

Appeal Decision

Site visit made on 11 May 2021

by D Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 02 June 2021

Appeal Ref: APP/C1570/W/20/3260239

Land off Bakers Lane, Felsted, Essex CM6 3DU

- 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 Mrs Fleur Tedder against the decision of Uttlesford District Council.
 - The application Ref UTT/20/0849/FUL, dated 7 April 2020, was refused by notice dated 9 June 2020.
 - The development proposed is erection of a Self Build 4 bed dwelling and garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Local Planning Authority's (LPA) third reason for refusal related to the absence of adequate mitigation to address the likely significant effects arising from an additional household within a zone of influence for proximate internationally protected habitats. As part of the appeal the appellant submitted a Unilateral Undertaking (UU) containing an obligation for a proportionate financial contribution towards a mitigation and avoidance strategy. The LPA has been provided the opportunity to comment on the submitted UU. I deal with the matter elsewhere in the decision.
3. At the time the LPA made its decision there was little dispute that it could only demonstrate a 2.68 years supply of deliverable housing land. As part of the LPAs statement of case to this appeal it has provided an annual update (dated January 2021) of the housing land supply situation in Uttlesford as of 1 April 2020. This latest assessment asserts there is now a 3.11 years supply of deliverable housing land. The appellant has been able to comment on the timing and content of the LPAs latest assessment of housing land supply. Consequently, I have had regard to the updated housing land supply evidence in reaching my decision.

Main Issues

4. The main issues in this appeal are firstly, the effect of the proposed dwelling and garage on the character and appearance of the locality, and secondly the effect of the proposal on the setting of 'Jollyboys', a grade II listed building.

Reasons

Character and Appearance

5. The appeal site has been taken from part of a wider arable field situated in gently undulating countryside between the core of the village of Felsted and the outlying community at Causeway End. Recent planting along the northern boundary of the appeal site would, over an appreciable period of time, enclose it from the wider open host arable field. Elsewhere, the site is bounded by established deciduous hedging and hedgerow trees along its southern and western boundaries. The boundary to the east of the site is more variable but generally comprising of vegetation with various gaps revealing a gable end of the Grade II listed former farmhouse dwelling at 'Jollyboys'.
6. In addition to the traditional farmhouse building at 'Jollyboys' to the east, there is to the west of the site a small cluster of dwellings along Bakers Lane including 'Howlands' and its various ancillary buildings and a couple of other dwellings distributed further to the west. This small scattering of development is not experienced as a coherent linear cluster of development, including in both views from Jollyboys Lane South or from within Bakers Lane. It is a very small satellite of sporadic development in the countryside and intrinsically not part of the main built-up settlement character of Felsted or Causeway End. The smattering of houses on Bakers Lane do not diminish the inherently rural character of the appeal location. Given these circumstances neither the Uttlesford Local Plan nor the recently made¹ Felsted Neighbourhood Plan have sought to envelop the small scale of existing development at Bakers Lane within any kind of settlement boundary or development limits.
7. Overall, the appeal site is a small, undeveloped pocket of countryside which makes a positive contribution to the verdant character at this rural location. The intrinsic rural character of the site within the wider fabric of the countryside in this part of the parish can be appreciated from the quiet byways of the adjoining Bakers Lane and Jollyboys Lane South and from the adjacent, well-used public footpath of Jollyboys Lane North.
8. Whilst the appeal proposal has sought to re-position the dwelling within the site in response to the previous recent appeal² and to retain a narrow degree of openness and views across the eastern half of the site, it would nonetheless result in a sizeable new dwelling and an appreciable ancillary domestic influence on approximately half of the site, including a proposed garage outbuilding. This would irrevocably and harmfully erode the verdant and intact rural character of this part of the countryside and detrimentally consolidate what is currently a very limited and scattered pattern of development in the otherwise rural landscape.
9. I accept in several distant views the proposed dwelling would be well-screened by mature boundary vegetation at the site and other hedging and trees elsewhere on Bakers Lane and the connecting paths and byways. However, to slow-moving walkers and other users of the well-used network of public rights of way immediately adjacent the appeal site, the proposed dwelling and change in character of the site from countryside to residential would be visually conspicuous, significantly eroding the experience of being in the countryside between Felsted and Causeway End. This would be particularly keenly felt on the rural footpath of Jollyboys Lane North where, notwithstanding existing and any proposed landscaping, the bulky appeal dwelling, in combination with the converted outbuildings at 'Howlands' to the west, would appreciably enclose

¹ 25 February 2020

² APP/C1570/W/19/3233627

and reduce the established character and tranquil experience of this well-used rural footpath.

