



Appeal Decision

Hearing held on 25 April 2023

Site visit made on 25 April 2023

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 17 May 2023

Appeal Ref: APP/C1570/W/23/3314018

Land east of Dunmow Road, Aythorpe Roding, CM6 1PQ

- 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 B Howlett against the decision of Uttlesford District Council.
 - The application Ref UTT/22/1186/FUL, dated 26 April 2022, was refused by notice dated 5 July 2022.
 - The development proposed is application for an entry-level exception site and the construction of 3 affordable residential dwellings together with associated access, parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have referred to the unmade road from which the appeal site (the site) is accessed as Keeres Green Lane, as this is how it is described on the location plan. fronting a recent development, the road is identified as "School Lane", which forms a loop back to Dunmow Road.
3. An updated Statement of Common Ground (SoCG) was submitted at the hearing. This was unsigned, but both the main parties confirmed that it was an agreed document.
4. The application describes the development as being an entry-level exception site. The Written Ministerial Statement of 24 May 2021¹ (the WMS) and accompanying Planning Practice Guidance² (the PPG) replaced government policy relating to entry-level exception sites with a policy relating to First Homes exception sites. However, the revised National Planning Policy Framework (the Framework), which still refers to entry-level exception sites, was issued subsequent to the WMS and PPG and is thus the more recent document. I have therefore considered the proposal before me on the basis that it is an entry-level exception site, although the WMS and PPG still have bearing as First Homes are stated to be the government's preferred delivery vehicle for homes for first-time buyers.

¹ Statement UIN HLWS48

² <https://www.gov.uk/guidance/first-homes>

Main Issues

5. The main issues in this appeal are: -

- The effect of the proposed development on the character and appearance of the site and the surrounding area; and –
- Whether the site is a suitable location for the appeal scheme, having particular regard to access to facilities and services.

Reasons

Character and appearance

6. There is no dispute between the parties that the development lies outside of any defined settlement boundary, and in planning policy terms is within the countryside.
7. The location of the site, close to the junction of Keeres Green Lane and the B184, makes it highly prominent. Being an undeveloped field largely enclosed by mature hedges, the site is characterised by its attractive verdant appearance and open rurality. As such it provides a transition between the somewhat strident suburban style cul-de-sac of Old Mill Close and the surrounding countryside. Accordingly, the site has a strong visual relationship to the wider open countryside and is clearly and distinctly different from the residential development opposite.
8. The proposed development would have a strong urbanising effect on the site, which would be out of keeping with its current open, verdant, countryside character. It would introduce substantial built form alongside, and visible from, the adjoining lane.
9. The existing roadside hedge would assist in breaking up the built form of the development, but the proposed houses would nevertheless be visible and prominent through the gaps in this vegetation.
10. The proposal would provide a new point of access, creating a significant opening in the existing hedgerow which bounds the lane. This new access point would introduce a highly visible break in the vegetation, which would further increase the visibility of the proposal. Further, the provision of wide driveways leading from this access point, together with hardstanding for the parking of cars, would result in considerable hard surfacing and this would be clearly identifiable and urbanise the existing rural setting.
11. It has been drawn to my attention that the site previously formed part of a proposal³ for five two-storey dwellings, three detached and a pair of semi-detached dwellings, with two points of access (the 2019 scheme). This proposal was the subject of an appeal⁴. The proposed dwellings would be single storey in height, a significant reduction in scale when compared to the previous scheme, fewer in number and positioned on the eastern part of the field within which the site lies. Nevertheless, the dwellings would be substantial buildings, and their roofs would be noticeable above the existing lower sections of the hedges. Whilst the number of access points is reduced when compared to the 2019 scheme, the new access would still breach the hedge fronting Keeres Green

³ Council Ref: UTT/19/0946/FUL

⁴ PINS Ref: APP/C1570/W/19/3240578

Lane, and the proposed dwellings would be clearly visible through the new access point from the lane.

