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## Appeal Decision

Site visit made on 6 February 2024

**by O S Woodward BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 6 March 2024**

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**Appeal Ref: APP/C1570/W/23/3320410**

**Bay Tree Barn, Buttleys Lane, Dunmow CM6 1SJ**

- 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 Gemm London Rental Developments Limited against the decision of Uttlesford District Council.
  - The application Ref UTT/22/2358/FUL, dated 23 August 2022, was refused by notice dated 17 October 2022.
  - The development proposed is the erection of 5 dwellings, creation of new access and associated infrastructure.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was released in late 2023. The changes were not material to the appeal and I did not therefore need to request comments from the main parties. I have reflected the revised Framework as appropriate in my Decision.
3. The appeal site is part of the garden to 'Barn at Highwood Farm'<sup>1</sup> (herein Bay Tree Barn), a Grade II listed building. It therefore falls within the curtilage of this building. However, there are no structures or outbuildings within the appeal site other than an insubstantial, modern, open sided shelter and other incidental items such as timber fencing. Therefore, there are no relevant objects or structures that are part of the building<sup>2</sup>. The appeal site also falls within the setting of the immediately adjacent, but separately demised, 'Highwood Farmhouse'<sup>3</sup> Grade II listed building.
4. The relevant consideration, therefore, is the effect of the proposal on the special architectural or historic interest of the listed buildings, in accordance with s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), but only with regard to their settings.

### Main Issues

5. The main issues are the effect of the proposed development on:
  - the special architectural or historic interest of the Grade II listed buildings, with regard to their settings;

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<sup>1</sup> List entry number 1142502

<sup>2</sup> See Section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>3</sup> List entry number 1323789

- the character and appearance of the area;
- highway safety; and,
- ecology.

## Reasons

### *Listed buildings*

#### Setting

6. Bay Tree Barn and Highwood Farmhouse are part of a small group of buildings that were originally in agricultural use. However, both are now residential properties with substantial gardens to the south. The garden areas are of a domesticated character and appearance, with close cut grass. They are accessed from Buttleys Lane, which is a narrow countryside lane that only serves the two properties and one further small collection of buildings to the south. The immediate surroundings are currently agricultural. However, this is relatively limited in extent because the wide and busy A120 road runs relatively close to the buildings to the south and the B1256 and significant new residential development beyond lies relatively close to the north.
7. In addition, there is more planned development in the immediate area. To the north, the field between the barn and farmhouse and the B1256 has outline planning permission<sup>4</sup> for the erection of 60 dwellings. To the east, on the opposite side of Buttleys Lane, the large field has outline planning permission<sup>5</sup> for a large new conjoined primary and secondary school. The school buildings would be to the eastern side of the field and the playing fields would be nearest to Buttleys Lane. To the south, on the opposite side of Flitch Way, is land reserved by Policy DS3 of the Great Dunmow Neighbourhood Plan 2015-2032 (the NP) for the school. However, it is unclear whether or not this land will be required.
8. Nevertheless, although the setting of the buildings has been partially urbanised by the surrounding development and this is due to increase, there is still a strong agricultural feel to the surroundings of the buildings. In addition, the immediate setting of the buildings is, and would remain even after the nearby proposed developments, as gardens. This immediate and intimate relationship is an important feature of their settings, which reflects their current use as homes. It also retains a legibility of the farmhouse and associated buildings being a small group of buildings and surrounding land that sit aside from the surrounding agricultural fields. Buttleys Lane is also likely to remain as a narrow country lane because the other developments would be accessed from the B1256.

#### Significance

9. Bay Tree Barn was originally built as a barn in the 17<sup>th</sup> Century, before being extended in the 18<sup>th</sup> and 19<sup>th</sup> centuries. It was relatively recently converted into residential use, including the insertion of glazing. It retains a weatherboarded exterior and clay tiled roof, although these materials are new as part of the conversion to residential use and are not historic fabric. The barn derives its significance from its retained internal historic fabric and because it can still be clearly read as a former barn as part of a collection of former

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<sup>4</sup> Appeal Ref APP/C1570/W/21/3270615, dated 19 January 2022

<sup>5</sup> Application Ref UTT/20/1963/CC, dated 18 November 2020

agricultural buildings. The barn also retains some significance, at present, from its setting in an agricultural area. The nearby proposed development as set out above would partially erode this setting but it would not be completely denuded.

