
Appeal Decision

Site visit made on 3 April 2024

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 April 2024

Appeal Ref: APP/C1570/W/23/3329762

Land at 'Springmead', Stebbing Road, Felsted, Essex CM6 3LQ

- 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 Dr Toni Harvey against the decision of Uttlesford District Council.
 - The application Ref UTT/23/1387/HHF, dated 31 May 2023, was refused by notice dated 1 August 2023.
 - The development proposed is described as a proposed granny annex.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The plans submitted with the planning application, and considered by the Council when it made its decision, are drawings Nos 100-105. These show a building with accommodation on two floors, including 3 bedrooms plus a kitchen and living rooms, located towards the site's southern boundary. In the present appeal, the appellants have sought to substitute a different scheme, for a 2-bedroom, single-storey building, located closer to the existing property, Springmead. These are shown in a new set of drawings, numbered 100A-105A.
3. I appreciate that the intention behind this was to overcome the Council's reasons for refusing permission. However, the new plans would represent an entirely different proposal from that considered at the application stage. The Planning Inspectorate's procedural guidance¹ makes it clear that fundamental or substantial changes will not normally be accepted during the appeal process, because of the likelihood of causing unfairness, either to the Council or to other parties. I have therefore dealt with the appeal on the basis of the plans originally submitted with the application, Nos 100-105.
4. Although the new building is described as an annex, it would have all the facilities needed for a separate dwelling, independent of the existing house. The written submissions made on behalf of the appellant also appear to suggest that this may well be the intended use, rather than as an annex as such. However, if permission were granted, the use of the building as an annex, ancillary to the main dwelling, could be secured by condition, and any subsequent question as to compliance would be a matter for the Council at that

¹ Procedural Guide: Planning Appeals - England

time. I have therefore dealt with the appeal on the basis of the description in the application.

Main issues

5. In the light of the above matters, and all the submissions before me, I consider that the main issues in the appeal are as follows:
 - the effects of the proposed development on the character and appearance of the locality, having regard for the relevant planning policies relating to development in the countryside;
 - and the effects on the setting of the nearby listed building, Brook Farm House.

Reasons for decision

Effects on the locality's character and appearance

6. Springmead is a semi-detached house, forming part of a loose group of about half a dozen properties, set in open countryside, some way outside the village of Felsted. The existing dwelling is set on the site's northern boundary, adjacent to the adjoining property Brooklands. To the side of the house is a gravelled parking area, and beyond this a large open grassed area, bounded by hedges and trees to the front and the south side. To the rear is paddock land, and a stable block. To the south are the residential properties Brook Farm House and Brook Barn, each set within their own extensive grounds. Despite the presence of the roadside vegetation, there are long views from Stebbing Road, across the site, to a ridge of higher ground in the middle distance.
7. In the Uttlesford Local Plan (the ULP), adopted in January 2005, the site is beyond the Felsted 'development limits', and is thus within the area designated as countryside. In that area, ULP Policy S7 requires development to be strictly controlled, with permission being granted only for development which specifically needs a countryside location, or is appropriate to a rural area. In addition, any development must protect or enhance the area's character.
8. The proposed development would be set within Springmead's grassed side garden area, close to the boundary with Brook Farm. In this location, it would appear unrelated to the existing house, and more akin to an independent dwelling. The upper floor rooms would be accommodated largely within the roof, with dormer windows to the front and a projecting gable to the rear. But nevertheless, in this part of the site, a new building of the size proposed would be clearly visible from Stebbing Road. As a result of its size and the degree of separation, the proposed development would intrude into the open gap between the existing buildings, thus detracting from public views of the landscape beyond. It would also appear as a sporadic and un-coordinated form of development, eroding the open character of the locality. In these respects the scheme would clearly conflict with Policy S7 and its aims for the protection of the countryside.
9. Policy S7 acknowledges that, in some cases, the criteria set out may permit infill development, where this would accord with ULP paragraph 6.13. However that paragraph also makes it clear that 'sensitive infilling' will only be acceptable where it meets a number of further requirements. In particular, the site should comprise a small gap between existing houses, and should be close to a settlement. Schemes should also be in character with their surroundings,

