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# Appeal Decision

Site visit made on 23 November 2022

**by Peter White BA(Hons) MA DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 December 2022**

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**Appeal Ref: APP/C1570/W/22/3290528**

**El Granero, Burton End, Stansted CM24 8UQ**

- 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 Mr Ray Cogan against the decision of Uttlesford District Council.
  - The application Ref UTT/21/2786/FUL, dated 1 September 2021, was refused by notice dated 19 November 2021.
  - The development proposed is the construction of 4No. detached dwellings with ancillary car parking and private amenity space.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are the effect of the development on: (i) the character and appearance of the area, with particular regard to openness and whether there would be coalescence between the airport and existing development; (ii) the accessibility of the site; (iii) the setting of listed buildings; and (iv) biodiversity and protected species.

## Reasons

### *Character and Appearance*

3. The appeal site is a parcel of land close to Stanstead Airport. It is enclosed by tall bunds on two sides, adjacent to the road, and by trees on three sides. It is open to the north-west, and is predominantly laid to grass, with an area of hardstanding near the entrance.
4. The appeal site is located outside areas allocated or designated for housing. It is within the Countryside Protection Zone (CPZ) currently established by Uttlesford Local Plan (2005) (ULP) Policy S8, but the policy approach of an airport in the countryside goes back much earlier. Policy S8 only permits new development required to be there, which would not result in coalescence between the airport and existing development in the surrounding countryside, and which would not adversely affect the open characteristics of the zone. Within the vicinity of the appeal site the CPZ extends from the airport boundary to the M11, with the appeal site being close to the airport.
5. The Council's review of the CPZ<sup>1</sup>, undertaken by Land Use Consultants in 2016, considered the area in the vicinity of the appeal site as Parcel 9 Tye Green. It considered the parcel contained limited development and a strong sense of

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<sup>1</sup> Uttlesford Countryside Protection Zone Study

openness, and that development within the parcel compromises its sense of openness. It found that the parcel was poorly contained by weak barrier features such as field boundaries and minor lanes. That the parcel contained the characteristics of the countryside with limited urbanising elements, and historic greenside hamlets contributed to the rural character of the parcel. It also considered the parcel retained a rural settlement pattern, as hamlets within the parcel are distinct from each other and from the airport. Although I note the comments of the Inspector in relation to appeal APP/C1570/W/19/3243727, these are useful descriptions of the area which apply irrespective of policy considerations.

6. In terms of openness and coalescence, the proposed development would introduce built development into an open area largely laid to grass. I note that part of the site contains a hardstanding area, which is previously developed land, but most of the development proposed is not located in that area, and the hardstanding is limited to development at ground level. The appellant refers to the removal of existing structures, temporary buildings and storage containers as a result of the development, but I did not see any significant structures or temporary buildings on the appeal site at the time of my visit, and the storage containers were located beyond the appeal site boundaries. Although the development would not, in itself, result in coalescence between the airport and Burton End, it would contribute significantly to the amount of development between the airport and The Ash public house, further eroding the airport's rural setting. The bunds and trees on the southern boundaries provide a strong defensible edge, which separates the appeal site from the airport and the cluster of houses between the airport and the appeal site. In terms of visibility, the roadside bunds and trees would provide some screening, but the roofs of some of the proposed houses would be seen above the bunds. The proposed development would therefore result in the expansion of built development from the airport outwards, contrary to the purpose of the CPZ.
7. Considering need for the development in this location, I note the Council acknowledges it can only demonstrate 3.52 years of housing land supply (HLS), as of April 2021. I also note that the appellant states the Council could only demonstrate 53.66% of its housing target in October 2019, but that the Council's 2021 Housing Delivery Test (HDT) results show it delivered 99% of its housing requirement over the 3-year period ending in 2021. Although 3.52 years demonstrates a significant shortfall against housing delivery targets, the HDT test results demonstrate that significant progress is being made to address that shortfall. Although later in my decision I give consideration to paragraph 11 of the National Planning Policy Framework (the Framework), I have not seen compelling evidence that development is required within the CPZ to address the housing delivery shortfall.
8. In conclusion, the development would harm the character and appearance of the area, with particular regard to openness and coalescence between the airport and existing development. As a consequence, it would conflict with ULP Policies S7 and S8 which strictly control new development in the CPZ. It would also conflict with paragraph 130 of the Framework, which seeks development sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change. In its decision notice the Council also referred to ULP Policy ENV5, which protects the best and most versatile

agricultural land, but I have seen no evidence or argument from either party relating to the quality of the land.