10. Highwood Farmhouse is a 15<sup>th</sup> Century farmhouse building with some modern additions and fenestration, but with significant retained historic fabric, and still largely retaining its original character and appearance. It partly derives its significance from its intrinsic architectural quality and historic fabric and partly from its setting as part of a small group of buildings surrounded by agricultural fields. The change of use of Bay Tree Barn to a dwelling has partially eroded this setting. However, because the barn has largely retained its outward appearance, the setting of the farmhouse still positively contributes to its significance.
11. The domesticated nature of the gardens to both the barn and the farmhouse has not materially harmed their settings because it would be expected that a farmhouse has garden areas. That this area has been split into two does not materially alter the character or function of this area. This area of largely open but not agricultural land in the setting of the buildings is a positive feature of their settings, as set out above, and therefore positively contributes to their settings.

#### Assessment

12. It is proposed to erect five 2-storey houses in the garden area of Bay Tree Barn. There would be three homes along Buttleys Lane, nearest the barn, then a hard standing courtyard area for car parking, then two further homes at the far end of the garden. There would be some, but limited, soft landscaping, including a hedgerow to the border of the appeal site, which is also the existing border separating the garden of the barn from the garden to the farmhouse. It is also proposed to remove some existing vegetation on Buttleys Lane to provide access, a visibility splay, and to provide three passing spaces along the lane.
13. The proposed houses would be relatively large. The combination of the buildings and the hard standing for the proposed car parking would take-up a large proportion of the existing garden area to the barn. This area is already domesticated. However, it is a soft landscaped garden. The proposal would significantly alter this by the provision of relatively large amounts of built form and hard landscaping. It would also change the character by introducing activity and light spill into the currently dark and quiet garden area. The proposal would harm the existing, intimate setting to the barn. It would divorce the barn from the surrounding agricultural land. The proposal would therefore harm its special architectural and historic significance. I assess the level of harm to be less than substantial.
14. There would be no direct effect on the garden of the farmhouse. However, the proposed development would be directly adjacent to that garden. Although it would be separated by a hedgerow, the built form would still clearly be appreciated from the garden of the farmhouse, due to its height, scale and proximity, as well as the increase in light spill and activity. It would likewise harm the existing intimate immediate setting to the farmhouse and also divorce it from the surrounding, complementary agricultural land use. The proposal would also, therefore, harm the special architectural and historic

significance of Highwood Farmhouse. I assess the level of harm to be less than substantial.

15. I acknowledge that the setting is likely to change in the medium term. However, even if all the proposed developments are constructed, there would potentially remain a field to the south, the land to the east would be a playing field rather than built form or hardstanding, and Buttleys Lane would retain its rural character. The field to the west, which is the field most directly associated with the two listed buildings, has recently had both a planning application<sup>6</sup> and appeal<sup>7</sup> for 14 dwellings refused and dismissed respectively. Also, unlike the proposal for this appeal, none of the proposed development would affect the intimate setting of the two buildings within their gardens. The likely evolution of the wider setting of the listed buildings does not, therefore, materially alter the harm I have identified above.

#### Conclusion

16. As set out above, the proposal would harm the special architectural and historic interest of the Grade II listed buildings Bay Tree Barn and Highwood Farmhouse, with regard to their settings. The proposal therefore conflicts with Paragraph 203 of the Framework, Policy ENV2 of the Uttlesford Local Plan 2005 (the LP) and Policy LSC-A of the Great Dunmow Neighbourhood Plan 2015-2032 (the NP), all of which seek to protect the significance of listed buildings.

#### *Character and appearance*

##### Existing

17. The appeal site is a garden area to the dwelling in the converted dwelling of the barn. It is directly adjacent to the garden to the farmhouse. There is a strong domesticated character to this small collection of buildings and their gardens. Buttleys Lane is a narrow country lane. There are agricultural fields to all sides. The combination of the buildings and their gardens contributes positively to this agricultural setting. Equally, the two gardens contribute positively to the setting of the dwellings, both individually and cumulatively, by providing breathing space to the dwellings and a transition from them to the surrounding fields.
18. As set out above, there is significant development further to the north, and likely future development more immediately to the north and east. However, the proposed development to the north would be accessed from the B1256 and is the other side of a fairly substantial hedgerow. It would feel divorced from the barn and farmhouse. The school development would present its playing fields where closest to the appeal site. Therefore, whilst this development would partially erode the wider agricultural setting, it would not do so entirely, and it would not affect the positive relationship between the barn and farmhouse and their gardens.

##### Assessment

19. The proposed development would result in hard standing or buildings over the majority of the land. The proposed homes would not be out of scale with the barn and farmhouse, or the future proposed dwellings to the north. The

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<sup>6</sup> Application Ref UTT/22/3013/OP, refused on 4 September 2023

<sup>7</sup> Appeal Ref APP/C1570/W/22/3305483, dated 18 September 2023

detailed architecture, materials and design would be appropriate. However, their location in the garden land would be harmful to the character and appearance of the area because it would urbanise this land. It would remove the currently pleasant relationship between the barn and its garden and remove the transitional character to the surrounding agricultural landscape. A landscape that would remain partially agricultural and open even if the proposed developments come forward, as set out above.

