



Appeal Decision

Site visit made on 12 December 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2023

Appeal Ref: APP/C1570/W/22/3296487

Land opposite Oakwood, New Pasture Lane, Saling Road, Stebbing CM6 3TD

- 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 Tom Wilks against the decision of Uttlesford District Council.
 - The application Ref UTT/21/2597/OP, dated 10 August 2021, was refused by notice dated 11 October 2021.
 - The development proposed is erection of 1No. dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's decision notice refers to the proposal being for 'outline application, with all matters reserved except for access, the demolition of existing buildings and the erection of 1no. dwelling and cartlodge'. However, this is not what was sought on the outline application form which is set out in the banner heading above. The existing buildings are shown retained alongside the dwelling on the plans. The appellant has subsequently clarified the proposal is for 'the construction of 1no. dwelling and cartlodge alongside associated development' and is of the view the implications of a condition on a permission relating to the removal of some existing site buildings¹, is beyond the scope of this appeal proposal.
3. It is not put to me the buildings are or would no longer be required by the residents of Oakwood. In-light of the plans, the description on the application form, the appellant's appeal statement, and the subsequent clarification, I have considered the appeal on the basis that the existing buildings are not proposed to be removed, and are not offered to be removed, as part of this proposal. As the application is made in outline with all matters reserved for future consideration except for access, I have regarded plans indicating the proposed dwelling design and proposed layout as illustrative only.
4. Since the Council's decision as issued, the Stebbing Neighbourhood Development Plan (2022) (the NP) has been made, and now forms part of the development plan. Having regard to this, I have sought the Council's and the appellant's views upon the implications of the NP for my decision and their

¹ Condition C.90A of permission Ref. UTT/0354/02/FUL.

respective cases, and taken these into account in determining the appeal. This is reflected in my setting out of the main issues and my findings below.

5. The Council's first reason for refusal refers to heritage asset in the singular, whereas the heritage advice refers to harm to two Grade II Listed Buildings. Having regard to my statutory duties under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCAA) I have considered the effect upon both assets. This is reflected in my wording of the main issues. The appellant has responded to this matter through the appeal process, so would not be prejudiced by this approach.

Main Issues

6. The main issues are:

- the effect of the proposal upon the character and appearance of the area;
- the effect of the proposal upon the setting and significance of Grade II Listed Buildings;
- whether or not the proposal would be in a suitable location having regard to policies for the location of new dwellings; and,
- whether or not the proposal would be in a suitable location having regard to the accessibility of services and facilities.

Reasons

Character and appearance

7. The appeal site comprises an access, hardstanding, a line of modest single storey buildings and significant area of field, sloping upwards from the highway, bound by hedgerows. On the opposite side of New Pasture Lane the pattern of development is distinctly different with a small broadly linear cluster of buildings and plots, within a wider open countryside setting. There is a land ownership and use relationship between Oakwood opposite and appeal site. However, the primarily open, verdant and rural character and appearance of the appeal site does not appear residential in character, and is viewed as part of the countryside. It is in keeping with and makes a positive contribution to the character and appearance of the area.
8. The appeal proposal would introduce a new dwelling onto the appeal site, and it would include some parking, the creation of domestic garden areas, and some comings and goings. While the detail of the new buildings and layout is not before me, the proposal would result in new built development, hard landscaping, formalisation, domestication of some of the land and associated paraphernalia. It is inherent in the proposal that there would be a marked formalisation, domestication and increased built development at the site.
9. This would be inherently harmful to the character and appearance of the area. Even if all of the length of the front hedgerow could be retained while complying with the Highway Authority's suggested access conditions, the effects of the development would be visible from New Pasture Lane outside the site access and from properties on the opposite side of the highway.
10. Given the height of the existing buildings, surrounding topography and that the hedgerows include much deciduous cover, there would be some limited

visibility of from the fields surrounding the appeal site. It is likely that through reserved matters submissions, a sensitive detailed landscaping could be secured, as well as matters such as sympathetically scaled buildings, layout and a traditional appearance and materials aiming to reflect its surrounds. However, these and related requirements that could be secured through reserve matters submissions would not fully mitigate the harm.

