

Appeal Decision

Hearing held on 3 and 4 February 2021

Site visit made on 15 February 2021

by D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 8 March 2021

Appeal Ref: APP/C1570/W/20/3257122

Land north of Canfield Drive, Takeley CM22 6ST

- 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 Village Developments Takeley Ltd against the decision of Uttlesford District Council.
 - The application Ref UTT/18/3538/OP, dated 20 December 2018, was refused by notice dated 13 March 2020.
 - The development proposed is outline application for up to 80 dwellings with all matters reserved except access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Hearing sat for 2 days. An unaccompanied site visit was undertaken on a separate day which included visits to a number of viewpoints suggested by those who attended the Hearing.
3. The planning application was decided by the Council on an outline basis with access reserved. At the Hearing the Appellant requested that I consider the appeal on the basis of also reserving access, in effect reserving all matters. I am content to allow this request as doing so would not in my view breach the principles of fairness. In particular, it is noted that the details for approval would maintain the identified access points shown on the plans that the Council made their decision on. In any event, this issue has not been a central determining factor in the outcome of this appeal. I am therefore treating the drawings as they relate to the reserved matters as only indicative.
4. Certified and duly executed planning obligations were submitted under section 106 of the Town and Country Planning Act 1990 (s106). The s106 relates to the provision of affordable housing, education and health care contributions, off site highway and other infrastructure changes, and to mitigate the impact of recreational pressures on the Hatfield Forest Site of Special Scientific Interest (SSSI).
5. The 40% affordable housing provision in the s106 is consistent with the requirements of Policy H9 of the Uttlesford Local Plan (Local Plan).

6. The education and health care contributions responds to comments made by the relevant consultees and are in line with the calculations set out. These requirements are consistent with Policy GEN6 of the Local Plan regarding infrastructure to support development.
7. The s106 provides a mechanism for off site highway and other infrastructure changes, including improvements both within the immediate vicinity of the site, for example any necessary road widening or markings, and contributions towards wider improvements, such as the maintenance of the Flitch Way. These obligations meet the requirements of Policies GEN1, GEN2, and GEN6 in relation to access, design, and infrastructure provision.
8. A contribution to assist with the National Trust's management of Hatfield Forest is included as a method of managing recreational pressures on the Hatfield Forest SSSI resulting from the development. This arises following consultation with Natural England and meets the requirements of Policy ENV7 of the Local Plan in relation to protection of the natural environment.
9. I am satisfied that the s106 meet the tests in paragraph 56 of the National Planning Policy Framework (the Framework) and can be taken into account in reaching my decision. The Council have also expressed a view that the s106 satisfactorily addresses the issues raised in their third reason for refusal.
10. In addition, following further consideration of the Appellant's evidence, the Council confirmed prior to the Hearing that they no longer wished to pursue their second reason for refusal in relation to sustainable drainage.

Main Issues

11. The main issues in the appeal are:

- The effect of the proposed development on the character and appearance of the area.
- Whether there are any other material considerations which would justify the appeal being determined other than in accordance with the development plan.

Reasons

Character and appearance

12. The appeal site is an agricultural field that lies beyond the development boundary of Takeley (the collective name I will use to describe Takeley and Little Canfield villages and the closely related modern housing estates). It is therefore regarded as countryside beyond the greenbelt for planning purposes. In such areas Policy S7 of the Local Plan seeks to protect the countryside for its own sake and only permit development if its appearance protects or enhances the particular character of the part of the countryside within which it is set.
13. The Flitch Way is an extensive bridleway that follows the path of a former railway line, part of which runs adjacent to the northern boundary of the site. Significant development associated with the expansion of Takeley has mostly been confined to the areas north of the Flitch Way, concentrated along the access provided by the B1256 and Parsonage Road, that gives this area urban characteristics.