and have only limited impact on the countryside. In the present case, the gap between the existing dwellings at Springmead and Brook Farm is more than 100m wide, and the site is around a kilometre by road from the nearest part of the Felsted village boundary. In addition, the development would be out of character with the locality, and have a harmful impact on the countryside, for the reasons already discussed. In all of these respects, the appeal proposal would fail to accord with the requirements for sensitive infilling in paragraph 6.13. It follows therefore that the scheme does not fall within the type of infill development envisaged in Policy S7.

10. It has not been contended by the appellant that the appeal scheme would meet any of Policy S7's other requirements, either in terms of needing a countryside location or being appropriate to the rural area. In the absence of any such evidence, to my mind, the scheme clearly does not fall within these categories.
11. I note the comments made by both the appellant and the Council as to whether Policy S7 is consistent with current national policies, in the National Planning Policy Framework (the NPPF). However, it seems to me that Policy S7's aim of protecting the countryside is broadly consistent with NPPF paragraph 180(b), which states that planning policies should recognise the countryside's intrinsic character and beauty; and none of the submissions now before me provides any further explanation as to any perceived discrepancy in this regard. In any event, Policy S7 remains part of the adopted development plan, and as a matter of law², I am required by to determine the appeal in accordance with that plan unless material considerations indicate otherwise.
12. I therefore conclude, for the reasons explained above, that the proposed scheme would cause significant harm to the character and appearance of the locality, and would thus fail to protect the countryside. As such, the development would conflict with ULP Policy S7.

Setting of Brook Farm House

13. Brook Farm House is an attractive 16th century timber-framed and plastered house, extended to the rear, with a gabled cross-wing, and roof of plain red tiles. The house would originally have formed the main dwelling associated with the farmstead of Brook Farm, and would have had an important functional relationship with the surrounding agricultural land. From the limited information provided, it appears to me that the building's significance as a heritage asset relates primarily to its aesthetic and evidential value, as to the building styles and techniques of the time, and as to the lifestyle of its occupants.
14. The new building now proposed would be a substantial and visually imposing structure, close to the boundary of Brook Farm House's present curtilage. It would be prominent in views towards the listed farmhouse from Stebbing Road, and also in outward views from the farmhouse itself. Given its size and siting, the new building would dominate its immediate surroundings, and compete visually with the other nearby dwellings, including Brook Farm House. The development would thus intrude upon the visual relationship between the listed building and its surroundings. For the reasons already explained above, the impact of the development on this rural landscape would be an adverse one. It

² Under section 38(6) of the Planning and Compulsory Purchase Act 2004

follows that the listed building's visual setting would be damaged, with consequent harm to its special interest and significance as a heritage asset.

15. Having regard to the terminology used in the NPPF, the harm would be 'less than substantial'. But nonetheless, NPPF paragraph 206 makes it clear that any kind of harm to a designated heritage asset should only be permitted where there is a clear and convincing justification. Paragraph 208 also requires such harm to be weighed against the public benefits of the proposed scheme. In the present case, no such justification or benefits have been argued by any party.
16. I therefore conclude that the development would fail to preserve or enhance the setting of Brook Farm House, and would fail to respect the sensitivity of the heritage asset. In this regard the scheme would conflict with ULP Policy ENV2, which is designed to protect listed buildings and their settings.

