



Appeal Decision

Hearing Held on 13 July 2021

Site Visit made on 14 July 2021

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2021

Appeal Ref: APP/C1570/W/20/3263440

Land to the north of Rosemary Lane, Bran End, Essex, CM6 3RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Land Allocation Ltd against Uttlesford District Council.
 - The application Ref UTT/20/1102/OP, is dated 1 May 2020.
 - The development proposed is up to 60 (maximum) residential dwellings.
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Decision

1. The appeal is dismissed and planning permission for up to 60 (maximum) residential dwellings is refused.

Procedural Matters

2. The appeal is against the Council's failure to determine an application for outline planning permission. The Council has provided a statement for the appeal which states that in its opinion the proposal is unacceptable, however, these are not formal determinations of the Council, as the jurisdiction to determine the application transferred from the Council upon valid receipt of the appeal. However, the Council has set out its putative reasons for concluding the scheme would be unacceptable and would have refused the application had it been empowered to do so. I have therefore taken these reasons into account in determining the Main Issues.
3. The planning application was submitted in outline form with all matters reserved, except for access. I have had regard to the Indicative Site Layout and Landscape Strategy Plan Aerial Overlays (Drawing Refs CAL010719 10 A and CAL010719 11) but have treated each element of these drawings as indicative, apart from the details of the access, when considering the likely impact of the proposal on the matters set out in the main issues below.
4. In the run up to the Hearing and during the event, the main parties presented the following information:
 - a Transport Planning Statement of Common Ground (TPSoCG), between the appellants and Essex County Council, as Highway Authority (HA);
 - revised arrangements on Drawing Reference DR-D-2010 P02 for the visibility splays for Crossing Point 2 (B1057 to Pulford Field recreation ground). This updated an earlier revision received as part of the appeal (Drawing Reference DR-D-2010 P01);

- a speed survey undertaken on behalf of the appellants on 8/9 July 2021 in connection with Crossing Point 3 (junction of B1057 and Brick Kiln Lane) and revised arrangements on Drawing Reference DR-D-2009 Revision P04 for visibility splays at this crossing point. This also updated an earlier revision received as part of the appeal (Drawing Reference DR-D-2009 P01);
 - the HA's response to the speed survey and drawing; and
 - an email from Stebbing Parish Council to the Council in relation to the hedge adjacent to Crossing Point 2.
5. Further to discussion in the Hearing and with cognisance of the Wheatcroft principles¹, following the close of the Hearing, in the interests of fairness and natural justice, I invited the parties that had commented on the appeal to consider this evidence and provide comment to their content, and final comments from the main parties. Hence, I am satisfied that interested parties have not been prejudiced by my acceptance of the plans and information, so my findings relate to these. Similarly, I am also satisfied that the revision to the visibility splays to the crossing point that would serve the bus stops north of the site access, shown on Drawing Reference DR-D-2011 P01, would not change the nature of the proposed development before me. Interested parties would therefore not be deprived by there being no opportunity of consultation.
6. The National Planning Policy Framework was revised on 20 July 2021 (the Framework). The main parties have had the opportunity to comment upon the relevance of any revised content of the Framework and I have had regard to any responses received in my decision.
7. The main parties have referred to the emerging Stebbing Neighbourhood Development Plan (Regulation 16 Draft v4a: June 2021) (SNDP). I understand that this has not yet been submitted for independent examination. Emerging policies and site allocations within the SNDP are not therefore matters that have a significant bearing on my consideration of the merits of this appeal, particularly as there may be unresolved objections to contend with. In accordance with the requirements of Paragraph 48 of the Framework, the policies of the SNDP attract only limited weight in my determination of the appeal.

Main Issues

8. The main issues are:
- whether the proposal is consistent with policies relating to housing in rural areas, with regard to the protection of the countryside;
 - whether the proposed development makes provision for safe and suitable pedestrian access;
 - in light of the proposed pedestrian and other access arrangements, whether the proposal would be accessible to services and facilities;
 - the effect of the proposed development on the protected species and habitat of the Hatfield Forest Sites of Special Scientific Interest (SSSI)

¹ Bernard Wheatcroft Ltd v SSE.

and National nature Reserve (NNR) and the Priority Deciduous Woodland and Bran End Wood Local Wildlife Site; and

- the effect of the proposed development on the setting of the Grade II listed buildings known as Apple Tree Cottage, Cranford, Stone Cottage and The Green Man.

