



Appeal Decision

Site visit made on 18 May 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st June 2021

Appeal Ref: APP/C1570/W/20/3262998

Manor Nursery, Thaxted Road, Wimbish CB10 2UT

- 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 Brian and Warren Blackburn Family against the decision of Uttlesford District Council.
 - The application Ref UTT/20/0755/OP, dated 26 March 2020, was refused by notice dated 17 July 2020.
 - The development proposed is Outline application for change of use to create 4 residential properties with associated landscaping and parking.
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Decision

1. The appeal is allowed, and planning permission is granted for Outline application, with all matters reserved, for change of use to create 4 residential properties with associated landscaping and parking at Manor Nursery, Thaxted Road, Wimbish CB10 2UT, in accordance with the terms of application Ref UTT/20/0755/OP, dated 26 March 2020, subject to the conditions in the attached Schedule.

Procedural Matters

2. The application is made in outline with all matters reserved for future consideration. An indicative layout including the access point and elevation plans have been submitted, which I have had regard to as indicative only.
3. The appellants submitted a Statement of Common Ground (SoCG) as it was their expectation that the appeal would have been conducted under the Hearing procedure. The Council has not agreed to the SoCG. As this appeal is being determined under the Written Representations procedure and the Council has not agreed to the SoCG, whilst I have considered its contents, I have not treated its contents as common ground between the parties.

Application for costs

4. An application for costs was made by Brian and Warren Blackburn Family against Uttlesford District Council. This application is the subject of a separate Decision.

Main Issues

5. The main issues are:

- whether the development would be in a suitable location having regard to policies for development in the countryside;
- the effect of the development upon the character and appearance of the area; and,
- whether the location of the proposal would meet sustainable transport objectives by encouraging movement by means other than private car.

Reasons

Countryside

6. The appeal site comprises land and buildings formerly operating as a nursery, then latterly a garden centre (between around 2000 – 2017) in the countryside south of Saffron Walden. Policy S7 of the Uttlesford Local Plan (2005) (the Local Plan) seeks to strictly control new buildings and to protect the countryside for its own sake. Development is only permitted where it needs to take place within and is appropriate to a rural area.
7. The evidence does not demonstrate this development needs to take place within the rural area and so it would conflict with this aspect of Policy S7. However, the National Planning Policy Framework (2019) (the Framework) amongst other things seeks that decisions not only should recognise the intrinsic character and beauty of the countryside (paragraph 170(b)), but also balance the harm against the benefits of development in accordance with the approach to sustainable development. Therefore, the approach to protect all countryside in Policy S7 is not compliant with the more positive and nuanced approach of the Framework. Consequently, the conflict with Policy S7 attracts reduced weight, which I will consider below.
8. The site includes a number of significant buildings and hardstanding areas associated with the garden centre commercial retail use, which appeared in good overall condition. From the evidence before me and my visit the appeal site is previously developed land as set out in the annex to the Framework, and so gains some support in this regard. The Council has suggested a conflict with Policy H1, which allocates housing to 2011. Policy H1, makes provision for dwellings on previously developed land, so I find the proposals consistent with criteria c).
9. A previous Inspector for Ref APP/C1570/W/20/3246954 found land to the south of the appeal site not to be isolated. The appeal site lies within a cluster of buildings comprising dwellings to its north, south and east and a number of significant agricultural buildings. Given the grouping of the site with the surrounding buildings, and the proximity of these to development at RAF Debden and the Carver Barracks to which this is viewed as an outlier, the dwellings would be part of a settlement and would not be 'isolated' in the terms of paragraph 79 of the Framework. Therefore, this development would not promote sporadic development in the countryside.
10. The development is in proximity to, and I see no reason why future occupiers would not utilise and support rural services and facilities such those at and around Howlett End. Therefore, it would make some limited contribution to the objective of promoting sustainable development in rural areas, being located where it will enhance or maintain the vitality of rural communities, referenced in paragraph 78 of the Framework.

11. For the reasons set out above the proposed development would result in a conflict with Policy S7 of the Local Plan in respect of its location in the countryside, the relevant provisions of which I have set out above. However, the conflict with this policy attracts reduced weight. For the reasons set out above I do not find conflict with paragraphs 78 and 79 of the Framework in respect of the location of the development.