20. The soft landscaping would be acceptable because only small amounts of the existing hedgerow to Buttleys Lane would need to be removed, even accounting for the proposed passing places which would largely be on the existing verge rather than hedgerows or trees. There would be the potential for damage of a mature oak tree but that could be controlled by condition. The lane could, therefore, retain its country lane character and appearance. However, the proposed landscaping scheme would be harmful because of the large proportion of the site that would become hard standing for car parking.

#### Conclusion

21. As set out above, the proposal would harm the character and appearance of the area. It therefore conflicts with Policy GEN2 of the LP and Policies DS1 and LSC1 of the NP, which require high quality design and the protection of the local rural and historic character of the area. The proposal also conflicts with Policy S7 of the LP. However, I place limited weight on this conflict because the policy protects the countryside for its own sake, which does not conform with the Framework.

#### *Highway safety*

##### Existing

22. Buttleys Lane is a narrow country road. It is unlit and there is no pavement. To all practical purposes it is single lane. Visibility is relatively good along the road because it is fairly flat and straight and the vegetation to the sides is slightly set back. The appellant has undertaken speed surveys which found the 85<sup>th</sup> percentile speed to be 22mph southbound and 24mph northbound. This is to be expected on such a narrow, short road.
23. For vehicles, the lane only provides access to the barn and farmhouse and another small collection of buildings further to the south. It also provides an access route for cyclists and pedestrians to the Flitch Way footway. There is limited vehicular, foot or cycle traffic on the lane at present. This will likely increase once the surrounding developments are built out and occupied but not to a significant degree because the developments are primarily accessed from the B1256.

##### Proposed

24. It is proposed to create a new access from Buttleys Lane to the appeal site. This would be a shared surface access for vehicles and pedestrians. Visibility splays would be provided. It is also proposed to create three passing spaces along the lane, one opposite the proposed site entrance, and two further north towards the B1256. It has been demonstrated that all the proposed works would be within either the appellant's or Highway Authority land.

### Assessment

25. The future occupants of the proposed development would generate additional vehicular and foot journeys along the lane. However, this would be relatively limited because only five homes are proposed. The lane is lightly trafficked at present. It has relatively good visibility and adequate visibility splays could be provided, and secured by condition, from and to the proposed access junction.
26. Nevertheless, the lane is narrow and there would be a slight increase in the likelihood of cars and/or cyclists and pedestrians needing to pass one another along the lane. Pedestrians also need to use the road because there is no footway. The three proposed passing places would provide the opportunity for passing places for vehicles and cyclists and refuge for pedestrians. These spaces, in combination with the relatively good visibility and naturally slow speeds of travel along the lane, would mitigate any potentially harmful effect from the proposal on highway safety.
27. I note that the HA has not requested that a footpath be provided along the length of Buttleys Lane. It instead required passing places to be provided. The appellant has not submitted a s106 Planning Agreement to fund the works. However, they would all be on land either controlled by the appellant or the HA. A Grampian condition could therefore be imposed to require the provision of the measures.
28. The Stage 1 Road Safety Audit, dated 18 November 2022 (RSA) recommends that warning signage of pedestrians be provided. If this was deemed to be necessary by the Highway Authority (HA), then the HA could install such signs. The RSA also recommends that visibility splays are lengthened to relate to speeds of 60mph. However, this is on the basis that the lane is re-surfaced and changed in character so as that those speeds are likely to be reached by traffic on the road. There are no such plans in place or likely to come forward. The narrowness of the road, its proximity to the junction with the B1256 and its overall character all naturally reduce road speeds. I do not, therefore, agree that the larger visibility splays are necessary to ensure highway safety.
29. Lastly, the RSA recommends the swept path analysis is provided to demonstrate the passing places are suitable. This has not been provided. However, there is scope to adjust the locations and size of the passing places on land owned either by the HA or the appellant and without significantly impacting upon the existing vegetation. Any required changes to the passing places could therefore be controlled by condition, if necessary.

### Conclusion

30. For the reasons above, the proposal would not unacceptably harm highway safety. It therefore complies with Policies GEN1 and GEN6 of the LP, which require suitable and safe access to be provided and that infrastructure necessary to support a proposal is provided. It also complies with Paragraph 115 of the Framework, which states that development should only be refused on highways grounds if the impacts on the road network would be severe.

### *Ecology*

31. The appeal site is largely a domestic garden. There is also a hedgerow and some further planting to some of the borders of the site. It has a low existing



ecological value and the submitted Preliminary Ecological Appraisal, dated October 2022 (the PEA) did not find evidence of any protected species on the site. There is further planting along Buttleys Lane, most notably a mature oak tree on the opposite side of the lane from the appeal site.