Other matters

Policy on 'supplemental dwellings'

17. In some circumstances, Policy FEL/HN6 of the Felsted Neighbourhood Plan (the FNP) gives support to 'supplemental dwellings', which are defined as a residential unit within the curtilage of an existing dwelling, where this is necessary to house carers or family members, in order to enable an existing resident to remain in their home. But the policy criteria include a requirement that the new dwelling must be essential to maintaining a family or community link, for the benefit of the older person. In the present case, there is no evidence that this condition is met. Indeed the appellant's submissions contain contradictory statements as to who would occupy the new building; and also refer to an opportunity for 'single-floor' living, which appears to relate to the subsequent alternative proposal rather than to the refused scheme. In addition, the criteria under Policy FEL/HN6 also require that the size of the supplemental dwelling should be consistent with that role, whereas in the appeal scheme the new building would have a floorspace not far short of that of the main dwelling. The development now proposed would therefore not satisfy the requirements of Policy FEL/HN6, and the scheme gains no support from that policy.

Other policies

18. The appellant has also drawn my attention to various other policies. In the ULP, Policy H8 permits home extensions, where various criteria are all met. However, the development in the present appeal would not be an extension, but rather a separate building, at a distance of over 30m from the existing house. There is no evidence that the policy is intended to be applied to annexes. And in any event, the criteria would require that the scale of the development respects that of the existing building, which would not be the case here.
19. ULP Policy H3, 'New Houses Within Development Limits', permits residential development within towns and villages, subject to certain criteria. However, as the name suggests, that policy applies only within settlement boundaries, and as such it cannot have any effect in relation to the present appeal site. I am aware that the Council's pre-application letter dated 1 September 2021 suggested otherwise, but on this point that advice seems to have been clearly

erroneous; it is therefore not open to me to take the same approach. For the reasons already stated, I find that Policy H3 has no relevance to the present appeal.

20. In the FNP, Policy FEL/HN4 likewise applies only within settlements. Outside settlement boundaries, Policy FEL/HN5 applies, and this does permit residential development in certain limited circumstances. However, none of those circumstances are applicable to the present site or proposal.

Housing land supply

21. The Council's pre-application letter of 1 September 2021 acknowledges that, at that time, the supply of land for housing development in the District was sufficient for only 3.1 years, significantly less than the 5 years' worth required by NPPF paragraph 77. Since then, the position may well have changed, but if so, the Council has not commented on this in relation to the present appeal. A third party has suggested that the supply now exceeds five years, based on a statement on the Council's website, but no detailed evidence is before me. In the absence of any further information, it seems to me that there remains some doubt as to the up-to-date position, and in these circumstances the benefit of providing an additional dwelling carries some weight in favour of the appeal.
22. In many cases, the absence of a 5-year supply would also engage the NPPF's presumption in favour of sustainable development. In the present appeal however, given the harm that I have found to the setting of the nearby heritage asset, that presumption is overridden by the provisions of NPPF paragraph 11(d)(i) and footnote 7.

Other matters arising from the Council's pre-application advice

23. In addition to the matters discussed above, the Council's letter of 1 September 2021 concluded that, subject to details of design and layout, and subject to the views of consultees, support could be given in principle for a small, single-storey dwelling. However, the scheme that is before me in the present appeal clearly exceeds that description. Consequently, the limited and conditional support given in the letter does not extend to the appeal proposal.
24. Furthermore, as well as the error noted above in relation to Policy H3, the letter also failed to give any consideration to the potential effects on the nearby listed building, thus failing to comply with the statutory duty to pay special regard to the desirability of preserving such buildings or their settings³. In both these respects therefore, the advice given was seriously flawed, and would not have provided a sound basis for the present appeal decision in any event.

Conclusion

25. For the reasons set out above, I have found that the proposed development would cause harm to the character and appearance of the countryside, and to the setting of Brook Farm House, contrary to ULP Policies S7 and ENV2. There is no positive support for the scheme in any of the other development plan policies identified. The appeal proposal would therefore be in conflict with the development plan as a whole.

³ Under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

26. The development would make a modest contribution to the local housing stock, and to making good any shortfall in the 5-year supply. But this benefit would not outweigh the conflict with the development plan; indeed the benefit would itself be outweighed, both significantly and demonstrably, by the harm that I have identified, to the countryside and to the nearby heritage asset.
27. I have taken account of all the other matters raised, but none changes this conclusion. The appeal must therefore be dismissed.

J Felgate

INSPECTOR