12. The proposal includes a landscaping scheme, and the appellant considers that this would assist to help screen the development from wider views. It is proposed to reinforce the hedge to fill existing gaps and manage the hedgerows to enhance health and vigour. Whilst such planting could be provided by planning condition, I am not satisfied that such measures would, of themselves, be adequate to mitigate the harm identified, as new planting would take time to establish itself, would likely be deciduous and there is no substantive evidence before me that sufficient screening would be achieved to address the matter successfully. Further, the large amount of scrub and bramble currently incorporated within the hedge may encourage future occupiers to remove it as being unsightly or a nuisance. In any event, landscaping can be used to soften development but should not be relied upon to hide buildings that would otherwise appear incongruous, as it could fail in the future and can only reasonably be safeguarded for a limited period.
13. Landscaping primarily softens visual impacts but will seldom mitigate the impact on landscape character as the land would still undergo a transformation from a field to housing.
14. The landscaping scheme shows significant amounts of soft landscaping around the access and manoeuvring areas, and around the boundaries of the proposed dwellings. However, the appearance, nature and activity associated with the access and parking would, nonetheless, remain clearly visible, as would the dwellings themselves and so this would not satisfactorily address the harm I have identified.
15. Bringing these matters together, notwithstanding the reduction in scale and positioning of the westernmost dwelling further from Dunmow Road when compared to the 2019 scheme, the three dwellings in this location would still be highly noticeable and this impact cannot be adequately mitigated. The introduction of development here, including hardstanding, parking and associated residential paraphernalia would be highly visible and at odds with the rural character of the site.
16. Consequently, I find that the proposal would significantly harm the character and appearance of the site and surrounding area. The proposal would, therefore, conflict with policies S7 and GEN2 of the LP, which seek, amongst other things, that development in the countryside protects or enhances the character of the countryside and is compatible with its appearance.

Suitable location

17. Keeres Green is a small settlement and does not offer any day-to-day services or facilities for future occupiers of the development. The appellant has provided a Transport Statement⁵ which includes an assessment of facilities near the proposed development.
18. The Chartered Institution of Highways and Transportation document "providing journeys on Foot" identifies that 2km is the "preferred maximum" walking distance for commuting and journeys to school, whilst 500m is identified as a "desirable" distance for such journeys. The National Design Guide identifies

⁵ Transport Statement prepared by Ardent Consulting Engineers dated March 2021

that walking distance to local facilities is generally considered to be no more than 800m in radius. Cycling is recognised as being a realistic alternative to the use of the private car for journeys of up to 5km.

19. Some facilities, in the form of a small convenience store and primary school can be found in Leaden Roding, which is the nearest village to the site. The appellant has identified that a primary school is located approximately 700 metres from the appeal site, with the local shop located approximately 1.1km. There is also a village hall, nursery and public house located in the village of Aythorpe Roding, north of the site, and these all lie within the preferred maximum walking distance. A small business park, Parklands Business Centre, is located approximately 1.7km away, which would provide some employment opportunities.
20. Taken together, these local facilities would represent a level of service and facilities which would meet some day-to-day requirements. They would not, however, meet them all. I am particularly mindful that the nursery, whilst being within the preferred maximum walking distance for commuting and journeys to school, would be used by very young children and parents are unlikely to consider walking or cycling such distances along a busy road. The scale and scope of Parklands Business Centre is such that employment opportunities would be limited, and there are no secondary school, primary shopping facilities or healthcare facilities within walking distance.
21. Further, whilst, once on Dunmow Road the routes benefit from a footway on one side, they are unlit and in places carry fast moving traffic. During my site visit I observed that the footway was obstructed by parked cars in the vicinity of the primary school, and it is reasonable to assume that these were being used by parents to drop off children. Such factors are likely to deter cyclists and walkers, particularly after dark or during inclement weather, and those accompanied by children, or carrying heavy shopping.
22. At the Hearing I heard that secondary school pupils are provided with opportunities to travel by bus, and that the bus picks up on Dunmow Road. However, reliance on buses may place limitations for pupils in regard to participation in after school activities.
23. The appellant has argued that selection of school is a matter of choice and that parents are not obligated to send their children to the nearest school. The planning system, however, focuses on whether there are opportunities to use facilities and services using sustainable transport.
24. The closest bus stop to the development is located approximately 650m from the site. However, services from this stop are infrequent and not available every day. This frequency of service would undermine the potential of these routes to provide an effective alternative to the use of the private car to access day-to-day services and facilities. There is an additional bus stop in the village of Leaden Roding and this provides an hourly service on Mondays to Saturdays, reducing to a bus every two hours on Sundays. This service runs between Chelmsford and Harlow where a full range of services are found that would cater for people's day-to-day needs. This stop is, however, over 1km from the site, accessed along the same roads that I have considered above. I therefore find that the limited service provision, distance from the development site and characteristics of the roads involved would make it unlikely that buses would

provide a realistic alternative to the private car to access day-to-day services and facilities.