Reasons

Protection of the countryside

9. The appeal site concerns a roughly L-shaped area of land that forms part of a larger gently undulating agricultural field situated to the western side of the B1057, north of a small group of houses in Rosemary Lane and adjacent to but beyond the settlement boundary of Bran End. It is therefore situated within the countryside, as defined by Policy S7 of the Uttlesford Local Plan² (ULP). The north and eastern boundaries are open, so the site is not distinguishable from the remainder of the field and shares common characteristics with the varied field pattern that envelopes the village. The backdrop of the western extent of the site is one of mature broadleaved trees situated within Bran End Wood and the skyline beyond the trees, as the site constitutes part of the eastern valley slope of Stebbing Brook.
10. The settlement boundary defined by the ULP does not include the ribbon of development that extends along the eastern side of the B1057 north of Pulford Field, but the built form contributes to defining what is more urban and rural in form. Further north, the grain of development of houses to the western side of the road is of loosely spaced buildings with a sylvan backdrop and becomes increasing sparser with a greater propensity for open and undeveloped fields. There is a larger development of houses to the east, which has been absorbed between Brick Kiln Lane and the B1057.
11. Taken together these stated features, particularly the openness and undeveloped nature of the site, give rise to a clear and distinct, pattern of development. This makes a significantly positive contribution to the rural landscape setting of the village edge, and therefore the character and appearance of the area. In particular, the openness of the site provides a significant vista of the landscape and skyline to the west of Bran End and emphasises the juxtaposition between built form and the surrounding undeveloped landscape. Given these characteristics and its visual prominence within the immediate surrounding landscape, including in views from the comprehensive network of Public Rights of Way (PROW) nearby, the site would be highly sensitive to change.
12. Although the submitted layout plan is only illustrative, together with the other application and appeal documents, it indicates that the proposal would be a development of significant proportions and prominence to the edge of Bran End, within the undeveloped and open site. Moreover, the proposal would be set apart from the existing houses in the locality and appear as a distinct built incursion of noticeable depth. It could not be said to be infill development and would appear discordant when viewed against the established grain of linear development to this edge of the settlement. The subsequent loss of openness and erosion of the site's undeveloped qualities would also undermine how the

² Adopted January 2005.

village currently blends more naturally into the wider rural landscape and interrupt the views into the countryside from Bran End across the valley.

13. I accept that the indicative landscape strategy for the scheme would be likely to be integral to the layout of the appeal scheme and reflect planting found in the landscape. However, clear views of the appeal site and its relationship with the existing built edges of Bran End are available from the surrounding road network, particularly the B1057, the PROW in the vicinity and from Pulford Field. The proposed landscaping would be unlikely to have matured enough in its initial years of development to achieve the intended screening effect required to soften the visual effect of the physical presence of the proposed development in its sensitive valley slope location, particularly during the operational and residual phases of development. It would also take a significant amount of time for the tree coverage to reflect the existing sylvan character of planting to the west.
14. I appreciate that the impact of the proposal on the surrounding rural landscape would only be likely to be experienced within the immediate locality, including in views from nearby PROW. Nevertheless, for the reasons outlined above, I cannot agree with the findings of the appellants' Landscape Visual Impact Assessment in respect of the magnitude of this impact, as the proposal would have a significant and detrimental urbanising effect on the rural setting of Bran End and, therefore, on the character and appearance of the area.
15. I note that the SNDP includes a potential allocation for land opposite the site, at Hornsea Lodge, but there is existing development there and two existing accesses. It is not therefore comparable to the appeal scheme and, in any event, as I have outlined in the Procedural Matters, the SNDP has not been through its examination so would be afforded limited weight.
16. In light of the above, the appeal scheme would not accord with the aims of Policy S7 of the ULP to protect and strictly control new building in the countryside. The appellants have not referred to any special reasons why the development needs to take place in the proposed location, nor have they highlighted any other policies in the ULP that would support the case for a significant development of houses, such as that proposed, in this location. It would also not amount to infill development. Hence, the proposed development would also be contrary to the design aims of Policies GEN2 and S7 of the ULP and paragraphs 130 and 174 of the Framework.

Pedestrian Access

Crossing Point 3 – junction of B1057 / Brick Kiln Lane

17. Prior to the Hearing, the appellants undertook a speed survey in relation to Crossing Point 3, south of the Brick Kiln Lane junction. There was some discussion at the Hearing to its efficacy given that it was not undertaken in a neutral period, as defined in *TAG Unit M1.2*³, and conflicting evidence was presented that it rained during the timeframe of the survey. Despite the content of weather reports, there is no substantive evidence to dispute the appellants' position that the survey was not rain effected and it contained sufficient vehicle movements to constitute a valid survey⁴.