### *Accessibility*

9. Access to the site is via Bury Lodge Lane, which is a rural lane without footways or street lighting, bounded by hedgerows and hedgerow trees with only limited verges. Although some services and facilities are available in Stanstead Mountfitchet, the lane is not particularly suitable for walking or cycling, particularly in the winter months or after dark. Occupiers of the proposed development would be heavily reliant on private cars.
10. The development would therefore not be located in an accessible location, and would conflict with ULP Policy GEN1(e), which only permits development which encourages movement by means other than driving a car. It would also conflict with paragraphs 8, 79, 104(c) and 110(a) of the Framework, which require housing to be located where it will enhance or maintain the vitality of rural communities, with accessible services, and where appropriate opportunities to promote sustainable transport modes can be taken up, given the type of development and its location.

### *Setting of listed buildings*

11. I am required, by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), to have special regard to the desirability of preserving the settings of the Grade II listed buildings. The Framework advises that heritage assets are an irreplaceable resource that should be conserved in a manner appropriate to their significance. Paragraph 193 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
12. The Grade II listed buildings Ryders and Ryders Farmhouse are located south-east of the appeal site beyond the appeal site's bunded boundary and Belmer Road. To the north-west the Grade II listed buildings Southview and The Nook can be seen across open grassland.
13. Ryders is a 16<sup>th</sup>–17<sup>th</sup> century timber-framed and plastered house with the upper storey jettied on the south and west sides and a 17<sup>th</sup> century extension. The building has tiled roofs, an original chimney stack on the east wing with grouped attached shafts, and a coved plaster eaves cornice. Ryders Farmhouse is a small 18<sup>th</sup> century timber-framed plastered house with a thatched roof and 20<sup>th</sup> century additions at the rear. In each case, for the purposes of this appeal, I consider their significance to be associated with their historic and architectural interest as farmhouses.
14. Ryders Farmhouse is a one-and-a-half storey building, and the significant vegetation in the highway verges and the intervening mass of the larger Ryders building mean there would be no intervisibility between the proposed development and Ryders Farmhouse; as a consequence there would also be no harm to its setting from the proposed development. Ryders is a two-storey building facing the appeal site in close proximity to the road and the bunded appeal site beyond it. The view of its main pedestrian entrance and front façade from the street looking towards the appeal site sets it in a silvan rural setting, with significant tree cover, fitting for a former farmhouse. In that view,

with the information before me, it is likely that the upper parts of at least one of the proposed dwellings would be seen above the bund and through or above boundary vegetation, particularly in the winter months. The proposed dwellings would not appear as agricultural features, and being seen in the setting of Ryders, the development would result in less than substantial harm.

15. South View and The Nook are listed as a single Grade II listed building, described as a timber-framed house with a tiled roof, re-fronted in the 19<sup>th</sup> century in red brick, and with a modern central chimney stack. With the limited information before me I consider its significance is associated with its historic and architectural interest.
16. Despite the existing open views between the proposed dwellings and South View and The Nook, there is a significant separation distance between them and the proposed development. New planting is proposed along the northern boundary of the appeal site and tiled roofs are proposed on the new dwellings; details of both these matters could be required by planning condition. Therefore, although the proposed development would be different in appearance to a group of traditional farmstead buildings, it would not result in harm to the setting of these listed buildings.
17. Considering the Act's statutory duty, and paragraph 199 of the Framework, I attach significant weight to the less than substantial harm to the setting of the Grade II listed building Ryders.
18. The public benefits of the development are the small contribution four new dwellings would make towards the significant shortfall in HLS, the associated economic benefits, and the partial use of previously developed land. Together these benefits attract limited weight in favour of the development.
19. The harm to the designated heritage asset is therefore not outweighed by the public benefits.
20. In conclusion, with the information before me, although I have not found harm to the setting of Ryders Farmhouse or South View and The Nook, the development would harm the setting of the grade II listed building Ryders. The development would therefore conflict with ULP Policies ENV2 and GEN2 which require development affecting a listed building to be in keeping with its scale, character and surroundings and to safeguard important environmental features in its setting. It would also conflict with the Essex Design Guide, in relation to building form and materials.

#### *Biodiversity and protected species*

21. The appellant completed and submitted a Minor Development Biodiversity Validation Checklist with the application. Place Services at Essex County Council (the County Council's ecologist) also provided a consultation response to the application.
22. Although the appellant's completed checklist concluded that no ecological surveys were required, I note the existing hardstanding area is previously developed land. I also note there is a small lake/pond within 200m of the proposed development. And despite being separated by a minor road, which appeared lightly trafficked, the lake/pond within 500m is linked to the site by semi-natural habitat of the roadside verges and boundary vegetation. Had any

of these features been acknowledged, the checklist would have advised that an ecological assessment was required to support the application.