Character and appearance

12. The appeal site buildings are approximately 1,079 square metres (sqm) in floor area. The site includes poly tunnels on concrete bases and a variety of other buildings, structures, paraphernalia, fencing, hardstanding, parking, and open storage and display areas. While some polytunnel structures might be compatible with a rural setting, these are of a significant height and scale capable of housing a commercial use and contributing to the significantly built-up commercial appearance of the site.
13. Although the site benefits from some landscape screening, the commercial and somewhat utilitarian character and appearance is visible from outside the site on the Thaxted Road and it has a harmful effect upon the character and appearance of the area. The previous garden centre use would have resulted in a significant number of comings and goings from customers and larger delivery vehicles, and associated parking towards the front of the site, also contributing to the urbanising effect upon the character and appearance of the countryside. Based upon the evidence before me, such a use could operate from the site again.
14. The layout and elevations are indicative only. While higher than the poly tunnels, the development would significantly reduce the building footprint, hardstanding, and parking areas. A high quality and sensitive design of dwellings and additional landscape planting to be approved at the reserved matters stage would ensure the overall scale, layout and appearance are of a high quality in keeping with the character and appearance of the rural area and the nearby dwellings, which would have a significant positive effect upon the character and appearance of the area. The substantive evidence does not demonstrate there would be a reduction in vehicle movements. However, once constructed there would be likely to be less movements of larger delivery vehicles, which would be beneficial.
15. For the reasons set out above the development would result in a beneficial effect upon the character and appearance of the area. In this regard it would be compliant with Policy S7 of the Local Plan insofar as this states development will only be permitted where its appearance protects or enhances the character of the countryside within which it is set. The development would also be compliant with paragraphs 127 and 170 of the Framework, which require that development is sympathetic to local character including the surrounding built environment and landscape setting and recognises the intrinsic character and beauty of the countryside.

Sustainable transport objectives

16. The appeal site is approximately 2.9km south of Saffron Walden, which is a significantly sized centre containing a variety of services and facilities to meet the day to day needs of future occupiers. This includes primary and secondary education, employment, health, leisure, retail, and professional services. There

is also a retail park and supermarket just south of Saffron Walden approximately 2.3km from the appeal site. If future occupiers were to primarily or solely to rely upon the private motor vehicle, the wide range of facilities in Saffron Walden are a relatively short drive away.

17. The Thaxted Road is an unlit national speed limit main distributor road but is of a good width and forward visibility so it is possible that some future occupiers would cycle to Saffron Walden. There are limited bus services from the bus stops approximately 700m to the south of the site, so given the route is not lit this suggests they would only be of limited appeal to future occupiers. The DART2 bus service is understood to collect from dwellings and can be used by those registered, suggesting some trips to services and facilities by public transport. Consequently, overall, given the likely number of trips and distance to services and facilities, the number of vehicular miles generated per year by future occupiers would be relatively limited, resulting in limited harm.
18. Given the size of the appeal site and proposed development, it would be likely to be classed as significant under paragraph 103 of the Framework. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and car dependency is not necessarily unusual in rural locations.
19. The development would offer limited opportunities for travel by means other than private car, so there is a conflict with Policy GEN1 of the Local Plan in respect of encouraging movement by means other than driving a car. It would result in some conflict with paragraphs 8, 84, 91 and 103 of the Framework which seek to use natural resources prudently, minimise pollution, focus development towards locations that limit the need to travel, offer genuine transport choice, and enable and support healthy lifestyles through developments that encourage walking and cycling. However, given the potential for cycling and use of bus services, and the limited distance to a wide range of services and facilities in Saffron Walden, the harm would be limited.

Other Matters

20. The Ecological Impact Assessment (EcIA) show that Great Crested Newts (GCN) are present in ponds in proximity to the appeal site, but there is limited suitable habitat on the site. The EcIA highlights that works could be carried out under a GCN District Level Licence providing a GCN method statement as mitigation, which is secured by a suitably worded planning condition. It also sets out precautionary practices in respect of badgers, nesting birds and the woodland. Subject to the mitigation and habitat creation being implemented in accordance with suitably worded planning conditions, the development would not result in harm to protected species, and overall, it would result in a small net gain to biodiversity.

Planning Balance

21. The most recent evidence from the Council in the updated trajectory at April 2020 (published January 2021) advises it can demonstrate a deliverable Housing Land Supply of 3.11 years. Paragraph 11d) states that in such circumstances, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

22. The development would conflict with Policy S7 insofar as this seeks to protect the countryside, which is not compliant with the Framework. However, the policy is compliant with the design policies of the Framework. Consequently, the conflict with S7 attracts moderate weight. There would be limited harm from the conflict with Policy GEN1 and Framework in respect of sustainable transport objectives, which attracts limited weight.
23. The development would result in a moderate economic benefit during construction and once complete some small on-going spend in the local economy. Four new dwellings would result in a moderate social benefit, contributing to the objective of boosting the supply of homes, in an area with a significant shortfall. It would be compliant with paragraphs 118d) and 121a) of the Framework through the development of under-utilised retail land and buildings, where it would help to meet identified needs for housing where land supply is constrained and demand is high.
24. The development would result in a beneficial effect upon the character and appearance of the area which attracts significant weight in favour of the scheme. There would be likely to be a small net benefit to local residents in respect of noise and disturbance compared to that generated by the previous use and a small net gain in biodiversity secured by planning conditions. Overall, the benefits of this development attract moderate weight in favour of the scheme. Compliance with policies such as highway safety and the living conditions of future occupiers are neutral matters attracting neutral weight.
25. Therefore, for the reasons set out above the adverse impacts would not significantly and demonstrably outweigh the benefits of the development, when assessed against the policies in the Framework taken as a whole. Therefore, the appeal should be allowed.

