



Appeal Decision

Site visit made on 16 August 2022

by C Harding BA(Hons) PGDipTRP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th February 2023

Appeal Ref: APP/C1570/W/21/3284780

Land Rear of Corbetts Tay, The Downs, Stebbing, Essex

- 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 Mr Patrick O'Sullivan against the decision of Uttlesford District Council.
 - The application Ref UTT/21/1983/OP, dated 11 June 2021, was refused by notice dated 13 August 2021.
 - The development proposed is 2 detached dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application site address used on the application form is brief and imprecise. In the interests of clarity, I have used the address used by the Council on their decision, and by the appellant on the appeal form.
3. Since the Council issued its decision, the Stebbing Neighbourhood Plan (SNP) has been adopted. Furthermore, the Council has updated its five-year housing land supply position. The main parties have provided comment on both matters.
4. The appeal seeks outline planning permission with all matters other than access reserved for future consideration. As matters relating to landscaping, layout, scale and appearance have been reserved for future consideration, the submitted plans can only be taken as being indicative and for information purposes at this stage, other than where they relate to access.

Main Issues

5. The main issues are as follows;
 - whether the appeal site is an appropriate location for the proposed development having regard to local and national policies, and access to services and facilities;
 - the effect of the proposed development on the character and appearance of the area, and;
 - the effect of the proposed development upon biodiversity and the natural environment.

Reasons

Location of new housing development

6. The appeal site is located within a small but marked break in development between the settlement of Stebbing and the hamlet of Bran End.
7. The Council have referred to conflict with ULP Saved Policy H4 which relates to Backland Development. This policy seeks to control new development on sites without road frontages. As the provided plans indicate that the site would front The Downs, I conclude that this policy is not relevant to the appeal proposal.
8. Uttlesford Local Plan (ULP) Saved Policy S7 states that new development within the countryside will only be permitted where it is required to be located there or is appropriate to a rural area.
9. It is common ground that the appeal site sits outside of the settlement boundary of Stebbing as defined in the ULP, and therefore is situated within the countryside. No justification has been provided for any requirement for the development to be located within the countryside, and as a result the proposal would conflict with ULP Saved Policy S7.
10. Although the appeal site is located between settlement areas, the break in development is not significant. Stebbing contains a number of services and facilities, including a shop, public house, primary school, church and village hall, and these would be located within reasonable walking distance and accessible by means of a footway alongside the road.
11. There would be some reliance on other services, facilities and employment opportunities in larger, better served settlements, and this would result in some reliance on the use of the private car. However, the site is located within walking distance of bus stops providing access to services to other local settlements. Whilst there is some dispute with regards to which settlements are accessible by bus, and the regularity of such services, it is nevertheless apparent that options for travel other than private car exist and are accessible.
12. Additionally, the level of car use likely to be generated by two dwellings would be modest, and I am mindful of advice within the Framework which acknowledges the support to nearby settlements that can result from rural development. Furthermore, I am aware that sites have been allocated for housing within the SNP which are located farther from services and facilities than the appeal site.
13. Having regard to the above, the appeal site would not be an appropriate location for new development with regard to ULP Saved Policy S7, which seeks to restrict new development within the countryside except where it is required to be located there, or is appropriate to a rural area, and the appeal proposal would conflict with this policy as a result.
14. However, the proposal would accord with ULP Saved Policy GEN1 which states that development will be permitted, amongst other criteria, where it encourages movement by means other than driving a car, and takes account of the needs of cyclists, pedestrians, public transport users, horse riders and people whose mobility is impaired. In addition, there is some support for the proposed development in the Framework, which is a material consideration to be taken into account.