³ Department for Transport (2020).

⁴ As defined in Highways England's Design Manual for Roads and Bridges document CA185 (2019).

18. While I accept that the recorded speeds north, 37.5mph, and south, 38.5mph, are close to the speeds outlined in *Manual for Streets*⁵ (MfS), it is only recommended for use with speeds below 37mph. Furthermore, the vehicle speeds recorded to the north of the junction, in close proximity of the latest speed survey, were found to be in excess of the 40mph speed limit. Based on the extent of traffic over the survey period, the B1057 also appears to be a well-trafficked road. For these reasons, it is more appropriate to use *Design Manual for Roads and Bridges* (DMRB) guidance to calculate the visibility for the proposed crossing. The HA's calculation of 74m would therefore be more appropriate for the southern visibility splay covering northbound vehicles and I would expect the northern visibility splay for southbound traffic to be greater than the 61.7m proposed. Nevertheless, I have considered the merits of the visibility splays shown on the various iterations of the drawing for this crossing, including that provided with the latest speed survey.
19. Due to the narrow nature of the footpath, the visibility south from the western side of the B1057 is taken from the back of the proposed tactile paving, 0.8m from the carriageway edge. It is also shown on all iterations of the drawing for this crossing to be to the offside of cars traveling north. The proposed visibility splay would not achieve the DMRB requirement set out above and pedestrians would be unlikely to see motorbikes approaching in the areas closer to the nearside of the carriageway. This would be further compounded by the narrow nature of the footpath, as pedestrians would be likely to be stood further back to avoid vehicles and looking over the front boundary wall and gardens of the adjacent properties. Visibility to the south would therefore be further impaired and vehicles would appear from a blind spot.
20. In terms of visibility north from the western side of the B1057, I note that the road is not straight as it approaches the junction and there will be vehicles turning. However, it is questionable whether it would be appropriate to utilise the latest speed data for southbound vehicles given the distance of the crossing from the survey point and the significant speeds recorded further north. Even if I were to accept that vehicles would be travelling south at 38.5mph in proximity of the junction, the visibility splay northwards would be insufficient and impaired. Moreover, like the splay southward, it would be taken from the back of the tactile paving and not terminate close to the nearside edge of the carriageway. This would exclude the possibility of overtaking vehicles being observed from the footway.
21. While the telegraph pole in the footway adjacent to the crossing point would, of itself, be a momentary obstruction to visibility⁶, together with the vegetation in the garden of Badgers Leap, there would be a more significant interruption to visibility of southbound traffic and vice versa. I am also conscious that the eyeline of some users of the footway, for instance wheelchair users and children, is likely to be relatively low such that they would find it more difficult to see and to be seen. Although it would be preferable for vegetation to be kept clear in such circumstances, this would rely on third party land beyond the highway.
22. For these reasons, pedestrians would need to stand close to the carriageway edge to view vehicles in either direction, which illustrates safe and suitable pedestrian access cannot be achieved at this crossing, as the visibility splays

⁵ Department for Transport (2007).

⁶ As defined in Section 3.4 of the Highways England's Design Manual for Roads and Bridges document CD109.

required for the speed of the road cannot be provided for this crossing. Despite the absence of concern in the Road Safety Audit in relation to obstructions, pedestrians already crossing the road here, I exercise caution in relation to the absence of recorded accidents, as not all accidents are reported and while they may not have occurred in the past they could in the future, particularly with the likely increased use associated with the proposed development.

Crossing Point 2 – Pulford Field recreation ground

23. There was some discussion at the Hearing as to whether the required visibility splay could be achieved to the eastern side of the carriageway, without the removal of the hedge along the roadside north of the crossing point. This is in the ownership of Stebbing Parish Council. Following the close of the Hearing the Parish Council confirmed that it would permit the cutting back or removal of the hedge were I to determine this appeal scheme favourably. In those circumstances and with cognisance of the guidance outlined in the NPPG⁷, a negatively worded planning condition could be utilised that would prohibit development from taking place until a scheme of such works has been completed. Such a condition, with respect to land outside of the appellants' control, would not create unacceptable uncertainty, since there is nothing to compel the appellants to implement the development in any event.
24. Notwithstanding the above, the extent of visibility south from either side of the carriageway would be deficient as it would be shorter than required and terminate further out into the carriageway. A compliant splay from the western side of the road would rely on third party ownership but a significant extent of the proposed visibility splay would be unencumbered and the latest speed survey demonstrates that vehicles would be likely to be travelling below the speed limit at the furthest extent of that splay. With this in mind, the reduced visibility that would be experienced south would not be of significant detriment to the safety of pedestrians using the crossing.
25. Conversely, in much the same way as Crossing Point 3, pedestrians would need to stand close to the carriageway to be able to see southward from the eastern side of the carriageway, as visibility immediately south would be likely to be obscured by a wall and vegetation in the garden to Toad Hall. The recorded speed of vehicles at this point would therefore mean that crossing the road at this point would be a daunting proposition for pedestrians. Safe and suitable pedestrian access would therefore also not be achieved for this crossing, as the visibility splays required cannot be provided for the proposed crossing.