14. Moving away from the B1256, south along Great Canfield Road and passing over the bridge that crosses the Flitch Way, the character rapidly changes to one that is more rural.
15. This is influenced by the less formal nature of Great Canfield Road, with its well vegetated roadside and agricultural fields that are beyond its boundary, including the appeal site. This aspect persists until the dwellings at the fringe of the hamlet of Hope End Green are reached. This hamlet is one of a number of similar 'Ends' that are typical of the area and has the characteristics of a small rural village that are distinct from Takeley.
16. The Flitch Way itself also contributes to the change in character to one that is more rural. Although man made, it's current use as a recreational bridleway provides a substantial physical break of natural appearance. It results in a level of screening between its north and south sides that limits intervisibility between them.
17. I do not agree with the Appellant's view that the site and the immediate surroundings are a transitional area between the urban and rural. Due to the combination of factors discussed above the character becomes fundamentally rural almost as soon as the Flitch Way is crossed.
18. I have carefully considered the Appellant's Landscape Visual Impact Assessment (LVIA), which was also discussed in detail at the Hearing. I note the site does not carry any specific landscape designation and is not a valued landscape, as expressed in Paragraph 170 (a) of the Framework. The site also is not rare in the sense that it is typical of agricultural fields in the area.
19. Notwithstanding this, the site has landscape value. It plays a role in providing physical and visual separation between Takeley and Hope End Green, therefore retaining their distinct characteristics, settings, and the rurality of this area south of the Flitch Way. It performs this function both individually and as part of a wider tract of agricultural land between the settlements. These factors are acknowledged with the LVIA but in my view are undervalued.
20. The introduction of up to 80 dwellings to the site would represent a substantial character change, mostly associated with the resulting presence of buildings and the wider urbanisation of the site, including the provision of a vehicular access onto Great Canfield Road.
21. At 29 dwellings per hectare, I accept that the proposal does not represent a particularly dense form of development. A character change is also an expected consequence of most greenfield development.
22. However, given the rural characteristics of the surroundings described above and the divorced nature of the site from other larger scale housing development in Takeley, the proposed development would be of a scale and nature that would be out of context with the surroundings.
23. Due to the distinct differences between the 2 settlements, I am not satisfied that a suitable detailed scheme could be achieved that would meet the Appellant's design intention of reflecting both the characters of Takeley and Hope End Green. It is hard to see how a development of the scale proposed would seamlessly integrate into this existing rural context in the way described by the Appellant.

24. Instead, the spatial effect of the proposal would be to introduce an urban influence that would reduce the physical and visual separation between Takeley and Hope End to an almost imperceptible degree. This would have consequent impacts on the character and appearance of the surroundings. The indication of a spatial separation along the southern boundary of the site would not overcome this.
25. In terms of visual impacts, it is common ground between the Appellant and the Council that the effects of the proposal would be limited to closer views. Longer views would be restricted by the relatively flat topography of the surroundings and visual obstacles such as vegetation. Further, the Council agreed at the Hearing that the most affected public viewpoints would be from beyond the boundaries of the site along Great Canfield Road and the Flitch Way.
26. From both these locations the degree to which views into and across the site are filtered by vegetation is highly variable due to the differences in the density and type of tree and plant coverage along the boundaries. Accounting for my site visit being undertaken in winter months and the absence of foliage, views into the site from a number of locations are only partially screened and, as such, the site is visible in a number of views from along Great Canfield Road and the Flitch Way.
27. As it is predominantly a recreational bridleway, the nature and function of the use of the Flitch Way is different to Great Canfield Road. Notwithstanding this, the current experience looking towards the site from both locations is similar and that is one of open countryside, with Hope End Green forming a small part of the backdrop in some views.
28. From the contributions of interested parties and the other evidence, it is clear that the Flitch Way is a well used and valued recreational resource. As it rises out of a cutting, it becomes level with the site along much of the shared boundary. In this location the proposal would obstruct much of the current open countryside view towards the buildings at the fringe of Hope End Green.
29. The effect would be to provide significantly greater enclosure to the Flitch Way that would severely impact negatively on the user experience and the enjoyment of countryside views from this well used recreation space. The presence of buildings in the distance at Hope End Green does not provide an appropriate reference point or justification for the proposal.
30. Great Canfield Road is a country lane that provides access between Takeley and Hope End Green. The site, along with other fields, currently provides an important break between the 2 settlements that maintains them as distinct. The proposal would severely disrupt this relationship, introducing a heavily urban influence as experienced from Great Canfield Road.
31. Whilst for later approval, the responses from the County Council highway department point toward changes necessary to Great Canfield Road that have the potential to further emphasise the urbanising effects of the development. The evidence does not adequately demonstrate that such works would not further contribute to the urbanisation of the surroundings.