Character and appearance

15. The appeal site is located at the edge of a gap in built development between Bran End and Stebbing. This gap is characterised by a shallow depression associated with a watercourse and between two higher areas of land on which existing development is focused.
16. The size of the gap, in terms of distance, is not substantial. It is, however, clear and obvious, and provides a brief visual interlude between areas of built development. The introduction of two dwellings, along with associated access, hardstanding and accompanying residential gardens onto the appeal site would erode this gap. Furthermore, as the proposed development would be located adjacent to the roadside, it would be prominent, and would extend built development on this side of the road towards an existing building. As a result, the current perception of leaving one area of development and then entering another would be eroded, to the detriment of the character and appearance of the area.
17. My attention has been drawn to the allocation within the SNP of a site for housing purposes to the north-west of the appeal site and on the same side of the road. This site, identified as site H5, is allocated for the development of up to three large dwellings, or up to five small bungalows. The appeal proposal would extend built development on this side of the road towards this allocated site, but would not adjoin it. I am also aware that there are committed developments on two other sites¹ for a total of three dwellings, located to the east of the appeal site.
18. The appellant contends that the appeal proposal would constitute infill development between these sites and the H5 housing allocation. SNP Policy STEB9 provides support to development proposals within infill sites, subject to a number of criteria.
19. Although the H5 allocation exists, I have not been made aware of any planning permission for residential development on this site. Furthermore, although the allocated site hosts some buildings and structures, it remained largely open in nature at the time of my site visit, particularly on the lower areas closest to the appeal site. Accordingly, I conclude that the appeal proposal would not constitute infill between existing development and would instead constitute an incursion into the open countryside between the built-up areas. As it would not represent development within defined development limits, or on an allocated or infill site, it would not draw support from SNP Policy STEB9.
20. The appellant has highlighted that the site has no viable countryside or community use, and in its current condition is detrimental to the character of the area. There is no evidence before me that indicates that the maintenance of the site is predicated solely on the grant of planning permission for the appeal proposal. Furthermore, although the site may not have been maintained, its verdant and largely undeveloped nature means that it nevertheless contributes to the open gap that exists between the settlements. Accordingly, the current use and condition of the appeal site does not overcome my concerns.

¹ Land West of Brick Kiln Lane, Corbets Tay (UTT/20/0821/FUL) & 'The Pygkle', The Downs (UTT/18/2763/OP)

21. The Council has raised concern with regards to the design and form of the proposed development, however these matters have been reserved for future consideration, and I consider that it is possible that dwellings of an appropriate detailed design and form could be achieved. However, I also need to be satisfied that such dwellings could be accommodated without harming the character and appearance of the area. I consider that it has not been demonstrated that the number of dwellings proposed within the appeal site could be achieved without leading to material harm, for the reasons that I have set out.
22. The proposed development would result in harm to the character and appearance of the area. It would therefore conflict with ULP Saved Policies S7 and GEN2, which together require development to be compatible with surrounding buildings, and when located within the countryside, protect or enhance the particular character of that part of the countryside. Furthermore, it would be contrary to the Framework, which advises that development should be sympathetic to local character, including the surrounding built environment and landscape setting.

Biodiversity and Natural Environment

23. Section 40 of the Natural Environment and Communities Act 2006 requires me to have regard to the purpose of conserving biodiversity. I have also had regard to the protection afforded to certain species under The Wildlife and Countryside Act 1981, The Protection of Badgers Act 1992 and The Conservation of Habitats and Species Regulations 2017.
24. The appeal site primarily comprises of an area of grassland, shrubs and trees, although it formerly also hosted a garage. The Council has indicated that roadside verges within Stebbing support nationally scarce Lesser Calamint (*Clinopodium calamintha*). Such a verge is located on The Downs, to the northwest of the appeal site. I understand that such 'Special Verges' are subject to a local authority scheme which seeks to safeguard the remaining verge sites in Essex where rare plants can still be found, however I have not been made aware of any statutory protection. It is also identified that the site is located in area where there is the potential for Great Crested Newts to be present.
25. The original application was accompanied by a 'Bat, Great Crested Newt and Special Verge Report'². The author of this report and any qualifications that they may hold are not identified. Although the report concludes that no evidence of bats or Great Crested Newts was found, and that no damage to the special verges would result as an existing drop-kerb would be utilised, there is only limited commentary and methodology provided with regard to these conclusions. With regards to the effect on the special verges, the conclusion reached appears to be in conflict with the provided plans which indicate that the existing access would be widened as part of the appeal proposal. Overall, I consider that this report is insufficient to allow me to conclude that the proposed development would not adversely affect protected species or habitats.