Pedestrian Footways

26. The HA has suggested that it expects footways to be a minimum width of 1.5m but ideally 2m wide. The proposed footway from the site would be 2m wide and would link to the existing footway further south. This narrows over a distance of 20m to 1.1m and further still to 0.85m due to a telegraph pole sited in the footway. In accordance with the guidance contained in *Inclusive Mobility*⁸, at its widest point, the footway is sufficient to accommodate a visually impaired walker with a cane or assistance dog, or general dog walkers. However, as set out in MfS, it would not be wide enough to enable an adult and child to walk

⁷ National Planning Practice Guidance, Reference ID: 21a-009-20140306, Revision date: 06/03/2014.

⁸ Department for Transport (2005).

beside one another and groups of two or more pedestrians would need to walk in single file.

27. I accept that the proposed bus stops to either side of the B1057 would reduce pedestrian trips to the stops in Brick Kiln Lane. Occupants of the proposal may also utilise the PROW from Pulford Field as a short cut. Overall, the extent of pedestrian trips into Bran End and Stebbing using the existing footway is also not likely to be significant, but there would be a meaningful increase in its use. Moreover, the narrow section of the footway is relatively short and pedestrians may wait to enable others to navigate this section of the footway before entering it themselves, but they could equally step out into the road to pass one another, which would be a safety concern. I note that this was identified in the appellants' Road Safety Audit. The speed of traffic, width of the footway and the visibility from Crossing Point 3 would therefore be likely to create an environment that would not be conducive to people making walking trips from the appeal site into Bran End and Stebbing.
28. It is clear that the safety issues associated with the existing footway and crossing points are existing rather than directly resulting from the proposed development, but it would rely on them to facilitate access to it. The use of the footway and crossing points would therefore significantly increase the potential for undertaking unsafe pedestrian movements along and across the B1057. For the above reasons, I conclude that safe and suitable pedestrian access would not be provided for the proposed development. Hence the proposal would not accord with Policy GEN1 of the ULP and paragraphs 110 and 112 of the Framework.
29. I have not found against the policies of the Essex County Council Development Management Policies, as the evidence before me does not appear to indicate that these form part of the Development Plan.

Accessibility

30. The neighbouring village of Stebbing includes a primary school, village hall, community shop, public house, bowls club, and church. Notwithstanding the proposed footways and crossings points, the route into Stebbing has limited street lighting and the footways are generally narrow in width, vary in quality and terminate abruptly. Pedestrians are thereby required to cross over the road to continue their journey.
31. In addition to the highway safety effects outlined above, failure to provide safe and suitable pedestrian linkage from the development into Bran End and Stebbing would also be likely to discourage pedestrian movements and encourage use of the private car in preference. Moreover, the routes available would not be convenient or realistic ones, particularly for occupants with young children or mobility issues, especially after dark or during inclement weather.
32. Given the limited extent of facilities and services in Bran End and Stebbing, occupants of the proposal would be obliged to travel further on a regular basis to, amongst other locations, Great Dunmow and Braintree to meet their daily needs in respect of retail, leisure, employment and healthcare.
33. Whilst cycling into Stebbing would be more straightforward, the route to Great Dunmow would utilise the fast-flowing B1057. There are existing bus stops on Brick Kiln Lane and the proposal would provide new stops to either side of the

B1057 for services between Chelmsford and Finchingfield. However, at the Hearing I heard from third parties that these services are not frequent and changes are required for either Great Dunmow or Braintree. There are separate school services. The railway station in Stansted is equally some distance away and it is unclear how it would be reached by public transport.

