local businesses and services and from during the construction period. These would be in the short to longer term, and although small the proposal would still assist in maintaining the vitality of rural communities.
31. A single-family sized dwelling would also provide a minimal contribution to the supply of housing, but this would be in a district with a supply of 2.68 years, a significant shortfall and where the emerging local plan has recently been withdrawn. It is not disputed it would also make a more efficient use of Previously Developed Land within the settlement limits and would be close to services and facilities and having regard to its rural location it would be accessible by a range of transport modes.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (As amended).

32. In my view, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole. The proposal would therefore be the sustainable development for which Paragraph 11 d) ii indicates a presumption in favour.
33. This is a material consideration which outweighs the harm and conflicts with the development plan that I have identified. It indicates to me a decision should be made other than in accordance with the development plan. There are no other material considerations that indicate permission should be withheld.
34. Having considered all other matters raised, including the objection from Hatfield Heath Parish Council, I therefore conclude that the appeal should be allowed.

Richard Aston

INSPECTOR

SCHEDULE

CONDITIONS

- 1) Details of the appearance, landscaping, layout and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development commences and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall begin not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:1250 Site Location Plan, OP/1 Rev C and drawing no. 5 Rev C insofar as these plans concern matters that are not reserved for later consideration.
- 5) The dwelling hereby permitted shall be sited and contained solely on land not within the Green Belt and shall be no more than 1½ storey.
- 6) Prior to occupation of the development, the access at its centre line shall be provided with clear to ground visibility splays as shown on drawing no. 5 Rev C. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction at all times.
- 7) Prior to occupation of the development the vehicular access shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall not be less than 3 metres and shall be provided with an appropriate vehicular crossing of the highway verge.
- 8) The dwelling hereby permitted shall not be occupied until such time as the vehicle parking and associated turning area indicated on the approved plans of the submitted details has been provided. Subsequently, the parking and turning area shall not be used for any purpose other than the parking and turning of vehicles.
- 9) Any gates provided at the vehicular access shall be inward opening only and shall be set back a minimum of 6 metres from the back edge of the carriageway.
- 10) The dwelling approved by this permission shall be built to Category 2: Accessible and adaptable dwellings M4 (2) of the Building Regulations 2010 Approved Document M, Volume 1 2015 edition.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development under Schedule 2, Part 1, Classes A, B or C shall take place on the dwellinghouse.

- 12) No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The plan shall provide for:
- i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials
 - iii. storage of plant and materials used in constructing the development
 - iv. wheel and underbody washing facilities.
- 13) The details submitted in accordance with condition 1 (landscaping) above shall include:
- a plan showing the position of every tree on the site and on land adjacent to the site (including street trees) that could influence or be affected by the development, indicating which trees are to be removed.
 - a schedule in relation to every tree identified listing: information as specified in paragraph 4.4.2.5 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations) (or in an equivalent British Standard if replaced); and, any proposed pruning, felling or other work; in relation to every existing tree identified to be retained
 - details of: any proposed alterations to existing ground levels, and of the position of any proposed excavation, that might affect the root protection area; and, all appropriate tree protection measures required before and during the course of development (in accordance with paragraph 5.5 of British Standard BS 5837) (or in an equivalent British Standard if replaced);

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

----- End of conditions -----