



Appeal Decision

Site visit made on 7 March 2023

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th April 2023

Appeal Ref: APP/J1915/W/22/3303407

31 Burnham Green Road, Datchworth, Knebworth SG3 6SE

- 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 & Mrs N & O Westcott against the decision of East Hertfordshire District Council.
 - The application Ref 3/22/0436/FUL, dated 24 February 2022, was refused by notice dated 17 June 2022.
 - The development proposed is erection of a four bedroom dwelling with associated access & parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Paragraph 149 of the National Planning Policy Framework (the Framework) states that the construction of new buildings in the Green Belt is inappropriate subject to certain exceptions. The parties agree that the proposal would fall within one of those exceptions - limited infilling in villages, and that the proposal would not therefore be inappropriate development in the Green Belt. From everything I have seen in submissions and on my site visit, I have no reason to disagree.

Main Issues

3. Taking into account the above, the main issues in this appeal are:
 - whether the proposed dwelling would be in a suitable location having regard to local policies concerned with housing in rural areas;
 - the effects of the proposed development on highway safety;
 - the effects of the proposed development on biodiversity; and
 - if harm arises, whether this is outweighed by other material considerations.

Reasons

Suitability of location

4. The appeal site forms the side garden of No 31 and is situated on Burnham Green Road which connects the villages of Bull's Green and Burnham Green. The area surrounding the appeal site is rural and characterised by large, detached houses set within spacious plots which create an almost continuous

row of linear development between the two villages. The appeal site forms an infill plot between Nos 31 and 33.

5. The footway at the front of the appeal site provides a pedestrian route between the two villages. However, the route is unlit and the villages offer a very limited range of services and facilities. Whilst there is a bus stop and public house within walking distance at Bull's Green, these are not accessible from a pedestrian footway.
6. The development plan defines the villages as 'Group 3' villages which, reflecting their poor access to services and facilities, the Council regards as amongst the least sustainable locations within the district. Occupants of the development would experience limited travel choices and would be generally dependent on use of a private car to meet their day-to-day needs. Therefore, the proposal would generate increased car movements from occupants of the new dwelling.
7. Having regard to local policies concerned with housing in rural areas, the proposed dwelling would not be in a suitable location. The proposal would conflict with Policy DPS2 of the East Herts District Plan 2018 (DP) which directs development to sustainable locations such as urban areas and urban extensions. In addition, the proposal would not comply with DP Policy VILL3, which limits development in Group 3 villages to infill identified in a Neighbourhood Plan only, and DP Policy TRA1 which requires new development to enable sustainable journeys to be made to key services and facilities.

Highway safety

8. The proposal would involve formation of a new vehicular access. A dense row of mature trees runs along either side of the carriageway. The Highways Authority (HA) has raised concerns regarding the effects of trees on visibility splays from the proposed access. However, the Tree Protection Plan identifies no works to trees along the highway. From my site visit I noted that, due to the curvature of the road, the presence of existing trees would obstruct views of approaching traffic travelling south along Burnham Green Road from the location of the proposed access.
9. To reach the carriageway, the proposed access would cross a wide verge, ditch and pedestrian footway. The HA notes that the proposed access would require the ditch to be culverted and also identifies that there is an existing culvert under the carriageway near the proposed access. The appellant suggests they were not provided adequate opportunity by the Council to address the HA's concerns at the planning application stage. However, the appellant has not sought to provide design details for visibility splays or the culvert during the course of this appeal.
10. In the absence of details to demonstrate that adequate visibility splays would be created, and in the absence of details of the design of the culvert, I must conclude that the proposed development does not adequately demonstrate that the proposal would achieve a suitable standard of highway safety. Due to the uncertainty that a suitable access is achievable, such matters cannot be resolved through a planning condition. For this reason, the proposal would not comply with DP Policy TRA2 which requires proposals to provide safe, suitable access for all users.