34. The Unilateral Undertaking (UU) supporting the appeal includes a financial contribution toward sustainable transport initiatives. While this could amount to bus services and other initiatives, the UU does not clarify whether this would have a direct effect on the frequency or route of bus services from Bran End to nearby settlements. I cannot therefore conclude that existing bus services or those that could be made available, or the opportunities available to cycle, would sufficiently discourage future occupants of the development from travelling regularly by private motorised transport.
35. The Framework suggests that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, so a greater dependency on car use is expected in rural locations. I also accept that some of the journeys may be shorter, including into Stebbing, and occupants may choose to car share, but the cumulative effect of allowing developments of the scale of the development proposed in locations such as the appeal site would be likely to significantly increase the amount of unsustainable journeys made.
36. In light of the above, I conclude that the appeal site would not be accessible to services and facilities. Hence, the proposal would conflict with the aims in respect of the accessibility of development as expressed in Policy GEN1 of the ULP and paragraphs 79, 104 and 105 of the Framework.

Protected Species and Habitat

37. The appeal site is situated within the Zone of Influence for the Hatfield Forest SSSI and NNR, which the National Trust states to be the finest surviving example of a small Medieval Royal Hunting Forest, with considerable ecological significance, especially its veteran trees and old growth woodland on undisturbed soils. There is evidence to suggest that unsustainable growth in visitor numbers and associated recreational activity is causing damage to the features for which it is designated. Consequently, any intensification of these activities could lead to further damage.
38. A solution for mitigation has been finalised by Natural England (NE) and was submitted to the Council in June of this year but the intended Strategic Access Management and Monitoring plan has not yet been adopted. The appellants have therefore proposed a bespoke solution to minimise the number of residents from the proposed development traveling to Hatfield Forest for recreational activities. This would include the provision of recreational facilities at the appeal site and nearby, including improved facilities and access to Pulford Field; a Locally Equipped Area for Play and other open space within the site; and native thorny species planted within the open space to deter future residents and their pets from accessing the adjacent Local Wildlife Site.
39. In theory the proposed mitigation measures would provide an alternative for residents to have access to open space within easy reach of their home. However, contributions to offsite provisions and the onsite open space would not be provided until at least twenty-four open market houses have been occupied, by which point all of the affordable houses would be provided.

A significant portion of the houses within the appeal scheme could therefore be occupied without the proposed recreational opportunities having been provided. Those residents may therefore travel to Hatfield Forest to access recreational opportunities there, which could have a harmful effect on the habitat.

40. NE has not been consulted as part of the planning application or appeal. As the Planning Inspectorate is a Section 28G authority in respect of the Wildlife and Countryside Act 1981⁹, I am mindful of the responsibility to notify NE should the intention be to give consent for development that would be likely to damage the features for which the SSSI has been designated. Given that I have found harm in relation to the first main issue, unless there is another material planning consideration which suggests that permission should be granted, it is not necessary for me to consider this matter in any further detail.
41. The appellants have also proposed mitigation measures and biodiversity enhancements for the site, which include a Construction Environmental Management Plan and open space, as a buffer to Bran End Wood. While I have no doubt that these will eventually protect the woodland, and species and habitats therein, the open space would not be delivered until a significant portion of the development has been occupied. The woodland is privately owned but access through it is provided by Public Right of Way 46-7. Given my findings above and the proximity of the site to Bran End Wood, there is potential for the early occupation of the proposal to lead to degradation of the right of way and the adjacent woodland through increased usage.
42. For these reasons, from the information before me, I am not satisfied that the extent to which protected species and habitats may be affected by the proposed development has been satisfactorily addressed. Accordingly, notwithstanding that NE has not been consulted, the proposed development would be likely to have a harmful effect on the ecological and biodiversity value of Bran End Wood and the nearby Hatfield Forest SSSI/NNR. On this basis, there would be conflict with the nature conservation aims of Policies ENV7 and GEN7 of the ULP and paragraphs 174 and 180 of the Framework.

Significance and setting

43. To the north of the site, beyond the remainder of the field, is Cranford. This is a Grade II listed detached two-storey house, oriented north-south with its principal front façade overlooking its small front garden. It is a timber framed and plastered building, with a red plain tiled roof incorporating substantial chimney stacks, and originates from the 17th or 18th Century. The southern of its two ranges overlooks the field immediately south. Despite later alterations, the significance of the listed building today is as a good example of a well-preserved 17th to 18th Century rural house, constructed in vernacular materials. Cranford also draws significance from its historical and visual setting within its garden, the sylvan backdrop of woodland to the west, and the open and undeveloped fields in the surrounding agrarian landscape, including those to the south and across the B1057 to the east.
44. To the southeast of the site are Stone Cottage, Apple Tree Cottage and The Green Man, all of which are Grade II listed buildings and arranged close to the road frontage.