32. To the south of the site is the Flitch Way Local Wildlife Site (LWS) and also Local Nature Reserve (LNR). This runs directly south of the appeal site then east-west along Flitch Way. The Flitch Way LWS/LNR contains priority habitats, including unimproved grassland. It also operates as a wildlife corridor. Although the Council's reason for refusal references a Highcross Lane Local Nature Reserve, no information on this designation has been provided and the appellant's PEA did not identify this designation. I do not, therefore consider that designation further.
33. The proposed works would involve removing some of the existing vegetation along Buttleys Lane, both for the proposed access and visibility splays and also the proposed passing places. However, the proposed passing places would be located in areas that are currently largely low quality grassland directly adjacent to the lane. There would also likely be some removal of vegetation to the southern boundary, adjacent to the LWS/LNR. However, this area is also proposed to include replacement planting. The details of all these works could be controlled by condition to limit the removal of existing vegetation and to ensure that any replacement planting would be of an appropriate type ie native planting, location, and timing ie to avoid bird nesting season. The PEA also concludes that enhancement measures could be provided, including bat and bird boxes. These could also be secured by condition.
34. There would be increased light pollution from the proposed dwellings but this would be relatively limited. Flitch Way is likely to be used as a foraging route for bats but it would be possible to control external lighting by condition so as to limit the effects on that route. The proposed hedgerow to the border of the appeal site would also help to limit light spill into the LWS/LNR. There would be increased recreational use of Flitch Way from the future occupiers of the proposed homes. However, this would be relatively limited. In addition, Flitch Way is a footway and it is actively encouraged that people use this route. I do not, therefore, view this as harmful to ecology.
35. Therefore, subject to control by conditions as set out above, the proposal would not unacceptably harm the ecology of the appeal site or the wider area, including the LWS/LNR. It would therefore comply with Policy GEN7 of the LP, which relates to nature conservation. It would also comply with Policy NE2 of the NP, which requires that wildlife corridors be protected. Policy GEN2 of the LP is referenced on the decision notice in relation to the ecology reason for refusal. However, this policy relates to design and is not therefore relevant to this main issue.

## **Planning Balance**

### *Heritage balance*

36. I have identified less than substantial harm to the significance of the two listed buildings, with regard to harm to their settings. Paragraph 208 of the Framework requires that I weigh this harm against the public benefits of the proposal.

37. Five homes are proposed. The appeal site is relatively close to bus routes on the B1256 and is directly adjacent to the Town Development Area as allocated in the NP for the extension of Great Dunmow. Despite its rural location, it is therefore accessibly located. Providing residential development in such locations is a key aim of local and national planning policy and I place substantial positive weight on this provision.
38. The appellant has stated that the proposed homes would be made available for at least 20% below market rents. However, this has not been secured by a legal obligation. Planning Practice Guidance (PPG) is clear that conditions to secure affordable housing are unlikely to be appropriate in the majority of cases<sup>8</sup>. A negatively worded condition requiring a legal obligation be entered into before the development commences would only be appropriate in exceptional circumstances, which is defined as where there is clear evidence that the delivery of the development would be at serious risk. That does not apply to the appeal proposal. I therefore place no weight on this consideration.
39. There would be a temporary economic benefit from construction of the proposed homes. There would also be long term economic benefits from expenditure by future occupants on goods and services in the local area. These benefits would be relatively modest because of the small scale of the proposal. I therefore place moderate positive weight on these factors.
40. These are important public benefits. However, I place great weight on the harm I have identified to the heritage assets and this harm outweighs the public benefits of the proposal. It is also clear that the proposal is not required to secure the optimum viable use of the listed buildings, both of which are occupied homes.

#### *Planning balance*

41. The Council's Officer's Report states that the Council can only identify a 3.52 year supply of housing land. The report dates from October 2022. I have not been provided with any evidence regarding its current position and I therefore proceed on the basis that the Council cannot demonstrate a sufficient supply of housing land as required by Footnote 8 of the Framework and that therefore Paragraph 11d of the Framework is engaged. However, as set out above, the proposal would harm the significance of two listed buildings, with regard to their settings, and this provides a clear reason for refusing the development proposed. Therefore, as directed by Paragraph 11di and Footnote 7 of the Framework, I do not engage the 'tilted balance'.

#### **Conclusion**

42. Overall, I find that the proposal, due to the harm to heritage assets and the character and appearance of the area, would not accord with the development plan when read as a whole. There are no material considerations to indicate I should make a decision otherwise. Therefore, the appeal is dismissed.

*O S Woodward*  
INSPECTOR

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<sup>8</sup> PPG Paragraph 010 Reference ID: 21a-010-20190723