Biodiversity

11. As indicated on the plans, the proposed development would require removal of a group of trees within the site, which the appellant's arboricultural statement identifies as being of mixed species and low amenity value. DP Policy N3 requires development proposals to demonstrate how the development improves the biodiversity value of the site and surrounding environment. Through the removal of trees, I consider the proposal would reduce the site's biodiversity value.
12. The appellant has completed a Sustainability Checklist through which they expressed willingness to provide bat or bird boxes. However, to ensure an increase in biodiversity value is achieved, such mitigation and compensatory measures should be designed based on evidence collected through ecological surveys. The appellant states they were not aware of the need for ecological surveys at the point of submitting the application. However, neither has the appellant supplied the required evidence during the course of this appeal.
13. The appellant has suggested a condition be imposed requiring surveys be carried out. Whilst the Framework allows conditions to be imposed to make an otherwise unacceptable development acceptable, in the absence of surveys to demonstrate the site's present biodiversity value there is significant uncertainty as to whether an increase in biodiversity value through the proposed development is achievable. I therefore do not consider use of a planning condition would be appropriate or suitably precise in this circumstance.
14. In the absence of ecological survey information, the proposal does not demonstrate how the development would improve the biodiversity value of the site. For this reason, the proposal would conflict with Policy N3.

Other matters

15. The proposal would contribute an additional dwelling to the area's housing stock. An additional unit would make little difference to the overall supply of housing and the support one extra household would provide to the local economy would also be insignificant.
16. In July 2019, planning permission was granted to subdivide the appeal property to create a separate 3-bedroom dwelling. I understand that at time of my decision the scheme has lapsed and is therefore now unimplementable. The appellant asserts that the Council's refusal of the appeal proposal conflicts with its approval of the previous scheme. However, the 2019 scheme is materially different from the appeal proposal since it relates to the subdivision of an existing residential building, the floorspace of which could be utilised for residential use in any event, as opposed to the erection of a new building. Whilst I note that, according to the appellant, the Council did not identify conflict between the 2019 scheme and the DP's locational strategy, as I have found above, the appeal proposal would result in the erection of a new building in an unsustainable location.

Planning Balance

17. The DP dates from 2018 but the weight to be attached does not hinge on its age. Rather paragraph 219 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework.

18. As discussed above, the proposal would conflict with the development plan's locational strategy, namely Policies DPS2, VILL3 and TRA1, which generally direct development to locations with best access to services and facilities and sustainable transport. Likewise, the Framework indicates that new development should be located to reduce greenhouse gas emissions and promote walking, cycling and public transport. In addition, I have identified conflict with Policy TRA2 in respect of highway safety. Paragraph 111 of the Framework indicates that development which would have an unacceptable impact on highway safety should be refused. The proposal would also conflict with Policy N3 regarding effects on biodiversity. Similarly, paragraph 174 requires proposals to minimise impacts and provide net gains for biodiversity.
19. As there are no policies in the DP which positively favour development of this kind in this location and as the proposal would be contrary to the policies referred to above, there would be a conflict with the development plan as a whole.
20. During the course of this appeal, it was confirmed that the Council cannot demonstrate a five-year supply of deliverable housing sites. In these circumstances footnote 8 of the Framework establishes that the policies which are most important for determining the application are out-of-date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
21. As described above, the benefits associated with a single dwelling would be limited even taking account of the objective of boosting significantly the supply of housing in the Framework and the Council's housing land supply position.
22. Consequently, the adverse impacts of the proposal on the locational strategy resulting in increased car travel associated with a single dwelling, highway safety, and biodiversity would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
23. I have concluded that the proposal would conflict with the development plan as a whole. The Council cannot demonstrate a five-year supply of housing land and so I am unable to afford full weight to the conflict of the proposal with the Plan. Nevertheless, there is a great deal of synergy of the development plan policies pertinent to the appeal with the Framework. Consequently, I attach moderate weight to this conflict. For the reasons set out above, there are no material considerations which indicate a decision other than in accordance with the development plan.

Conclusion

24. For the reasons given above, having assessed the case against the development plan as a whole and having had regard to all other relevant material considerations, I conclude that the appeal should be dismissed.

E Dade

INSPECTOR