



Appeal Decision

Site visit made on 9 January 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2024

Appeal Ref: APP/C1570/W/23/3320060

Land adjacent to Kunduchi, Bannister Green

- 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 Paul Hutley against the decision of Uttlesford District Council.
 - The application Ref UTT/22/2544/OP, dated 8 September 2022, was refused by notice dated 23 November 2022.
 - The development proposed is for 8 detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application subject of this appeal was submitted in outline, with matters of access and landscaping to be considered at this time, and matters of appearance, layout and scale reserved for later consideration. I have determined the appeal on the same basis, and hence I have treated the plans showing the layout of the site, a cross-section and a street scene as merely illustrative.
3. Slightly different addresses are used on the application form, appeal form, Council's decision and within the description of the development. I have used the address given on the appeal form in the header above as that is most precise and have removed the location from the description.
4. During the determination of the appeal, an amended version of the National Planning Policy Framework (the 'Framework') was issued. Both parties were consulted on the amended version and the comments received have been taken into account in my decision.

Main Issues

5. The main issues are the effect of the proposal on the character and appearance of the area and its effect on the biodiversity on the site.

Reasons

Character and appearance

6. The appeal site constitutes part of a larger field currently in agricultural use. There are some trees and a hedgerow along its frontage facing Rayne Road, but its southern and eastern boundaries are open to the remainder of the field.

Kunduchi is the neighbouring dwelling to the west but there is a public footpath¹ which runs along the edge of the field separating it from the site.

7. Bannister Green is a small rural settlement surrounded by agricultural land, including the appeal site. The parties agree the site is beyond the settlement limit and so is designated as being within open countryside.
8. Kunduchi is the last house in a row on this side of the road. The public footpath adjacent to it assists in terminating the extent of development, and the whole settlement, along this side of Rayne Road. Although layout is a reserved matter, landscaping is not, and the plans show a thick landscaped buffer between the built up part of the appeal site and the footpath. This buffer, combined with the footpath itself, would provide a significant gap between the new houses and Kunduchi which would result in the proposal appearing as a disconnected and separate development from, instead of a natural extension to, the existing built form along Rayne Road. The proposed landscaping along the frontage would not assist in negating that effect. Also, by being a distinct development in this position in the countryside beyond the settlement boundary, it would detract from the settlement's rural setting which contributes to its character as a rural settlement.
9. In addition, from some positions to the south west along the public footpath², there would be a substantial undeveloped gap between the houses at the appeal site and those in The Copse. This would add to the sense of detachment from the remainder of the settlement. The proposed landscaping would mitigate this effect to some degree, but it would not be likely to completely screen the proposed houses and, in any case, it could not be relied upon in the long term. Indeed, the appellant's Landscape and Visual Impact Assessment concludes that the impact on views from this footpath, and from that directly adjacent to the site, would be minor adverse, even in the long term and accounting for landscaping. I accept that from the south east, the development would be seen against the backdrop of existing houses so would appear more contiguous with the settlement.
10. Nonetheless, overall, the proposal would harm the character and appearance of the area. It would conflict with policy S7 of the Uttlesford Local Plan (ULP) and policy FEL/HN5 of the Felsted Neighbourhood Plan (FNP) which both generally aim to focus development to within the settlement boundaries. It would also conflict with policy S7, insofar as it seeks to ensure development enhances the character of the countryside, and FNP policy FEL/CW1 which seeks to preserve the character of the landscape.
11. There is little conflict with ULP policy GEN2 as that relates to the design of development, which would be dealt with as a reserved matter in this case.
12. The appellant refers to a study which indicates that building on greenfield land is inevitable to meet the national housing need. However, it does not suggest that greenfield sites are always suitable for development, and this has little effect on my assessment of this particular proposal.

¹ No 15_46

² No 15_71

Biodiversity

13. The Council commented that the Preliminary Ecological Appraisal (PEA), dated December 2020, submitted with the application was out of date and reflected the site boundary of the previous proposal for this land.
14. The appellant has provided an updated PEA dated March 2023 with the appeal. This states that very little has changed on site since the time of the previous PEA; it remains to be an arable field with an Elm dominated hedgerow along the north boundary and poor-quality semi improved grassland to the north and west perimeter. The alterations to the site boundary have only incorporated more of the open arable field.
15. The updated PEA concludes that the development would have no adverse impact on biodiversity, primarily because the hedgerow along the frontage would be undisturbed. The Council have not disputed that, and I have no reason to consider otherwise.
16. The development would also result in a biodiversity net gain of around 100% in terms of hedgerows and 30% in respect of habitat. This counts positively in favour of the development.
17. Overall, the development would accord with ULP policy GEN7 which seeks to ensure development does not have a harmful effect on wildlife, and supports proposals which enhance biodiversity. It would also comply with ULP policy GEN2 which requires development to safeguard important environmental features.

Other Matters

Housing land supply

18. In the officer's report it was stated that the Council could only demonstrate 3.52 years supply of housing. During the appeal, Felsted Parish Council provided a copy of the District Council's '5 year land supply statement and housing trajectory' dated October 2023. This suggested an updated figure of 5.14 years. However, subsequent to that, the Housing Delivery Test (HDT) figures were released in December 2023 which showed the Council had only delivered 58% of their housing target over the previous three years. The Framework states that the failure to exceed 85% means that a 20% buffer should be added to the Council's housing target, rather than the 5% buffer used in their October statement. In the absence of any other updates relating to targets or supply, I can only substitute the 20% buffer for the 5% buffer. The appellant suggests this means the Council could now only demonstrate a 4.5 year housing land supply.
19. Furthermore the appellant's critique of some of the assumptions around the developments that make up the Council's supply seem reasonable. I have little detailed information before me on that matter, but it would not be unreasonable to consider the supply is slightly less than the 4.5 years suggested. Indeed in the most recent appeal decision provided to me³, the Inspector considered the corresponding figure was closer to the 4 years suggested by the appellant rather than the 4.89 figure proposed by the Council at that time. I can draw a comparable conclusion in this appeal. In any case

³ Ref: APP/C1570/W/22/3296064

the shortfall is modest and is notably less now than it was when the Inspector in the previous appeal on this site⁴, in December 2021, considered the supply to be around 3 years.

20. Notwithstanding the housing supply figure, as the HDT figure is below 75% paragraph 11d of the Framework is engaged. This means that relevant local plan policies are deemed to be out of date and permission should be granted unless the adverse impacts of doing so would clearly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
21. Clearly the provision of eight dwellings at a time where there is a modest undersupply, would be a benefit and would be supported by paragraph 60 of the Framework. As a relatively small site which could be built out promptly, the scheme would also accord with paragraph 70. There would also be some economic benefit both through the employment created during construction and through the maintenance of the properties, plus increased revenues for the Council and local services. This would accord with section 6 of the Framework. Also the net gain in biodiversity resulting from the proposal would align with the aims of paragraph 180 d) of the Framework. Together these benefits attract moderate weight. This is broadly consistent with the Inspector on the previous proposal at the site who considered these same benefits, albeit from a scheme involving nine units, to attract moderate weight.
22. Weighing against that is the harm to the character and appearance of the area as set out above. Paragraph 180b) recognises the intrinsic character of the countryside, and paragraph 131 states that the development of high quality and beautiful places is fundamental to what the planning process should achieve. The proposal which would represent a harmful extension to the settlement with long term adverse effects on some local views would conflict with these parts of the Framework. I consider these conflicts to carry significant weight.
23. Paragraph 14 of the Framework effectively says that where a recent neighbourhood plan includes policies to meet its identified housing requirement, it is likely that any conflict with neighbourhood plan policies is likely to outweigh the benefits of the proposal. I have no evidence before me to indicate what Felsted's identified housing requirement is, with the FNP stating that the Council have not indicated a figure. Therefore whilst I note the allocations in the FNP, it cannot be concluded that the conflict with neighbourhood plan policies is likely to outweigh the benefits of the proposal and therefore this paragraph is of little consequence.
24. Overall, when considering the Framework as a whole, the adverse impact of the development would significantly and demonstrably outweigh the benefits.
25. Also, in light of paragraph 11d), policy FEL/HN5, and the part of policies S7 which seek to restrict development beyond settlement boundaries, are inconsistent with the Framework. Therefore the conflict with them carries limited weight.
26. However the part of policy S7 which seeks to preserve the character of the countryside is consistent with paragraph 180 b). Also, policy FEL/CW1 is

⁴ Ref: APP/C1570/W/21/3272768

consistent with the Framework insofar as it seeks to protect the character of the landscape. The conflict with these policies therefore carries substantial weight. The proposals accordance with policies GEN7 and GEN2, resulting from biodiversity improvements, carries considerable positive weight as those policies are consistent with the Framework.

27. Overall, I consider the proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which leads me to a decision otherwise than in accordance with the development plan.

SPA and Ramsar site

28. The site is within the zone of influence of the Blackwater Estuary SPA and Ramsar site. The appellant has completed a unilateral undertaking which seeks to secure a payment to mitigate the effect of the development on these habitat sites in accordance with the Essex Coast Recreational Disturbance Avoidance Mitigation Strategy (RAMS).
29. I have scant information before me as to the need for this mitigation, how the value of the payment has been calculated, or if Natural England were consulted on the application. Nevertheless, as I am dismissing the appeal on other grounds it is not necessary for me to consider this matter further. This is because the payment is to mitigate harm resulting from the occupation of the development, hence it could not count positively in favour of the scheme and so could have no bearing on my decision.

Other considerations

30. Additional concerns are raised by local residents and the parish council including in respect of highway safety, flooding, privacy, noise and disturbance. However as I am dismissing the appeal for other reasons I need not consider these issues further either.

Conclusion

31. For the reasons given above, and taking account of all matters, the appeal is dismissed.

A Owen

INSPECTOR