⁹ As amended by the Countryside and Rights of Way Act 2000.

45. Stone Cottage is a two-storey timber framed house of 17th or 18th Century origin, arranged on an L-shaped plan form. The roof is hipped and clad in red plain tiles and the facades are plastered with panelled pargetting. There is also a prominent external chimney to the northeast façade. Despite its front entrance being infilled and repositioned to the side, and the addition of a flat roofed range to the rear northeast corner, in so far as it is relevant to this appeal, its significance today lies in its architectural and historic interest as a 17th or 18th Century cottage, designed and constructed in the rural vernacular.
46. Apple Tree Cottage, which has its origins in the 17th Century or earlier, is arranged on an L-shaped plan form at the northeast corner of the junction of Brick Kiln Lane and the B1057. It is a timber framed house, the exterior of which is plastered, with 20th Century pargeting, and its roof is partly hipped and gabled and incorporates two brick chimney stacks. Despite later alterations, as far as it is relevant to this appeal, its significance today lies in its architectural and historic interest as a good example of a 17th Century or earlier house. Moreover, it is constructed in vernacular architecture and materials and occupies a visually and historically prominent position at the road junction.
47. To the opposite corner to the junction is The Green Man, a former public house, now in use as a house. Like the preceding properties, it is also of two-storeys, timber framed, plastered, arranged on an L-shape plan form and dates from the 17th or 18th Century. Its roof is part gabled and half-hipped and clad with red plain tiles roof. Despite later additions and renovation, in so far as it is relevant to this appeal, its significance today lies in its architectural and historic interest as a former public house, designed and constructed in vernacular materials. Like Apple Tree Cottage it also has prominence within the locality due to its position but is perhaps of greater prominence as it sits forward of both the other listed buildings to the north.
48. I am mindful of the definition of 'setting' in the Framework as being the surroundings in which a heritage asset is experienced and that this is not fixed and may change as the asset and its surroundings evolve. I have also had regard to the content of Historic England's Good Practice Advice in Planning Notes 2 and 3¹⁰, as far as they are relevant to this appeal.
49. While the immediate surroundings of the curtilage of each listed building contributes to its setting, the visual and historical association of the listed buildings with one another also makes a positive contribution. These three listed buildings are also listed for their group value together, likely in part due to this relationship.
50. It is evident that the historic settings of the listed buildings have changed as a consequence of the introduction of built development to the eastern side of the B1057. However, the open and undeveloped character of the adjacent agrarian landscape to the western side of the road, partly provided by the site, has remained largely unaltered and well-preserved since at least the late 18th Century. The characteristics of the site and the remainder of the field therefore provide a rural context which forms an integral part of the historic setting of the listed buildings, including a significant contribution to their appreciation within the historic core of the settlement and understanding of their role in its layout and development. In particular, in the mid-19th Century, the Tithe

¹⁰ Managing Significance in Decision Taking in the Historic Environment (2015); and The Setting of Heritage Assets (second Edition, 2017).

Apportionment shows that the eastern half of the field was in the same ownership as Stone Cottage, which together are likely to have contributed to the role of the settlement in food production.

Effect of the proposal on the setting and significance of the listed buildings

51. Despite the indicative landscaping within and around the site, the proposal would introduce considerable built development within close proximity of Stone Cottage, Apple Tree Cottage and The Green Man. This would include domestic paraphernalia such as street lighting which, together with greater road traffic, would lead to changes in the environmental conditions of the surrounding area.
52. The physical presence of the proposal would therefore significantly and permanently erode the openness and undeveloped qualities of the site within the agrarian landscape, which is prominent in views from these listed buildings. This would fundamentally alter and be harmful to their settings and the understanding and appreciation of their significance in the development of the historic core of Bran End. While the listed buildings would still be likely to be visible in views across the site's frontage, these would be significantly altered, as the current rural edge of the settlement would largely disappear.
53. The proposal would also bring built development closer to Cranford, but its clear visual link to the surrounding rural landscape, principally to the east, would remain due to the extent of undeveloped field south and the indicative landscaping within the site. The proposal would not therefore have a harmful effect on the setting of this building or its understanding and significance.