32. Whilst illustrative, the Appellant has provided details of green space within and surrounding the proposed development. I have considered whether this could reduce the harmful visual impacts discussed above to an acceptable degree, either through enabling a sense of openness to be retained or improving the effectiveness of screening.
33. The greatest opportunities for less formalised greenery are likely to be around the perimeter of the site. This offers opportunity for screening that would be agreed as part of a landscaping reserved matter. However, I do not see a reasonable prospect of it significantly concealing or reducing the impact of a development that would be fundamentally out of context with the surroundings. As such, I am not persuaded that additional screening would have the intended effect, even after the time periods suggested by the Appellant.
34. Overall, the proposed development would result in visual harm to the character and appearance of the area. The harm would be of a much greater level of significance than the minor adverse to neutral effects that the Appellant draws from the conclusions of the LVIA, which in my view undervalues the significance of the site and overstates the role that screening could play in mitigating the effects of the proposal.
35. The appeal decision at land west of Great Canfield Road¹ is cited extensively in the evidence (commonly referred to as the Gladmans site). This is to be expected as the site lies immediately across the road from the present appeal site and also proposed major housing development, albeit more dwellings than the present proposal.
36. I do not agree entirely with the Council's view that the Gladmans site is a mirror of the appeal site. They are of different sizes and shapes and have their own wider contexts. The relationship between the 2 sites and the Flitch Way is also different as it is mostly in a cutting as it passes the Gladmans site which limits the extent of views. In addition, the relationship with historic buildings and the Countryside Protection Zone that has been established to manage growth connected with Stanstead Airport are not issues of central relevance to this appeal. However, they share common characteristics in terms of their openness, general topography and boundary planting. Both sites are clearly also part of the same rural context when travelling along Great Canfield Road. Overall, I have paid regard to the conclusions reached on the Gladmans site, whilst also considering this appeal on its own specific merits.
37. The issue of precedent is mentioned in the appeal decision on the Gladmans site and has been widely referred to in evidence to this appeal. Given the extent of more recent housing proposals in this area to the south of the Flitch Way, there is a risk of a number of unplanned developments causing significant cumulative harm to the character and appearance of the surroundings. Whilst it is important that all proposals are considered on their own merits, the cumulative risks associated with such development are in this case more than theoretical. Concerns about precedent are in my view justified. However, this issue in itself has not been determinative due to the individual level of harm that would result from the proposal.

¹ App/C1570/W/18/3213251

38. In conclusion, the proposed development would have a harmful impact on the character and appearance of the area. Consequently, the proposal would conflict with Policy S7 of the Local Plan which seeks to only permit development if its appearance protects or enhances the particular character of the part of the countryside within which it is set.

Other considerations – housing provision

39. It is common ground between the Council and the Appellant that a 5 year supply of deliverable housing sites cannot be demonstrated at present. The Council's updated Housing Delivery Test and 5 year Land Supply Statement provided prior to the Hearing puts supply at 3.11 years. This is an improved position from the 2.68 years previously indicated but still represents a significant deficit.

40. The Council withdrew their draft Local Plan from examination in May 2020 and indicate a timetable of bringing forward a new submission draft plan in early 2023. Considering this position, and the Council's other points on this matter, beyond indicating work being underway to bring forward a new draft plan for examination, there is little clarity on the Council's strategy for improving the situation with identifying land supply for housing.

41. I note that the Council have performed well against the Housing Delivery Test requirements in both 2018 and the most recent 2019 scores. This is a positive indicator that housing delivery is occurring notwithstanding the absence of an up to date Local Plan. However, there is little firm evidence behind the reasoning for this or any relationship it may have with the position on 5 year land supply.

42. Considering the situation above, the addition of up to 80 houses proposed by the development would make a contribution towards addressing this shortfall on a site that is available in the short term.

43. The proposal also makes provision for 40% of the homes to be affordable, in full accordance with Policy H9 of the Local Plan. Need for affordable housing is acknowledged as being a corporate priority for the Council. Addressing this need will be to some degree reliant on larger sites, such as the appeal site, coming forward.

44. In conclusion, the delivery of housing, including affordable housing, is a consideration that should be given weight in this appeal decision.

Other matters

45. There was discussion at the Hearing about whether there would be effects on the Grade II Listed Buildings that comprise Great Canfield Park. This arises from comments in the Environmental Statement. Considering the location of the site in relation to Great Canfield Park and the contents of the Environmental Statement, I accept the Appellant's clarification that the proposal would cause no harm to Great Canfield Park. It is not therefore necessary to consider effects on heritage assets any further.