11. For the reasons set out above the proposal would be harmful to the character and appearance of the area. It would conflict with Policy S7 of the Uttlesford Local Plan (2005) (the ULP) which seeks to protect and enhance the character of the countryside. It would conflict with Policy STEB5 of the NP which, amongst other things, states that development will only be supported where it is demonstrated how the predominant open nature of the landscape is retained. The proposal would also conflict with paragraphs 130 and 174b) of the National Planning Policy Framework (2021) (the Framework) which expects planning decisions to be sympathetic to local character and recognise the intrinsic character and beauty of the countryside.
12. As an application for outline permission with all matters reserved save for access, the Council has not demonstrated that a new dwelling could not meet relevant requirements of Policy GEN2 of the ULP, such as a being of an compatible with the scale, layout, form, appearance and materials of surrounding buildings, in respect of this main issue. However, this does not outweigh or mitigate the harm from the other conflicts set out above.

Heritage Assets

13. Section 66(1) of the LBCAA requires special regard is had to the desirability of preserving the setting of a listed building or any features of special architectural or historic interest which it possesses. Paragraph 199 of the Framework requires that when considering the impact upon the significance of a designated heritage asset, great weight should be given to the asset's conservation. Any harm to its significance, including from development within its setting, requires clear and convincing justification (paragraph 200).
14. The appeal site lies a short distance from the Grade II Listed Yew Tree Farm House and Yew Tree Farm Barn 20m south of house. They derive their special interest and significance from the architectural and historic values of their historic function, construction, forms, features, materials, and evolution. The farm house includes timber frame, plaster, a tile roof, window ranges with round head or small paned vertical sliding sashes, six panel door, and chimney stacks. Although I saw no thatched roof or midstrey referred to in the listing description, the barn includes prominent historic weatherboard elevations.
15. Notwithstanding the mature trees and hedgerows adjacent to the highway, the listed buildings include a relatively wide, rural setting including surrounding fields and some buildings. The settings contribute to their significance as it is part of the historic rural tranquil landscape with which the buildings were and are viewed, are associated with, and reflective of their historic function and landscape setting. Given the elevated topography of the appeal site, its proximity to the assets, the filtered visibility and intervisibility, including from surrounding land, the appeal site is within their settings. Its low level rural buildings, open field and landscape features are keeping with their rural context, making a positive contribution to their setting and significance.

16. The development would result in new domestic built development, a formalisation and domestication of some of the land and associated activity and paraphernalia. Given the close proximity and intervisibility, it is inherent that new built development, formalisation and domestication of the appeal site from the development, would adversely affect the contribution of the appeal site to the setting and significance of the heritage assets.
17. Subject to reserve matters submissions in respect of matters such as the dwelling being of a low height, modest scale, sensitively sited, and further landscaping there would little perceptibility of this from parts of New Pasture Lane. However, the harm would be visible from within the appeal site, some of rooms in the heritage assets, and from some vantage points in surrounding fields, particularly when the trees are not in leaf. It is not demonstrated, and I am not satisfied the harm could be adequately addressed through reserved matters submissions. Therefore, the proposal would neither preserve or enhance the way in which the listed buildings are viewed and experienced.
18. For the reasons set out above the proposal would be harmful to the setting and significance of two Grade II Listed Buildings. It would not preserve their setting, in conflict with the aims of section 66(1) of the LBCAA. It would conflict with Policy ENV2 of the ULP which states that proposals that adversely impact upon the setting of a listed building will not be permitted. The development conflicts with Policy STEB1 and STEB5 of the NP, which in combination and amongst other things, require that development within the Green Wedge should preserve or enhance the setting of listed heritage assets and will only be permitted if a Landscape and Visual Impact Assessment and a Heritage Impact Assessment demonstrate there is no harm.

Location

19. Policy S7 of the ULP protects the countryside for its own sake and states permission will only be granted for development that needs to be there or is appropriate to a rural area. Policy H1 of the ULP states that 5052 dwellings will be developed between 2000 – 2011 in a number of locations. The appeal site does not lie within defined settlements and named locations referred to in the pre-text to Policy S7 or in Policy H1 so is within the countryside. It has not been demonstrated that this proposal for a market dwelling needs to be in the countryside or is an appropriate type of development to a rural area.
20. The NP was developed and examined to ensure compliance with Framework policies, in setting out the strategy for the location for new dwellings. The appeal site is not within defined development limits, allocated sites and would not be an infill site, referred to in Policy STEB9 1. of the NP. So it is not within the locations the NP seeks to direct new dwellings, and is within the countryside. Policy STEB9 2. of the NP provides additional and up-to-date guidance on sites that are subject to Policy S7 of the ULP. In order to protect the intrinsic character and beauty of the countryside, support will only be given to proposals that comply with the listed categories of development.
21. The appellant and Council agree the circumstances of this proposal does not fall within the categories of development listed in Policy STEB9 2. as being supported in the countryside. The proposal would be located where it will maintain or enhance the vitality of rural communities and support local services therefore I do not find a conflict with paragraph 79 of the Framework. Were I to consider the dwelling is not isolated and the small cluster of buildings as a