Public benefits

54. The statutory duty in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) is a matter of considerable importance and weight. Paragraph 197 of the Framework states that the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation should be taken into account in determining applications. Paragraph 199 of the Framework also advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation.
55. The proposal would be harmful to the setting of three Grade II listed buildings, namely Stone Cottage, Apple Tree Cottage and The Green Man, which would have a harmful effect on their significance as designated heritage assets. In my view the harm that I have identified would equate to less than substantial harm to their significance. In such circumstances, paragraph 202 of the Framework identifies that this harm should be weighed against the public benefits of proposals.
56. In assessing the benefits, I have also had regard to the appeal decision at Elsenham¹¹ but note that this differs to the appeal scheme before me, as it relates to a scheme on the edge of a town that does not affect the setting of any listed buildings.

¹¹ Appeal Ref: APP/C1570/W/19/3242550.

Unilateral Undertaking

57. The UU for the appeal scheme seeks to provide 40 per cent of the proposed dwellings as affordable housing, which would be commensurate with the Council's policy position to address the scale of affordable housing need and retain mixed and balanced communities. It would also include provisions and financial contributions for early years and childcare provision, primary and secondary education, school travel for secondary school-aged pupils residing in the development, primary healthcare, public open space within the site, sustainable infrastructure and initiatives, improved access within Stebbing parish to Pulford Field and the provision of a Multi-Use Games Area and improvements and maintenance of adult gym equipment therein, and towards the provision of a community minibus. Whilst these contributions and provisions would be beneficial, and in the case of affordable housing would help the Council to improve its delivery, they clearly respond to policy provisions that exist to mitigate an impact. In this case, that of the erection of up to 60 dwellings. Accordingly, as the obligations therein can only mitigate against the proposed development, I afford these benefits limited weight.

Other Benefits

58. The supply of housing land in the District has been agreed by the main parties to stand at 3.11 years. Policy H1 of the ULP covered the housing requirement for 2000-2011, so it is now time expired. The Council abandoned its previous attempt to adopt a new local plan in March 2020 and the latest emerging plan is some way from being adopted. I am therefore acutely aware that the Council has no adopted strategy for the delivery of housing to meet the needs of the district and any means of addressing this situation has been significantly delayed. The appeal scheme would boost the supply of homes in the district and help to address the acute deficit in supply. The Council's supply of housing also appears to have continuously fallen short of what is required by the Framework. While the current housing land supply difficulties in the area are likely to be temporary, given the above, I afford this benefit considerable weight.

59. There would be short-term benefits to the local and wider economy from the application of the New Homes Bonus and direct and indirect employment associated with construction and longer-term maintenance works. Future occupants would be likely to support local shops and services through expenditure. These would all constitute benefits in social and economic terms and given the magnitude of the proposed development, they would be afforded moderate weight.

60. While residents of the proposed scheme would be eligible for work and could contribute to the local economy, they could equally already be employed in the district. Council Tax receipts in conjunction with the proposal would also only be likely to make a modest contribution within the District, which would amount to economic benefits of limited weight.

61. The site is at low risk of flooding and the appeal scheme includes initial proposals for surface water drainage. However, given that the potential environmental risk to other land users would need to be addressed in the final design at Reserved Matters, I am only able to afford limited weight to the locational benefit of the site with respect to flood risk and climate change.

62. The proposed houses would ultimately be constructed to the standards expected by the Building Regulations, particularly in respect of thermal performance. While this would constitute an environmental benefit, given that it is a requirement of all residential development it would only amount to a limited benefit, especially as the detailed design and layout of the houses has not been finalised.
63. Despite the proposals for biodiversity enhancement of the site, given that there are likely to be harmful implications to the SSSI/NNR and Bran End Wood from the development before mitigation is employed on and off-site, there would be unlikely to be any net biodiversity benefits associated with the proposed development.
64. The facilities and services in Stebbing can be reached by walking and cycling and the existing access to Pulford Field would evidently be improved upon by avoiding grass verges. Nevertheless, for the reasons outlined in the second and third main issues, any potential benefits attract no more than limited weight.
65. Taking the above together, the public benefits that I have outlined would not justify allowing development that would be harmful to the setting of Stone Cottage, Apple Tree Cottage and The Green Man. In accordance with paragraphs 199 and 202 of the Framework, considered together, I therefore conclude that the public benefits do not outweigh the great weight to be given to the less than substantial harm that I have identified.

Conclusions on the fifth main issue

66. In light of the above, I conclude that the proposed development would have a harmful effect on the setting of Stone Cottage, Apple Tree Cottage and The Green Man, all of which are Grade II listed buildings. Hence, the appeal proposal would fail to satisfy the requirements of the Act, paragraphs 197 and 199 of the Framework and conflicts with the heritage aims of Policy ENV2 of the ULP.

