



Appeal Decision

Site visit made on 2 August 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2023

Appeal Ref: APP/C1570/W/22/3298597

Land behind The Street Barn, The Street, Great Hallingbury, Essex

- 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 W H Ward against the decision of Uttlesford District Council.
 - The application Ref UTT/21/3463/FUL, dated 19 November 2021, was refused by notice dated 20 January 2022.
 - The development proposed is Development of a single dwelling on the site of a disused manège.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Mr William Howard Ward against Uttlesford District Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are:
 - the effect of the proposed development on protected species; and
 - whether the appeal site is a suitable location for development with specific regard to the spatial strategy, access to services and public transport, and the use of previously developed land.

Reasons

Protected Species

4. A preliminary ecological appraisal (PEA) dated September 2021 was submitted in support of the application, supplemented by further information in response to comments provided by the Council's ecologist. The parties are in dispute about the need for additional information with regard to the potential for the proposed development to affect great crested newts (GCN) and Hazel Dormice (HD), both European Protected Species¹ and reptiles which are listed as rare and most threatened species². Natural England produces standing advice in relation to all of these species which sets out how to assess a planning application where the relevant species are on or near a proposed development site.

¹ Designated by SI 2017/1012 The Conservation of Habitats and Species Regulations 2017

² Designated under s41 of the Natural Environment and Rural Communities Act 2006

5. The standing advice in relation to GCN contains criteria on when to ask for a survey which includes if distribution and historical records suggest they may be present or if there's a suitable water body such as a pond or ditch up to 500 metres of the development. The PEA identified the site as having some potential to form terrestrial habitat for GCN and that three licence returns had been recorded within 1km of the site. It also identified that there were four ponds within 250m of the site, of which three were surrounded by good terrestrial habitat. Further aquatic surveys were considered to be disproportionate to the predicted level of impact on GCN and recommended precautionary measures.
6. For HD, the standing advice criteria for a survey includes if distribution and historical records suggest dormice may be present. The appellant contends the potential for dormice is negligible due to the lack of connections to the wider countryside or woodland blocks, and notes that records of HD do not include the precise location, which may be some considerable distance from the site.
7. I am mindful of the advice in Circular 06/2005³ at paragraph 99 that, with regard to species protected by law, "It is essential that the presence or otherwise, and the extent that they may be affected by the proposed development, is established before the planning permission is granted....". With respect to both European Protected Species, the criteria for requiring a survey as set out by Natural England has been met. No such survey has been submitted for either.
8. With respect to reptiles, the PEA notes only limited potential for common species due to the relative isolation and lack of tussocky grassland structure. The standing advice recommends a survey should be requested if records suggest reptiles may be present or a proposal is likely to lead to harm to individual reptiles or their habitats. There do not appear to be any such records and 'limited potential' does not lead me to conclude that it is likely the proposed development would lead to harm to individual reptiles or their habitats.
9. I do not have full details of the previous ecological survey before me. However, that survey was dated December 2018. The CIEEM⁴ advice note on the lifespan of ecological reports and surveys that Natural England refer to in the standing advice confirms that reports more than three years old are unlikely to still be valid. As such, that report and the previous comments of the Council's ecologist would not be sufficient to justify me reaching a different conclusion.
10. I therefore cannot conclude that the proposed development would not have an adverse effect on protected species contrary to Uttlesford Local Plan adopted 20 January 2005 (LP) Policy GEN7 which requires, amongst other things, nature conservation surveys for sites that include protected species.

Suitable Location

11. The site is in the countryside. LP Policy S7 seeks to protect the countryside for its own sake and seeks to exercise strict control on new building. Only development that needs to take place there or is appropriate to a rural area will be permitted. There is no substantive evidence before me to demonstrate that

³ ODPM Circular 06/2005 Biodiversity and geological conservation – statutory obligations and their impact within the planning system

⁴ The Chartered Institute of Ecology and Environmental Management

the development needs to take place in this location or that market housing is an appropriate land use outside of development limits. While the policy does allow development if its appearance protects or enhances the character of the countryside, I consider this only to be where the proposed development meets the earlier criteria of the policy.

12. The support LP paragraph 6.14 provides is for infilling limited to sites outside of development limits but close to settlements. While it has been argued The Street leads up to the village, I have not been made aware of the development limits of any surrounding settlements. Furthermore, paragraph 6.14 confirms applications for infill development will be considered in the context of LP Policy S7. There is no substantive evidence before me which would lead me to conclude the overarching conflict with LP Policy S7 would be overcome from this argument.
13. While it has been put forward that the site is within walking distance of Great Hallingbury village hall and one mile from the school and pub in Little Hallingbury, I have not been provided with details of the routes. However, The Street is narrow, with no footpath or illumination. Church Road, which leads to the surrounding settlements and the access to public transport at Bedlar's Green, also does not benefit from a footpath. It is unlikely that this would form an attractive route in low light, during inclement weather or for families with young children. Even though there is a school bus service serving The Street for a local primary school, it is nonetheless likely that there would be a high degree of reliance on the private car for future occupiers of the proposed dwelling to access services to support their day to day needs, even accounting for the rural location of the site. This would be contrary to paragraph 112 of the Framework which seeks to give priority first to pedestrian and cycle movements and minimise the scope for conflicts between pedestrians, cyclists and vehicles. Overall, there is limited evidence before me as to how the proposal would accord with paragraph 79 given the site is not well related to any rural settlement.
14. The site is located within a small cluster of predominantly residential development. Notwithstanding, it is clearly within a rural location and the site appeared to be in use as a paddock at the time of my site visit. As such, I would not consider there to be significant under-use of land. In light of the Government's objective to boost significantly the supply of housing, it may be that residential development would make more effective use of it. It is also common ground between the parties that the site constitutes previously developed land. However, I am mindful of the advice in paragraph 120 of the Framework that substantial weight to the reuse of brownfield land applies in settlements, which this site is not.
15. The site would not be isolated for the purposes of paragraph 80 of the Framework so the criteria in that paragraph would have no bearing on the determination of this appeal. While the appellant has directed me to paragraph 85, this relates to sites to meet local business and community needs. In the context of the Framework, and noting this paragraph is within section 6 which is titled 'Building a strong, competitive economy', I do not consider this paragraph to be of relevance to an application for residential development. There is no evidence before me that the land is despoiled, degraded, derelict, contaminated or unstable so paragraph 174 f) of the Framework would also not apply.

16. For these reasons, the appeal site would not be a suitable location for development with specific regard to the spatial strategy, access to services and public transport and the use of previously developed land. It would therefore be contrary to LP Policy S7 which seeks, amongst other things, to only allow development in the countryside that needs to take place there or is appropriate to a rural area.

Other Matters

17. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. The Street Barn, The Street House and Street Farm Cottage are all Grade II listed. Their significance, for the purposes of this appeal, is derived from their architectural and historic interest as surviving buildings from the 16 to 17th centuries. The appeal site does not have a frontage to The Street so it would not be readily visible in views where the three buildings can be appreciated together. The proposed development would be physically closest to The Street Barn. It would be on land somewhat higher than the listed building. However, the sites are physically separated by a close boarded fence and the proposed dwelling would have a limited height which would further reduce its prominence. There is further surrounding development that limits the relationship of The Street Barn to the surrounding undeveloped countryside.
18. The proposed dwelling, through the introduction of further built development into the setting of The Street Barn, would result in less than substantial harm to its significance. Given the surrounding development, this harm would be at the lower end of the scale although I remain mindful of the advice in paragraph 199 of the Framework that great weight should be given to the asset's conservation. Paragraph 202 of the Framework advises that less than substantial harm should be weighed against the public benefits of the proposal. In this case, I find that the public benefits of providing an additional dwelling, the associated economic benefits of development and biodiversity enhancements would outweigh this harm.
19. No concern has been raised with respect to the design of the proposed dwelling or its effect on the living conditions of neighbouring occupiers. I have no reason to reach a different conclusion. Suitable parking, including for cycles, could be provided and there would not be an adverse effect on the safe operation of the highway. Utilities, including broadband, could be provided. Suitable means of enclosure, including landscaping, and tree protection measures could be secured by condition. However, these would be expected of any well designed development and amount to a lack of harm. They are therefore neutral.

Planning Balance

20. The Council accepts they are currently unable to demonstrate the supply of housing required by the Framework which the appellant sets out stands at 3.52 years. Although I have found the development would result in less than substantial harm to a designated heritage asset, the application of the policies in the Framework would not provide a clear reason for refusing the development proposed since that limited harm would be outweighed. As such, I am taken to paragraph 11d) ii. In such circumstances, the most important

policies are out of date and planning permission should be 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.

21. I would attach significant weight to the harms I have found in regard to both main issues. They would be wide ranging and long lasting since they relate to protected species and the principle of the proposed development. There would be resultant conflict with the Framework to which I have referred above. The appeal proposal could deliver an additional dwelling as windfall development on previously developed land. As a small site, it is likely that the development could be delivered quickly. There would also be the accompanying economic benefits during the construction and occupation stages. However, these benefits would be limited given the proposal is for a single dwelling.
22. With this and the above in mind, the adverse impacts of granting a planning permission for the scheme would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal would not therefore benefit from the presumption in favour of sustainable development.

Conclusion

23. The proposal conflicts with the development plan and there are no material considerations worthy of sufficient weight, including the approach of the Framework, to suggest the decision should be made other than in accordance therewith. The appeal is therefore dismissed.

J Downs

INSPECTOR