Planning Balance and Conclusions

46. I have concluded that the proposed development would have a harmful impact on the character and appearance of the area. The main policy conflict is with Policy S7 of the Local Plan.
47. As acknowledged by the Council, the policy is only partially consistent with the Framework as it seeks to protect the countryside for its own sake and imposes a development boundary that is part of a wider strategy for housing delivery that is out of date. I do however note that the Council say they recognise the need to take a flexible approach to development boundaries and have not advanced an argument that this proposal is unacceptable in principle simply because the site is beyond a boundary.
48. Weighing these matters up, I conclude that reduced weight should be given to the degree of conflict with Policy S7. The Council accept that this should be the case. Notwithstanding this, there is still conflict with the Local Plan.
49. I stop short of concluding that the conflict with Policy S7 should be given only limited weight as the concept of protecting and enhancing the natural environment is an important part of achieving the environmental component of sustainable development as expressed in the Framework. More specifically, Paragraph 170 (b) of the Framework still requires recognition of the intrinsic character and beauty of the countryside. This is a principle that is capable of applying to countryside that is not a valued landscape.
50. The position in relation to the provision of housing discussed above triggers consideration of the presumption in favour of sustainable development in Paragraph 11 of the Framework. The consequence of the Council being unable to demonstrate a 5 year supply of deliverable housing sites is to deem the policies which are most important for determining the application out of date.
51. In these circumstances, and in the absence of the exception at Paragraph 11 d(i) applying, this leads to a presumption that permission should be granted unless the circumstances at Paragraph 11 d(ii) apply.
52. The adverse impacts resulting from the proposed development are the harm to the character and appearance of the area, which is related to the conflict with the Local Plan discussed above with the associated reduced weight. Due to the scale and nature of the development and the prominently rural context of the surroundings, the harm would be substantial. Whilst there is the potential for the harm to lessen over time as the development becomes more established, the evidence does not demonstrate this would be to a degree where the harm could be regarded as temporary.
53. Fundamentally, these adverse impacts conflict with the environmental objective in the Framework of protecting and enhancing the natural environment, including recognising the intrinsic beauty of the countryside.
54. The benefits of the proposal include the provision of up to 80 homes, including 40% affordable housing, on a site that is available in the short term. This comes at a time where there is a significant shortfall in the identification of supply of land for housing and a lack of clarity from the Council about how the shortfall is to be addressed. These are benefits that attract significant weight.

55. This weight fully recognises the importance of housing delivery in meeting the economic and social objectives of the Framework, including the priority it places on boosting the supply of housing.
56. Economic benefits, including those linked to the construction and eventual occupation of the dwellings, attract more moderate weight.
57. I also afford the environmental benefits of the proposed development more moderate weight, including the enhancements resulting from the perimeter plantings and other green space. This is more than the limited weight suggested by the Council in recognition that there is potential for biodiversity improvements, although the degree to which this represents genuine improvement rather than mitigation is not entirely demonstrated by the evidence.
58. The weighing exercise at Paragraph 11 d(ii) of the Framework requires an assessment against the policies in the Framework taken as a whole. This includes contributing to the achievement of sustainable development, with its economic, social, and environmental objectives.
59. Carefully considering the evidence that has been presented, I conclude that the adverse impacts of granting planning permission in this case would be at a level that would significantly and demonstrably outweigh the benefits.
60. As such, the presumption in favour of sustainable development at Paragraph 11 of the Framework is not a material consideration that indicates that Local Plan policy should not be followed.
61. I also do not agree that the Appellant's view that, presumption aside, the position in relation to housing provision on its own constitutes a material consideration justifying an exception to Local Plan policy due to the reduced weight afforded to Policy S7.
62. Further, the evidence does not demonstrate that there are any other relevant material considerations that indicate that the decision should not be taken in accordance with the Local Plan.
63. In their evidence to this appeal the Council and the Appellant presented a body of appeal decisions where the weight to be given to Policy S7 and application of the presumption in favour of sustainable development have been considered, in addition to other matters. The decisions indicate a margin of difference in approach which is to be expected in cases where evidence of different benefits and degrees of impacts are being weighed up. Whilst this limits the usefulness of direct comparison, I have nevertheless paid regard to these decisions.
64. In final conclusion, and having regard to all other matters raised, the appeal should be dismissed.

D.R. McCreery

INSPECTOR

Appearances at the Hearing

For the Appellant

- Victoria Hutton (39 Essex Chambers)
- Andrew Black (Andrew Black Consulting)
- Nigel Greenhalgh (Village Developments)
- Steve Robins (Mosaic Architecture)
- Eleanor Trenfield (ETLA Landscape)

For the Council

- Alison Hutchinson

Other Interested Parties

- Councillor Barlow
- Linda Beesley
- Mr G Fisher
- Jenny Jewell
- Lisa Southgate