settlement as is put to me by the appellant, there would be no conflict with paragraph 80 of the Framework. Nevertheless, Policy STEB9 2. does not list the development as a type it supports. Therefore, the proposal conflicts with Policy S7 of the ULP and STEB9 2. of the NP.

22. For the reasons set out above the proposal is not in a suitable location having regard to development plan policies for the location of new dwellings. It conflicts with Policy S7 of the ULP and Policy STEB9 2. of the NP, the relevant provisions of which I have set out above. Although, I do not find a conflict with paragraphs 79 and 80 of the Framework insofar as these seek to locate development where it will maintain or enhance the vitality of rural communities and support local services and avoid the development of isolated homes.

Services and facilities

23. On my visit I noted a nursery approximately 400m south of the appeal site and I am informed there is a bus stop nearby. A limited number of services and facilities for day to day living are at Stebbing approximately 1.5km from the appeal site, such as places of worship, bus stops, a village hall, a public house, a grocery store, news agent, and a primary school. The route is via unlit roads with varying speed limits, with relatively narrow carriageways, turns, and some areas with verges for refuge. Walking or cycling to them is unlikely to be particularly attractive or convenient for many future occupiers.
24. The settlements of Great Dunmow and Braintree are approximately 5.5km and 6.5km respectively from the appeal site. They provide a larger range of services and facilities for day to day living. These include shops, supermarkets, chemists, a dentist, medical facilities, professional and financial services, secondary education, takeaways, recreation facilities, and employment opportunities. The A120 is a busy dual carriageway, so walking and cycling would not be regarded as safe, attractive or convenient. While the A1256 is relatively straight, it had little street lighting and in some areas the verges are narrow and there was no footway. It also requires access via some sections of narrower highways. Therefore, walking and cycling would not be attractive or convenient for many future occupiers.
25. I am informed the closest bus stop to the appeal site has a regular service, although the frequency and duration is not before me. I also could not see a shelter or lighting. Given this and the distance and route to it, even if the services are frequent, it would only be likely to have limited appeal for accessing services and facilities. It is likely that many journeys by future occupiers would be by private motor car.
26. I am informed that in the Braintree judgement² that proposal was a similar distance to services and facilities as the appeal proposal. That Inspector concluded that while consistent the Framework, accessibility to services, facilities and employment other than by private car would be poor, and it was a factor that weighed against the development.
27. Two applications³ for the conversion or replacement of an existing building nearby, south of the Listed Barn, were approved notwithstanding the location. The access to services and facilities was referred to and appears to have been considered as part of the overall balance of considerations. The proposals

² Braintree DC v SSCLG [2018] EWCA Civ. 610.

³ Permission Refs. UTT/20/0509/FUL and UTT/21/3270/FUL.

convert or directly replace a building and were deemed in compliance with related policies. The first proposal was not considered harmful to the character and appearance of the area, and on-balance it was found not to conflict with Policy ENV2 of the ULP, in respect of the setting of heritage assets. Therefore, the proposals are not directly comparable to this appeal proposal.

28. The Council has approved other applications which I am informed are in similar locations⁴ although there is little by way substantive detail of the full details and circumstances of those proposals, such as other considerations that would have weighed in their favour. Therefore, I cannot make a fully reasoned and meaningful comparison between this appeal scheme and those proposals. However, those decisions pre-date the making of the NP which is an important consideration. Their relationship to heritage assets is not fully explained to me. Therefore, based upon the evidence before me, the approval of those applications does not justify allowing this appeal proposal, which I have considered on its own merits and impacts.
29. I take into consideration that paragraph 105 of the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and the number of trips generated, and distances travelled, would be limited. However, these would soon add up to a significant number of vehicular miles.
30. For the reasons set out above, the proposal would not be in a suitable location having regard to the accessibility of services and facilities. It conflicts with the aims of paragraphs 8 and 105 of the Framework which aim to use natural resources prudently, minimise pollution, focus development toward locations that limit the need to travel, and offer transport choice. While this is not uncommon in rural areas it attracts some weight against the proposal.