Conditions

26. The Council has provided conditions which I have considered and amended to comply with the Framework and National Planning Practice Guidance. Conditions 1, 2 and 3 below are standard conditions for outline planning permissions. For the avoidance of doubt a plans condition is necessary. I see no reason why the Council's suggested landscaping, maintenance, materials, accessibility, and the highway access conditions would not be included within the detailed design of the development considered under the standard reserved matters submissions for access, appearance, landscaping, and layout. Therefore, these conditions are not necessary.
27. Pre-commencement conditions are necessary to ensure the nature and extent of land contamination is identified and any remediation scheme to remove unacceptable risks to human health is secured. A pre-commencement condition is necessary to ensure the effect of the proposed development upon archaeological deposits is investigated, managed, and mitigated.
28. In order conserve and enhance protected species and priority species and habitats in accordance with section 40 of the Natural Environment and Rural Communities Act 2006, and to ensure ecological mitigation and enhancements are secured, conditions are necessary in respect of ecological mitigation and enhancement measures, protected species licensing, biodiversity enhancement and wildlife sensitive lighting. It is necessary for the condition in respect of licensing is a pre-commencement condition.

29. In the interests of sustainable development and facilitating the future use of low emission and electric cars, a condition with respect to electrical charge points is necessary. Informative advice in respect of archaeology, highway advice, energy saving and renewable technologies, and the code of development practice, is not necessary, do not carry any legal weight and cannot be used in place of a condition.

Conclusion

30. The proposed development would conflict with the development plan and the Framework taken as a whole. However, there are material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should succeed.

Dan Szymanski

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale (herein after called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Applications 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 take place 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 plan/drawing no. 5265 01.
- 5) No development shall take place until an assessment of the nature and extent of contamination has been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a competent person, and shall assess any contamination on the site, whether or not it originates on the site. It must include:
 - (i) a survey of the extent, scale, and nature of contamination; and,
 - (ii) an assessment of the potential risks to human health, adjoining land, groundwater, and surface waters.
- 6) No development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use, by removing unacceptable risks to human health and the natural environment, has been submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, proposal of the preferred options, and a timetable of works and site management procedures. The scheme shall be implemented as approved. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 7) The remediation scheme shall be implemented in accordance with the approved timetable of works and prior to the commencement of development, other than that required to carry out the remediation, unless otherwise previously agreed in writing by the Local Planning Authority. Within 2 months of the completion of measures identified in the approved remediation scheme, a validation report that demonstrates the effectiveness of the remediation carried out must be submitted to the Local Planning Authority.
- 8) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported immediately to the Local Planning Authority and work halted on the part of the site affected by the unexpected contamination.

- 9) No development or preliminary groundworks shall commence until a programme of archaeological trial trenching and excavation has been secured and undertaken in accordance with a Written Scheme of Investigation which has been submitted to and previously approved in writing by the Local Planning Authority.
- 10) All ecological mitigation & enhancement measures and works shall be carried out in accordance with the details contained in the Ecological Impact Assessment (agb Environmental, June 2020). This includes but is not limited to the strict adherence to the Great Crested Newt Working Method Statement, protection of woodland boundary features, precautionary measures for reptiles, badgers, and hedgehogs; installation of integrated bat boxes, bird boxes and native species planting.
- 11) No site clearance or development shall commence unless the Local Planning Authority has been provided with either:
 - a) a licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorising the specified activity/development to go ahead; or
 - b) a certificate to confirm site registration under GCN District Level Licence counter signed by Natural England; or
 - c) a statement in writing from the relevant licensing body to the effect that it does not consider that the specified activity/development will require a licence.
- 12) Prior to works commencing above slab level a Biodiversity Enhancement Layout and Strategy for protected and priority species shall be submitted to and approved in writing by the Local Planning Authority. The content of the Biodiversity Enhancement Layout and Strategy shall include the following:
 - a) the purpose and conservation objectives for enhancement measures;
 - b) detailed designs to achieve stated objectives;
 - c) locations of enhancement measures on appropriate maps and plans;
 - d) persons responsible for implementing the enhancement measures;
 - e) details of initial aftercare and long-term maintenance.

The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.
- 13) Prior to the first occupation of any dwelling, a lighting design scheme shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, and technical specifications) so it is demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the approved scheme and maintained thereafter in

accordance with the scheme. No other external lighting shall be installed without the prior written approval of the Local Planning Authority.

- 14) Prior to the first occupation of each of the dwellings hereby approved, an electric car charging facility shall be installed at the property it serves, and shall be retained as such, unless the prior written consent of the Local Planning Authority is given to any alteration.

End of Schedule.