² Ecology Report – Bat, Great Crested Newt & Special Verge Report, Damasis Lane Ltd, 17 June 2021

26. A further ecological survey and assessment³ has also been provided. This report has greater coverage and has been carried out by an appropriately qualified individual, and also concludes that the site would be unlikely to be providing habitat for protected species. However, this document makes no reference to the Special Verges or any potential effects that could occur to them as a result of the proposed development.
27. I acknowledge that the Council's Natural Sciences Officer and Uttlesford Special Roadside Verges Coordinator raises no objection to the proposed development with respect to its potential effect upon Special Verges. However, this appears to have been premised on the site being accessed from Brick Kiln Lane, which the plans indicate would not be the case. Accordingly, I do not attach significant weight to these comments.
28. Given that the Special Verges contain nationally scarce species, and the proposal involves widening of the existing access then, when taken as a whole, the evidence before me is insufficient to allow me to conclude that the proposed development would not have a harmful effect on biodiversity and the natural environment.
29. Therefore, the proposed development would be contrary to ULP Saved Policy GEN7 which states that development that would have a harmful effect on biodiversity will not be permitted unless it is outweighed by the need for the development, as well as Part 15 of the Framework, which requires new development to avoid adverse impacts upon priority species and habitats and biodiversity, or where they can't be avoided, be adequately mitigated.

Other Matter

30. The appellant refers to a number of houses that have been granted planning permission by the Council where reference has been made to Stebbing being a sustainable location. I have found no harm in this regard but have also had regard to other matters in reaching my decision.

Planning Balance and Conclusion

31. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires me to determine the appeal in accordance with the development plan unless material considerations indicate otherwise.
32. The appeal proposal would accord with ULP Saved Policy GEN1 as it would encourage movement by means other than driving a car. However, it would be located within the countryside, would lead to harm to the character and appearance of the area, and it has not been established that protected or priority habitats and species would not be adversely affected. It would therefore be in conflict with ULP Saved Policies S7, GEN2 and GEN7.
33. The appellant considers ULP Saved Policy S7 is out of date due to the Council's undisputed lack of five-year housing land supply. I would agree. In addition, the policy is not wholly consistent with the Framework in terms of its approach to rural housing, where it is advised that exceptional circumstances should only be required in the case of proposed new dwellings in isolated locations. Accordingly, the weight I afford to the proposal's conflict with ULP Saved Policy

³ Ecological Survey and Assessment for Land adj. The Downs, Stebbing, Essex Mammal Surveys, August 2021

S7 is moderate. Nevertheless, it would be in conflict with the development plan as a whole.

34. Furthermore, the proposed development would conflict considerably with the environmental objectives of the Framework with regard to its effect upon the character and appearance of the area, and in relation to potential effects upon biodiversity and the natural environment.
35. Set against this, the provision of two additional dwellings would make a positive, albeit modest, contribution towards boosting housing supply in a location with some accessibility to services and facilities. It would also result in some economic benefits during the construction phase and through local expenditure by future residents. In view of the current shortfall in housing delivery, I give these considerations moderate weight.
36. On balance, and taking all matters into consideration, I conclude that the adverse impacts of the development would significantly and demonstrably outweigh the benefits. The material considerations in this case, including the Framework do not indicate that the proposal should be determined other than in accordance with the development plan.
37. For the reasons given above, I conclude that the appeal should be dismissed.

C Harding

INSPECTOR