23. Great Crested Newts (GCN) are a European Protected Species, and the County Council's ecologist states that the Magic Maps records show GCN have been found in ponds approximately 100m south of the appeal site and four records of licence returns and three mitigation licences within 500m. They also advise that tall ruderal and scrub habitats along the bordering hedgerow/trees on the appeal site could be suitable for protected species including GCN, Badger and reptiles as well as Priority species such as Hedgehog and Common Toad.
24. In relation to bats, the Planning Design and Access Statement refers to the site currently containing a detached dwelling, a single storey prefabricated dwelling, and a small number of miscellaneous outbuildings, including storage containers. These features are not within the appeal site, as defined by the red line on the site and location plans. I have seen no proposals within the appeal site for the demolition of a pre-fabricated building, or for trees to be impacted by the development. I have therefore not seen a compelling case for requiring bat surveys.
25. The Council are also concerned that insufficient biodiversity enhancement measures are proposed as sought by ULP Policies GEN7 and paragraph 174 of the Framework. I have not seen evidence of proposed biodiversity enhancements. And as I cannot be certain there would not be adverse impacts on protected species, this matter cannot be addressed by a planning condition.
26. Therefore, although I have not found the need for bat surveys, there is a reasonable likelihood of protected species being present on the appeal site. Paragraph 99 of ODPM Circular 06/2005<sup>2</sup>, which relates to biodiversity and geological conservation, states that, "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision." This matter is therefore not one which can be addressed by a planning condition.
27. In conclusion, with the information before me I cannot be certain that the development would not harm biodiversity and protected species. The development would conflict with ULP Policies GEN7 and ENV8, which require a nature conservation survey where the site includes protected species or habitats suitable for them, mitigation and/or compensation for potential impacts of development, and biodiversity enhancement. It would also conflict with paragraphs 174 and 180 of the Framework, which require planning decisions to minimise impacts on and provide net gains for biodiversity.

### **Other Matters**

28. I have considered the comments of the Inspector in appeal decision APP/C1570/W/19/3243727 in relation to ULP Policies S7 and S8 and the CPZ. The Inspector noted the age of the Local Plan and the restrictive nature of Policies S7 and S8. The Inspector also recognised that land beyond settlement boundaries would need to be released if the Council was to rectify the HLS shortfall. That decision was made shortly after the withdrawal of the Council's

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<sup>2</sup> Office of the Deputy Prime Minister ODPM Circular 06/2005 Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System

draft Local Plan in 2020 at a time when the Council could only demonstrate a housing land supply (HLS) of 2.68 years.

29. The Council currently claims it can demonstrate 3.52 years of housing supply, as of April 2021, and there therefore remains a significant shortfall. The Council also claims it has consistently been granting planning permissions outside the development limits and, as a result, the Council's 2021 Housing Delivery Test (HDT) results show it delivered 99% of its housing requirement over the 3-year period ending in 2021. Therefore, although 3.52 years is a significant shortfall against housing delivery targets, the HDT test results demonstrate that significant progress is also being made to address it.
30. Although ULP Policy S8 is the current CPZ policy, the policy intention has been a longstanding one for an airport in the countryside, and incremental development in the area around the airport would have a lasting effect. In the current circumstances, the Council's attempts to preserve the CPZ, while granting significant numbers of new dwellings elsewhere, including in the countryside, appears to me to be a reasonable approach.
31. Four new dwellings would make a very small contribution towards housing supply, compared to the shortfall of over 1000 dwellings. There would also be limited economic benefits associated with construction, and part of the site is previously developed land.

### **Planning Balance and Conclusion**

32. As outlined above, the Council cannot demonstrate a 5-year HLS and therefore paragraph 11d)i of the Framework applies. The harm I have found to heritage assets is a clear reason for refusing the development.
33. Furthermore, I have found harm to the character and appearance of the area, including the CPZ, the accessibility of the site, and biodiversity and protected species, together with consequential conflict to development plan policies. These attract further significant weight against the proposal. As outlined above, the public benefits only attract limited weight.
34. I therefore conclude the development would conflict with the development plan as a whole and the approach in the Framework. There are no other material considerations that suggest a decision should be made other than in accordance with the development plan. The appeal should therefore be dismissed.

*Peter White*

INSPECTOR