Heritage Balance

31. I consider the harm to the setting and significance of Grade II Listed Buildings, would be limited and less than substantial harm. Paragraph 202 of the Framework states where a development would lead to less than substantial harm, the harm should be weighed against the public benefits. However, great weight should be given to an asset's conservation, and less than substantial harm should not be equated with a less than substantial planning objection.
32. The proposal would result in a small temporary economic benefit during design and construction, and once occupied a small on-going benefit to the local economy, and there would be local tax receipts and the New Homes Bonus. The Council advises it now demonstrate a Housing Land Supply (HLS) of 4.89 years. Even if it were significantly less and regarded as particularly acute, a single dwelling is a small public benefit. The proposal would make a more efficient use of the land and there would be a small contribution to sustaining and the vitality of rural communities, rural services and facilities, which is consistent with objectives of the Framework.
33. There is scope for the scheme to secure overall landscaping and biodiversity benefits. However, there is no substantive evidence to demonstrate that these would be anything other than a limited benefit.

⁴ Permission Refs UTT/18/3147/FUL, UTT/18/0611/FUL, and UTT/20/3369/OP.

34. Were I to agree the proposal is or could be made compliant with policies and standards in respect of matters such as climate change, resource and energy efficiency, communications, detailed design, access and parking, arboriculture, refuse storage, drainage, the living conditions of future and neighbouring occupiers, and contamination, these would overall be neutral effects.
35. Overall, the policy compliance and benefits of the proposal attract moderate weight in favour of the scheme. Consequently, when giving considerable importance and weight to the special regard I must have to the desirability of preserving the setting of listed buildings, I find that the public benefits do not outweigh the harm to the setting and significance of the listed buildings. Therefore, the development conflicts with paragraph 202 of the Framework. This attracts great weight.

Planning Balance

36. The appellant is of the view the ULP is out of date, and the Council cannot demonstrate a 5 year HLS. In such circumstances paragraph 11 of the Framework states that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development, having regard to footnote 7. It includes designated heritage assets. Therefore, while I have noted the appellant's commentary of various judgements⁵, the tilted balance does not apply, and Framework policies provide a clear reason for refusing the proposal.
37. The proposal conflicts with development plan policies for the location of new dwellings and would be harmful to the character and appearance of the area. Policy S7 of the ULP is based upon boundaries to accommodate historic housing requirements and its blanket countryside protection is not consistent with the more positive and nuanced approach of the Framework to the location of development in rural areas. Having regard to this and the conclusions set out in Inspectors appeal decisions referred to me by the appellant⁶, the conflict with the policy does not attract full weight.
38. However, Policy S7 is consistent with policies of the Framework that recognise the intrinsic character and beauty of the countryside, and expect development to be sympathetic to local character including the landscape setting. Therefore, overall, the conflict with S7 still attracts limited weight. Policy H1 allocates housing up to 2011, is based upon historic housing figures, so conflicts with the Framework requirement to meet the local housing needs of the District. The appellant suggests the conflict attracts little or no weight, the Council does not dispute this, and I see no reason to disagree on the evidence before me.
39. Having regard to the submissions from the parties in respect of the NP and paragraph 14 of the Framework, I see no reason the conflict with its policies should not attract full weight against the scheme.
40. The proposed development would adversely affect the setting and significance of two Grade II Listed Buildings, which is a matter that attracts great weight. It would also adversely affect the character and appearance of the area, conflict with development plan policies for the location of new dwellings, and would not be in a suitable location for access to services and facilities. The harm from the development is such that, overall, it significantly outweighs the

⁵ 6.77 – 6.81 of the Appellant's Planning Statement Ref. C20121 (May 2021).

⁶ APP/W3520/W/18/3194926, APP/C1570/W/16/3166101 and APP/F4410/W/17/3169288.

policy compliance and the benefits of the development. Therefore, the appeal should not succeed.

Conclusion

41. The proposed development conflicts with the development plan and the Framework taken as a whole, and the aims of the LBCAA. There are no material considerations advanced, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR