



Appeal Decision

Site visit made on 10 February 2024

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th February 2024

Appeal Ref: APP/A1530/W/23/3323572

The Barn, Bull Lane, Tiptree CO5 0BE

- 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 James Clough against the decision of Colchester Borough Council.
 - The application Ref 222649, dated 20 October 2022, was refused by notice dated 16 December 2022.
 - The development proposed is residential development comprising two 4 bedroom chalet bungalows.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although not included within the description of development above, the proposal is in outline with all matters reserved.
3. The appeal evidence includes documents not before the Council at the time of its decision. These are a signed Unilateral Undertaking (UU) of November 2023 which provides for financial contributions towards community facilities and Habitats sites mitigation, a Preliminary Ecological Appraisal and Preliminary Roost Assessment (April 2023), and a Tree Survey, Arboricultural Method Statement and Tree Protection Plan ('the Tree Survey') (April 2023). In accordance with the *Holborn Studios Ltd*¹ judgement, I find that accepting these documents would meet both the substantive and procedural tests, whereby in the interests of natural justice no parties would be prejudiced.
4. As a result of these documents, the Council has confirmed its withdrawal of reasons for refusal (2), (3), and (4) relating to impact on wildlife, Habitats sites, and community facilities. I have therefore made my determination on the same basis.
5. The Tiptree Neighbourhood Plan 2022-2033 (TNP) (2023) was made in May 2023, and all parties had a chance to comment on any implications.
6. The National Planning Policy Framework ('the Framework') was revised in December 2023. The content of the Framework has not been materially altered in respect of the main issues before me, and therefore it has not been necessary to go back to the parties in this regard.

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

Main Issues

7. The main issues are:

- the effect of the proposed development on the character and appearance of the countryside;
- whether the proposed development is in a suitable location for housing, having regard to the settlement strategy for the Borough; and
- the effect of the proposed development on vegetation.

Reasons

Character and Appearance

8. The appeal site is a triangular field south of Tiptree, containing a small derelict stable building to be demolished as part of the proposal for 2 dwellings. It has a fenced southern boundary, and the others comprise hedging with access gates. The surrounding area includes a nearby large agricultural complex, plus a few other scattered dwellings and rural buildings, all accessed off Bull Lane which is poorly surfaced and single width. It is clearly of a rural character and with expansive open sky views interspersed with boundary vegetation.
9. The proposal is in outline with no fixed parameters of scale, layout, and appearance. However, these are relevant at this stage insofar as an in principle assessment of the development's impact on the character and appearance of the countryside. For the avoidance of doubt, my determination is not based on a single fixed option, as the plans are only indicative. However, the description of development is for 4 bedroom chalet bungalows, which would therefore require a relatively substantial size and height. The appellant suggests the dwellings could be single storey, but this would be a substantive change to the proposal sought, and therefore outside of the parameters of this appeal.
10. Despite the curves in Bull Lane, the massing of the new dwellings would be relatively visible from some way away, and at close range they would prominently block open views across the site and the wider countryside. Although as chalet bungalows their height would be limited, this would still be prominent. The stables' existing massing has a very limited impact in comparison due to its small size and being a typically rural structure.
11. To the south the site directly adjoins various agricultural and equine buildings, and the curtilage of a nearly completed large dwelling. While this dwelling is prominent, its character and setting indicates a farmhouse within its fields and associated buildings. The addition of 2 proximate dwellings plus domestic paraphernalia on approaching this site, would change this character to that of a conspicuous domestic cluster.
12. Furthermore, the site is not surrounded by other built form. Open fields lie to the east, and the agricultural buildings to the west are separated by a field. To the north is a large field on one side of Bull Lane, and a dwelling within a large smallholding plot on the other, again with the built form some distance from the site. As such, the massing and bulk of the proposed dwellings would be untoward and incongruous, and so would harm the rural character. This would not be sufficiently mitigated by established or enhanced boundaries and trees.

13. The Council further considers that the extent of hedge removal to allow for visibility splays would impact on the rural character. However, there is sufficient verge to allow for some or all the suggested visibility splays to be achieved via hedge trimming, there may only be one access point, and compensatory planting could be required. Therefore, it does not appear to me that the extent of potential hedge removal would be likely to be so extensive, as to have an undue impact on character.
14. Overall however, I find the proposal would result in harm to the character and appearance of the countryside. It would conflict with the Colchester Borough Council Local Plan 2017-2033 Section 2 (LPS2) (2022) Policies SP7 and DM15. Together and amongst other matters, these require that development should meet high standards of design, respond positively to local character and context to preserve and enhance the quality of existing places, and help to establish a visually attractive sense of place. It would also conflict with the LPS2 Policy OV2 relating to new dwellings in the countryside, whereby developments need to demonstrate that the scheme respects the character and appearance of landscapes and the built environment, and preserves or enhances the historic environment and biodiversity.

Location in Countryside

15. The site lies outside of any settlement boundaries identified on the LPS2 Policies Map. As such, it is designated as 'Countryside' by the LPS2 Table SG1, which also identifies Tiptree as a 'Sustainable Settlement'. The LPS2 Policy SG1 further identifies that growth will be located at the most accessible and sustainable locations in accordance with the spatial strategy in Policy SP3 and Table SG1, in order to reduce the need to travel. Policy SP3 of the North Essex Authorities' Shared Strategic Section 1 Plan (SS1P) (2021) identifies the principal focus for development as being within or adjoining settlements according to their scale, sustainability, and existing role.
16. The appellant suggests that the site adjoins the settlement boundary of Tiptree, and therefore conforms with the SS1P Policy SP3. However, in exercising my planning judgement and including consideration against the cited 'Corbett' judgement², I find that it does not. While 'adjoining' does not necessarily mean 'contiguous', I give weight to the nature and predominantly open rural character of the majority of the intervening land, the distance, there being only a single dwelling in between, and the lack of clear sightline to the appeal site. This outweighs any functional relationship which the site may have with Tiptree.
17. The spatial strategy does not entirely preclude development in the Countryside. Although the TNP Policy TIP01 aims to focus new development within its settlement boundary and on site allocations, it also refers back to the LPS2 Policies SG1 and Policy OV2 for the assessment of development outside of its boundary. Policy SG1 identifies that such development in the Countryside will be acceptable where it accords with the LP Policies OV1 and OV2, in order to safeguard the rural character of the Borough. However, I identified above the proposal would conflict with Policy OV2 with relation to its harmful impact on the character and appearance of the countryside. It follows therefore, that it would thus also conflict with Policies SG1 and TIP01.

² Corbett v Cornwall Council [2022] EWCA Civ 1069

18. The Council considers the proposal would conflict with Paragraph 84 in relation to avoiding the development of isolated homes in the countryside unless specified circumstances apply. I agree that none of these circumstances apply. However, notwithstanding that I do not define it as adjoining the settlement, the *Braintree*³ judgement outlines that a site may be outside of such defined limits and still be considered as not isolated. Due to the proximity of other dwellings, I do not find it would be isolated, and thus it would not conflict with the Framework in this regard. However, this does not override the need to comply with the spatial strategy set by the development plan.
19. The main parties disagree as to the extent to which the site would be sustainably located with regard to access to facilities and services. Were I to find it to be very sustainably located, this could suggest compliance with some elements of the development plan, and be a material consideration to weigh against the policy conflict identified above. In this regard I have taken into account the appeal decision examples presented by both main parties. However, I find these to be sufficiently different contexts, such that they do not set a precedent or outweigh my own judgement of the relationship between the site and the Tiptree boundary, and its sustainability.
20. A relatively long stretch of Bull Lane is an unlit rural road with no footway. It is unmade in parts and in poor condition, with my site visit identifying large puddles. Although very lightly trafficked, it would be unattractive for non-vehicle users, especially in darker or wetter conditions. I find similarly for the muddy and unlit public right of way from Bull Lane which provides the most direct route into central Tiptree. Given this, and notwithstanding the availability of services and public transport in Tiptree, I find the proposed dwellings' future occupants would be heavily reliant upon the private car.
21. As such, I do not find the site context to be so exceptional so as to outweigh the conflict with the development plan. Overall therefore, the proposal would not be in a suitable location for housing, having regard to the settlement strategy for the Borough. It would conflict with the LPS2 policies SP1, SG1, SG2, and OV2, the SS1P Policy SPG3, and the TNP Policy TIP01.

Vegetation

22. There are no trees within the site boundary. The appellant's Tree Survey advises that impacts on trees will be negligible, following implementation of recommended tree/hedge protection measures. As such, any potential impact on the hedgerow and on root protection areas could be assessed at the future reserved matters stage once the precise layout and access is known. Any identified impact could then be mitigated through the imposition of suitable conditions or an amendment to the scheme design. Additional vegetation and landscaping could also be sought at that stage.
23. Overall therefore, the proposal would not cause undue harm to vegetation. It would comply with the LPS2 Policies ENV1 and DM15, which together and amongst other matters, aim for development to conserve and enhance the natural environment, and to positively integrate arboricultural assets.

³ Braintree District Council v SSCLG & Ors [2018] EWCA Civ 610

Other Matters

24. The Framework seeks to significantly boost the supply of homes, with paragraphs 123 and 124 providing support for the development of windfall sites and the effective use of land. Additional housing in this location is therefore a benefit of the proposal. However, 2 dwellings would only be a small-scale contribution to the housing supply, the site is not brownfield land as particularly supported by the Framework, and Council has demonstrated it has a five year housing land supply. There would also be small social and economic benefits from construction, and from the local expenditure and demand for services by the additional residents. These benefits would be modest overall, and I give them minor weight.
25. Measures could be required via condition to ensure biodiversity benefits compared to the site's current low ecological value, including nest boxes, native planting, and other habitat creation. I give this minor weight.
26. The site lies within a recreational 'Zone of Influence' for sites along the Essex Coast which are afforded protection under the Habitat Regulations. Permission may only be granted after having ascertained that the proposed development would not affect the integrity of these protected sites. There is a likely significant in-combination effect on these sites resulting from increased recreational visitor pressure from new residential development.
27. The Council has identified appropriate mitigation to be a financial contribution towards the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (2020). The appellant's UU would provide for this contribution. However, as I have identified above that I am dismissing the appeal on other grounds, I do not need to consider further the implications of the Habitats Regulations, and whether the contribution would adequately mitigate the proposal's effect on the integrity of the protected sites.
28. The UU also provides for a financial contribution towards community facilities, as required by the LP Policies SG6 and SP7, and the Provision of Community Facilities SPD (2009, updated 2013). Again, as I am dismissing the appeal on other grounds, and it no longer forms a reason for refusal by the Council, I have not considered this matter further.
29. I note the interested party representations in support of the proposal, and have addressed their substantive comments in my reasoning above.

Conclusion

30. The proposal conflicts with the development plan as a whole. With no other material considerations outweighing this conflict, for the reasons given above I conclude that the appeal is dismissed.

L N Hughes

INSPECTOR