Other Matters

67. The appeal site is also near to Bird in Hand, Mead/Oak Cottages, Peartree Cottage and The Malt House, all of which are designated as Grade II listed buildings. I have therefore had regard to the statutory duty referred to in the Act. However, given the proximity and physical relationship of the proposal with these designated assets, their settings will be preserved and the proposal will not detract from them.

Planning Balance

68. The Council cannot currently demonstrate a five-year supply of deliverable housing sites, as required by the Framework, and the development plan is out of date as it only plans for the District's housing needs to 2011. In these circumstances the so-call tilted balance approach to decision making would normally be engaged. However, in this case given my findings in relation to heritage, the conventional untilted planning balance applies.
69. The development plan for the area includes the ULP. While this predates the current Framework, it is clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to its publication.

Due weight should be given to policies according to their consistency with the Framework.

70. Policies GEN1, GEN2, GEN7 and ENV7 of the ULP are generally consistent with the Framework in terms of its aims to promote sustainable transport, achieving well-designed places, and conserving and enhancing the natural environment. I therefore afford considerable weight to the conflict of the proposal with these policies.
71. Despite the absence of a balancing exercise in relation to heritage harms in Policy ENV2, this policy is generally consistent with the heritage aims of the Framework, particularly the statutory duties of the Act reflected within it. Nevertheless, I only afford moderate weight to the conflict of the proposal with this policy given that it does not include any such balancing exercise.
72. Policy S7 refers to development outside of settlement boundaries. In isolation of other considerations, this would not be wholly aligned with the more flexible and balanced approach implicit in the objectives outlined in the Framework. However, this does not fundamentally undermine the continued relevance of such an approach, particularly as its aim is to protect or enhance the character of the countryside from development that does not need to be there. This differs only slightly from the aim in the Framework to recognise the intrinsic character and beauty of the countryside. There is therefore still a clear rationale for development boundaries in order to protect the countryside while focusing growth within designated settlements. In light of this I have regarded the underlying objectives of the policy, as being partially consistent with the current Framework.
73. The ULP is of some age and Policy H1 has time expired, the settlement boundaries in the District are therefore out of date so, in order to meet current and future housing needs, development will have to take place beyond existing settlement boundaries, until such time as it has a new adopted local plan with redrawn boundaries and allocated sites. I note that this point has been repeatedly discussed by the Inspectors in the appeals to which I have been referred by the main parties. Policy S7 is therefore predicated on settlement boundaries that are out of date and I have referred to the acute shortage in the supply of housing in the District. With these points in mind, I afford limited weight to the conflict of the proposal with this policy.
74. I have already identified the benefits of the appeal scheme as part of the assessment of public benefits in undertaking the necessary balancing exercise in relation to the heritage assets. In terms of harm, the proposed development would not comply with development plan policy in respect of the harm to the countryside, particularly the rural setting of Bran End and the character and appearance of the area; the provision for safe and suitable pedestrian access; the accessibility of the site to services and facilities; and the setting of three Grade II listed buildings.
75. This leads me to an overall conclusion that the appeal scheme would not accord with the development plan, when considered as a whole, and I find that the adverse impacts of the proposal are matters of significant weight against the grant of planning permission that comfortably outweigh the claimed benefits.

Conclusion

76. The proposed development would be contrary to the development plan and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Accordingly, for the reasons given, I conclude that the appeal should be dismissed and planning permission refused for the appeal scheme.

Paul Thompson

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Miss Megan Thomas	QC
Mr Joe O'Sullivan	Head of Planning, AAH Planning Consultants
Mr Oliver Brown	Landscape Architect
Mr Stuart Wilson	Highways Consultant
Miss Ellen Lishman	Highways Consultant
Mr Andy Rudge	Heritage Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr William Allwood	Team Leader, Development Management.
Miss Maria Kitts	Senior Built Heritage Consultant, Essex County Council
Mrs Katherine Wilkinson	Strategic Development Engineer (Highways), Essex County Council

INTERESTED PARTIES

Mr Andrew Martin	Andrew Martin Planning (on behalf of Stebbing Parish Council and several local residents)
Cllr John Evans	District and Parish Councillor and Chair of Stebbing Neighbourhood Development Plan Steering Group
Cllr Merifield	District and Parish Councillor

DOCUMENTS SUBMITTED AT THE HEARING:

- Email from Stebbing Parish Council to the District Council in relation to the hedge adjacent to Crossing Point 2.