10. The appellant places some emphasis on paragraph 9 from the recent appeal decision where my colleague noted that in plan form the appeal site would appear to be an infill site capable of accommodating sensitively designed development. However, similar to my colleague I have also found that on the ground the harmful impacts of developing the appeal site, particularly on the rural, verdant qualities of Bakers Lane and Jollyboys Lane North, become manifestly apparent. In contrast to the previous appeal scheme the re-positioned dwelling would retain a degree of the view across the site to the rolling open countryside beyond, across the eastern half of the site. However, the scale and position of dwelling and its domestic curtilage including a garage building, proposed vehicular access and driveway would impinge and detract from what is currently an almost wholly rural aspect from various approaches to the appeal site. Accordingly, the re-positioning of the dwelling does not overcome concerns about the degree of harmful impact identified on the rural character and countryside experience at the appeal location.
11. I therefore conclude that the appeal proposal would result in significant harm to the intrinsic character of the countryside in this part of the parish of Felsted. There would also be appreciable visual harm to the experience of users of the network of rural byways and footpaths that pass immediately adjacent to the appeal site. As such the appeal site would not constitute the sensitive infill development in the qualified terms set out fully at paragraph 6.14 of the Uttlesford Local Plan 2005 (the ULP).
12. The appeal proposal would therefore be contrary to Policy S7 of the ULP which seeks to protect the countryside of Uttlesford for its own sake unless there are particular reasons for the development to be located in the countryside or it would be appropriate for the area, including sensitive infill development. It would also be contrary to Policies FEL/HN5 and FEL/CW1 of the made Felsted Neighbourhood Plan 2018-2033 (the FNP) which cumulatively seek to carefully manage new residential development outside of the Village Development Limits and to protect and enhance the landscape and countryside character of the parish.
13. The degree of consistency of Policy S7 with the National Planning Policy Framework (NPPF) is a moot point. The LPAs own assessment is that it is partially consistent and therefore any conflict with it should be ascribed limited weight. This has been reiterated at other appeals in Felsted referred to me by the appellant. The recent appeal decision at the site found on a broader reading of Policy S7 it goes on to say that development will not be permitted unless its appearance would protect or enhance the particular character of the countryside. Policy S7 does not impose a moratorium on development in the countryside and the caveat of facilitating sensitive infill development in small groups of houses close to existing settlements chimes with the NPPFs balanced approach to achieving sustainable development, including meeting housing needs in rural areas.
14. Consequently, I find similar to the recent appeal decision on this site that Policy S7 is broadly consistent with paragraph 170 of the NPPF which states that planning policies and decisions should contribute to and enhance the natural and local environment, including, amongst other things, recognising the

intrinsic character and beauty of the countryside (paragraph 170, criterion b). Similar applies to FNP Policy FEL/CW1, which was not adopted at the time of the other Felsted appeal decisions referred to me. One of the basic conditions of the FNP examination would have been how the plan had regard to national policy including the NPPF. Accordingly, I consider the conflict with Policy S7 should be given significant weight and the conflict with up-to-date Policy FEL/CW1 should be given substantial weight, in any planning balance.

Heritage Assets

15. 'Jollyboys' is a large two storey timber-framed farmhouse originating from the 17th Century and externally comprising of rendered walls and a plain tiled roof, hipped at its western end, which also includes an impressively scaled external brick chimney flue and stack facing towards the appeal site. The property has been altered, with additions within its immediate grounds, including ancillary buildings and a tennis court to the east. Nonetheless, in filtered views from within Bakers Lane, from the public right of way at Jollyboys Lane North and to a lesser extent from Jollyboys Lane South, the heritage significance of 'Jollyboys' as a stand-alone rural farmhouse dwelling of some status can still be read in the surrounding host agrarian landscape.
16. The appellant has provided numerous historical maps which seek to illustrate that the appeal site, despite the immediate adjacency, has not been within the historic curtilage of 'Jollyboys'. The appellant further submits that the setting of 'Jollyboys' is further restricted by its secluded nature including surrounding vegetation on Bakers Lane and along the boundary to the appeal site. The NPPF defines "setting of a heritage asset" as the surroundings in which a heritage asset is experienced, the extent of which is not fixed. The setting of 'Jollyboys' includes its immediate curtilage but I also find from the historical mapping and from observations on site that the immediately surrounding farmland to the farmhouse, including the appeal site, is positively part of its setting in terms of being able to understand and appreciate its heritage significance as a stand-alone, status agrarian dwelling.
17. I appreciate in certain views, including from Jollyboys Lane South, vegetation now significantly cloaks 'Jollyboys' as a feature in the landscape but from within Bakers Lane and across the appeal site from Jollyboys Lane North it remains to be readily understood as it was conceived as an isolated rural farmhouse. Notwithstanding the re-positioning of the dwelling within the site, there would remain only a limited gap between the hipped western gable end of 'Jollyboys' and the proposed dwelling. Given the relatively narrow gap between the buildings, I find potential landscaping and boundary treatments would not be sufficient to maintain the isolated, agrarian setting of the listed building or appropriately disconnect the proposed bulky 1½ storey proposed dwelling from the immediate setting of the listed building. This would be particularly experienced in views from Jollyboys Lane North and within Bakers Lane where the proposed dwelling and garage would visually impinge upon and harmfully distract from the isolated and otherwise undeveloped setting of the traditional farmhouse building.
18. I therefore conclude that the inevitable loss of the intrinsic openness of the appeal site as part of the immediate agrarian setting of the former farmhouse building would result in harm to its heritage significance as a stand-alone status building. The proposal would therefore be contrary to Policy ENV2 of the

ULP which seeks to ensure the conservation and preservation of historic buildings and their settings. Accordingly, it would also conflict with the objective of the NPPF to conserve heritage assets in a manner appropriate to their significance.

19. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special regard to the desirability of preserving a listed building or its setting. This is a stern test and as such it is incumbent that I attach considerable importance and weight to the harm that has been identified. The harm to the setting of the listed buildings would be less substantial and therefore paragraph 196 of the NPPF expects such harm to be balanced against the public benefits. I deal with this balance below.

Balancing and conclusion

20. The NPPF specifies that great weight should be given to the conservation of designated heritage assets, which are an irreplaceable resource. Accordingly, the less than substantial harm identified to the heritage significance of 'Jollyboys' would require clear and convincing justification. In terms of public benefits, the proposal would make only a very small contribution to meeting housing need in the District, including any demand for 'self-build' dwellings. Accordingly, at one dwelling the social and economic benefits arising from its construction and support of services in Felsted would be very modest. The appeal proposal would not be isolated (in the terms of NPPF paragraph 79) and notwithstanding its countryside location it would be sustainably located and there is no objection on highway safety grounds. The proposal would also represent an opportunity for biodiversity net gain. To some extent these are expected requirements of new housing in any event rather than a specific benefit, and so these aspects are considered to be neutral in the balance. Consequently, the limited public benefits identified would not outweigh the less than substantial harm to the heritage significance of 'Jollyboys'.
21. Whilst the LPA cannot demonstrate a five-year supply of deliverable housing land as a route to engaging the presumption in favour of sustainable development at paragraph 11 d) of the NPPF, it nonetheless remains that ULP Policy ENV2 is consistent with the NPPF and the conflict with it carries significant weight. Therefore, in terms of NPPF paragraph 11(d)(i), footnote 6, the harm to the setting of the designated heritage asset provides a clear reason for refusing the development.
22. Furthermore, the proposal would result in significant harm to the character and appearance of the locality resulting in conflict with ULP Policy S7 and FNP Policies FEL/HN5 and FEL/CW1. This conflict is brought into further focus by the LPA now contending that it has a 3.11 year supply of deliverable housing land. The Council has set out its evidence on sources of supply, including on a site by site basis on sites over 6 units. In broad terms, the Council's approach to calculating its land supply appears to be logical and I note that the latest 3.11 year figure would represent a relatively modest improvement on the previous figure of 2.68 years.
23. The appellant submits general commentary that the figure is now likely to be an over-estimate because of the impact of the Covid pandemic. That remains to be seen through the LPA's ongoing monitoring and annual update statement rather than to apply any kind of speculative discount to get to a position of less than 3 years deliverable supply. In looking at the submitted housing trajectory

it already forecasts a significant drop in supply for the years 2019/20 and 2020/21 compared to previous performance before recovering slightly in 2021/22 and 2022/23. As such the housing trajectory appears to take a suitably prudent outlook. I therefore accept the 3.11year figure as the most reliable evidence before me.

24. The NPPF at paragraph 14 sets out conditions where conflict with a recently made neighbourhood plan would amount to an adverse impact likely to significantly and demonstrably outweigh benefits. All the conditions at NPPF paragraph 14 apply. Accordingly, the identified environmental harm arising from an additional dwelling in the countryside, outside of locally determined development limits, would outweigh the limited social and economic benefits of the self-build proposal when considering NPPF paragraph 11 d) ii.
25. The appellant has directed me to other relatively recent decisions permitting housing development in the parish either by the LPA or on appeal. These decisions and proposals are considered to provide a comparable basis for permitting the appeal scheme, including any conflict with Policy S7 of the ULP and on heritage matters. I have visited these sites and observed some material differences in character to the circumstances found at the appeal, some of which are reflected in the decisions themselves, enabling an alternative balancing outcome. This is particularly the case in respect of land at Jollyboys Lane North which will provide a different scale of public benefit in terms of the number of homes including affordable housing. I also note from the information before me that most of the decisions pre-date the making of the FNP as part of the development plan which further reduces the applicability of these decisions to the circumstances now before me. Ultimately, I have assessed the appeal on its own merits.
26. As set out above the appellant has submitted a UU making provision for a financial contribution towards a mitigation and avoidance strategy to manage visitor pressure likely to significantly affect the qualifying features of nearby protected habitats. Were I minded to allow the appeal, I would need to be satisfied, as the competent authority, that any likely significant effects resulting from the proposal were capable of being successfully mitigated so as to avoid adversely affecting the integrity of the protected site. However, as I am dismissing the appeal for other substantive reasons, I do not need to consider this further.
27. From everything that is before me, there no other material considerations that would justify a decision, on the two principal matters in this appeal, other than in accordance with the development plan. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should not succeed.

D. Spencer

Inspector.