25. I recognise that Paragraph 105 of the Framework states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that this should be taken into account in decision-making. However, based on the evidence before me and what I saw during my site visit, I find that occupiers would be likely to be heavily reliant on private cars to access key services and facilities. In any event, the use of such vehicles would not promote the health benefits of regular active travel. I note that, for the 2019 scheme, the Inspector reached a similar conclusion in determining the appeal.
26. The appellant claims that the increase in the use of electric and hybrid vehicles and carpooling, home working, and the use of home delivery services may reduce the impacts of the use of the private car to a degree. However, there is no evidence before me to demonstrate that future occupiers of the site would be able to avail themselves of such things.
27. Therefore, I find that the development would not a suitable location for the appeal scheme, having had particular regard to access to facilities and services. As such it conflicts with those aims of the Framework which seek, amongst other things, to protect and enhance the natural environment, minimise the need to travel and to support the transition to a low carbon economy.

Other Matters

28. There is no disagreement between the parties that the Council is currently unable to identify a five year supply of housing land (5YSHL). Accordingly, the most important policies for determining the application should be deemed out of date. The policies may, nonetheless, still carry weight in proportion to their degree of consistency with the aims of the Framework.
29. The parties have not provided detailed information in regard to the Council's spatial strategy or policies in regard to the provision of housing. However, as I am dismissing this appeal for other reasons, they cannot affect the outcome and I have not considered them further.
30. The description of the proposal identifies it as an entry-level exception site for the construction of three affordable residential dwellings. Paragraph 72 of the Framework (Paragraph 72) and the WMS and its accompanying PPG support the development of entry-level exception sites and First Home exception sites, suitable for first time buyers. The proposal is intended to provide homes for such persons.
31. Entry-level or First Home exception sites, by their nature, are located within land designated as countryside for planning purposes. There would thus be an implicit level of landscape change at the edge of the host settlement envisioned by the policies, which allow limited numbers of entry level homes to emerge at the edge of a settlement on the basis that the benefits would outweigh any limited changes and potential landscape harm and thus a degree of tolerance for harm is built into their provisions. Thus, it is implicit in the context of the policy set out in Paragraph 72 and the WMS that the consideration of compliance of a proposal with local design policies and standards involves detailed matters about the design of housing, rather than matters of the principal of landscape change.

32. The appellant has brought to my attention an appeal decision⁶ (the Broad Town appeal), relating to a proposal for entry level housing. I note that, in that appeal, the Inspector reached a similar conclusion in regard to the application of Paragraph 72 in regard to landscape change as I have.
33. The appellant has suggested that, for exception sites, the lack of access to services and facilities by sustainable transport is implicitly accepted. The Framework, in Paragraph 105 acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making. The Framework further identifies in Paragraph 79 that development in one village may support services in a village nearby. However, I can find no support in the Framework to discount the consideration of sustainable transport to any further degree.
34. I also have concerns that, were such to be the case, it would have potential implications regarding social exclusion for occupiers of such dwellings who may not have the same degree of access to the private car as would be the case for occupiers of market housing, and this would undermine the aims of the Framework to promote social and cultural well-being for all sections of the community.
35. Paragraph 72 and the WMS both set out that local authorities should support the development of exception sites for entry level homes unless the need for such homes is already being met within an authority's area.
36. The inability of the Council to demonstrate a 5YSHL, and that it has been unable to do so for some time, makes it reasonable to assume that the historic under delivery of housing would generate a need for homes of all types and tenure, including entry level homes. From the evidence before me it is also clear that property prices locally are many times the average household income. The Council has provided no substantive evidence to demonstrate that any need for entry level homes is being met.
37. The wording of Paragraph 72 and the WMS place on the Council the burden of proving that any need for entry level homes is being addressed. I note that the Inspector in the Broad Town appeal reached a similar conclusion, in regard to demonstration of need for starter homes when applying Paragraph 72 as I have in regard to the application of Paragraph 72 and the MWS.
38. Paragraph 72 and the WMS also set out various criteria that entry-level sites need to satisfy and these are similar to each other.
39. The site has not been allocated for housing and there is no dispute between the parties that, subject to an effective means of securing delivery, the dwellings would deliver entry-level homes that offer one or more types of affordable housing as defined in Annex 2 of the Framework.
40. There is, however, dispute that Keeres Green is a settlement in its own right. There is no definition within the Framework or on the Planning Portal of a settlement. However, the Oxford Advanced Learner's Dictionary defines a settlement as "a place where people have come to live and make their homes, especially where few or no people lived before".

⁶ PINS Ref: APP/Y3940/W/20/3249284

41. Keeres Green is not specifically identified as a settlement within the development plan hierarchy and lacks a settlement boundary. However, I find no requirement within the Framework for such requirements in order to qualify as a settlement for the purposes of Paragraph 72 or the WMS, nor do these documents identify the need for services or facilities to be within a 'settlement'.
42. Keeres Green is a named place identified on maps and is a group of around 28 dwellings. Although in parts these are loosely grouped, I find that Keeres Green is, by virtue of its scale, its form as a discernible grouping of dwellings and the permanency of occupation, a settlement for the purposes of Paragraph 72 and the WMS. I note that the Inspector, in their appeal decision for the 2019 scheme, described Keeres Green variously as a 'village' and a 'hamlet'. The site is next to, and opposite, existing development that forms part of Keeres Green and is, thus, adjacent to it.
43. Paragraph 72 and the Framework requires that proposals for entry-level exception sites are proportionate in size to the settlements that they would adjoin. In footnote 35 the Framework advises that exception sites should not be larger than one hectare in size or exceed 5% of the size of the existing settlement.
44. The appellant argues that it is unclear in the Framework what aspect of the settlement should be used to determine the 5% limit, be it overall settlement area, overall number of dwellings, overall number of residents, or some other statistic. However, given the wording of the footnote it is clear to me that it is intended merely to provide guidance. I consider that, in the absence of any specific guidance, the number of dwellings, which would also be, in general terms, proportionate to the number of households is a useful starting point.
45. There is no reference to the limits set in footnote 35 within the WMS. The PPG⁷, however, advises that "For decision making, what constitutes a proportionate development will vary depending on local circumstances" and I am mindful that the First Homes policy is the Government's preferred vehicle for delivery of dwellings for first time buyers.
46. Having visited the site and considered the layout of the settlement, its plots and pattern of development I do not consider that the scale and density of the development would be disproportionate, nor would an additional three households have an unacceptable social impact on the population. I therefore consider that the proposed development would not, in this case, be disproportionate to its host settlement.
47. There is agreement that the site, whilst located in the countryside for planning purposes, does not lie within an area of 'particular importance' as defined in footnote 36 of the Framework. There is also agreement that the proposal would, or could, under the requirements of planning conditions, comply with local design policies and standards.
48. I am mindful of the advice provided in the PPG⁸ that "The landowner should enter into a planning obligation under section 106 of the Town and Country Planning Act 1990 enforceable by the local planning authority that:

(a) secures the delivery of the First Homes; and,

⁷ Paragraph: 026 Reference ID: 70-026-20210524

⁸ Paragraph: 003 Reference ID: 70-003-20211223

- (b) ensures that a legal restriction is registered onto a First Home's title on its first sale.
49. In most cases, these planning obligations should be entered into in the usual way prior to the grant of planning permission. The government has published template planning obligations for this purpose, which the local planning authority can use as a basis for agreements prepared locally".
50. No such planning obligation has been provided. Rather, the appellant has suggested that a planning condition be imposed to secure the dwellings as entry-level starter homes and be retained as such thereafter. This would be a negatively worded condition, in effect obliging the developer to enter into a planning agreement prior to commencement of work on site.
51. I am further mindful of the advice provided in the PPG⁹ that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases, and that ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed.
52. It further advises that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk.
53. The appellant has sought the development of this site over a prolonged period and has previously included elements of affordable homes within the overall proposal. It is, therefore, reasonable to assume that the development would not be at risk of delivery, were all other aspects of the proposal acceptable other than securing the homes as entry level affordable housing.
54. Although I am mindful of the Guidance provided in Paragraph 55 of the Framework that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition, I am also mindful of the likely complexity of any obligation, that the main parties have had little engagement at the current time, and the clear guidance of the PPG that First Time Homes should be secured by a planning obligation as the default, and, further, that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. The exceptional circumstances envisioned within the PPG under which such a condition would be appropriate have not, in this case, been demonstrated.
55. Bringing these matters together, I therefore conclude that the proposed development would fulfil the criteria set out in Paragraph 72 of the Framework for an entry-level exception site or a First Homes exception site. However, I am not satisfied that the homes provided could be adequately secured in perpetuity as entry-level homes.

⁹ 010 Reference ID: 21a-010-20190723

Planning Balance

56. There is no disagreement between the parties that the Council is currently unable to identify a five year supply of housing land (5YSHL). Accordingly, the most important policies for determining the application should be deemed out of date and, in this instance, permission granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
57. In the context of the development plan, I have found that the proposed development would be contrary to Policies S7 and GEN2 of the LP. Whilst, in this case, the absence of a 5YSHL means that the policies most relevant to the determination of this appeal are deemed to be out of date, the policies may, nonetheless, still carry weight in proportion to their degree of consistency with the aims of the Framework. These policies recognise and seek to protect the intrinsic character and beauty of the countryside. They are thus broadly in accord with the aims of Chapter 15 of the Framework in seeking to conserve and enhance the natural environment and thus I have afforded them significant weight in my deliberations.
58. The proposed development would deliver three additional homes. However, in the absence of a planning obligation I have found that the homes cannot be secured as entry-level. In the absence of securing the site for entry-level affordable housing it would not gain support, in this balance, from any benefits accruing from the provision of affordable housing or from any status it may have as an exception site.
59. Whilst the Council have improved their position of late with regard to the 5YSHL they are currently only able to demonstrate a supply of 4.89 years. Three additional homes would provide a modest contribution towards the Council's housing supply and, as a 'windfall site', help decrease the Council's shortfall. Further, Paragraph 69 of the Framework recognises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. The new homes would be constructed to current design requirements and provide lifetime homes. Given the improvement of the Council's position with regard to the supply of housing land and the current magnitude of the shortfall, these factors provide limited weight in favour of the proposals.
60. The proposal would provide minor short-term benefits to the construction industry, both economic and, by providing workforce experience and training, social. Future occupiers would also provide some support to local services, although, given the limited size of the local convenience store and the degree of reliance on the private car to access services and facilities, future benefits would be likely to focus within the nearby towns, rather than the closest villages. Limited support would also be provided by the proposal, to existing clubs and other social groups.
61. The additional landscaping proposed as part of the development could provide biodiversity improvements to the site. However, this has not been quantified by the appellant and therefore the weight that can be attributed to this is limited.
62. Taken together, given the scale of the proposal, these factors provide support weighing in favour of the proposed development, but that weight is limited in scale.

63. However, the proposal would result in significant harm to the character and appearance of the area and would result in the likelihood of dependency on the use of the private car for access to day-to-day services and facilities. These are matters weighing significantly against the proposal.
64. Thus, I find that the proposal would be contrary to the aims of the Framework to protect and enhance the natural environment, minimise the need to travel and to support the transition to a low carbon economy.
65. Overall, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when read as a whole.

Conclusion

66. The proposed development would be contrary to the Development Plan and the Framework, when read as a whole, and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal fails.

I A Dyer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

B Howlett

Appellant

Paul Calder

Real 8 Group

FOR THE LOCAL PLANNING AUTHORITY:

Laurence Akrill

Uttlesford District Council

INTERESTED PERSONS

Mr Ian Coward

Collins and Coward

(appearing on behalf of Mr Paul Ashurst of Maberley House)

Documents submitted at the hearing:

1. Updated, but unsigned SoCG, dated April 2023.
2. Annotated Location Plan showing vantage points from which the site should be observed, agreed between the above parties.