



Appeal Decision

Site visit made on 6 June 2024

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2024

Appeal Ref: APP/X1545/W/23/3333441

Land at Vicarage Lane, Tillingham, Essex CM0 7TW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs N Cole against the decision of Maldon District Council.
 - The application Ref is OUT/MAL/22/01214.
 - The development proposed is described as 'Outline planning application for 5 detached single storey dwellings with all matters reserved'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with all matters of detail reserved for future consideration, including the scale and appearance of the buildings, the layout and landscaping of the site and the access arrangements. This is an unusual course of action given the site's location within a conservation area. Nevertheless, the Council did not direct for details under Article 5(2) of the DMPO¹ and therefore I have assessed the proposal in the terms it was originally submitted. On this basis, I have treated the submitted drawings as simply being an illustration of how the scheme could ultimately be configured rather than being a firm proposal.

Main Issues

3. The main issues in this appeal are:
 - Whether the appeal site is a suitable location for the proposed development, with reference to the spatial strategy in the development plan;
 - The effect of the proposed development on the significance of the Tillingham Conservation Area;
 - The effect of the proposed development on the character and appearance of the area and the significance of Clifton, a non-designated heritage asset;
 - Whether the proposal would preserve the settings of Stow Farmhouse, a Grade II* listed building and 3 Vicarage Lane, a Grade II listed building;

¹ Town and Country Planning (Development Management Procedure) (England) Order 2015

- The effect on highway safety, with particular reference to whether there would be conflict between users of Vicarage Lane and whether the proposal would incorporate a safe and suitable access; and
- The effect of the proposed development on biodiversity.

Reasons

Spatial Strategy

4. To deliver economic and residential growth whilst protecting and enhancing the area's natural, built and historic environment, Policy S2 of the Maldon District Approved Local Development Plan 2014-2029 (LP) seeks to focus development on existing settlements subject to their role, accessibility and constraints. This balanced approach is broadly consistent with the National Planning Policy Framework (the 'Framework'), which outlines several objectives.
5. Policy S8 of the LP flows from Policy S2 and outlines the approach to the location of development, including a settlement hierarchy. Being a small settlement away from the larger urban areas in the district, Tillingham is identified as a 'smaller village'. Policy S8 also confirms that development will be supported within settlement boundaries, and that outside these areas it will only be granted if the intrinsic character and beauty of the countryside is not adversely affected and it would be a stated type of development.
6. The appeal site is located outside the settlement boundary of Tillingham. For reasons I go into, the proposal would adversely affect the intrinsic character and beauty of the countryside. Furthermore, being for five unrestricted open market dwellings the proposal would not be any of the types of development listed in Policy S8 as being acceptable in the countryside.
7. In conclusion, the proposal would be at odds with Policies S2 and S8 of the LP. In this respect, the appeal site would not be a suitable location for the appeal scheme when applying the spatial strategy in the development plan, which is a carefully drafted and considered statement of policy informed and shaped by public participation. Instead, the proposal would undermine the objectives of the strategy. This would be harmful given the public interest in having a genuinely plan led system that provides consistency and direction.

The effect on the significance of the Tillingham Conservation Area

8. The Tillingham Conservation Area (CA) broadly incorporates the pre 20th Century element of the historic rural village of Tillingham, the core of which is nucleated around The Square and Church. Most of the buildings in the CA date from the 17th, 18th and 19th Centuries with many exhibiting the traditional vernacular finish of white painted timber boarding. The buildings frame the public spaces and delineate a very old street plan that Historic England suggest is of Saxon origins. The plan form is broadly linear with perpendicular lanes that lead out into the countryside. The properties in the centre of the village are typically set close to the edge of the road or behind front gardens giving a tight feel to the central grain of the settlement. The street scape becomes more open and verdant with generous levels of planting when travelling along the lanes into the surrounding arable landscape.
9. Considering the above, it is apparent that the CA includes a rich mix of attractive period buildings and a distinctive settlement pattern and street

scape. It therefore has archaeological² and historic value as a repository of period building styles, bygone lifestyles, local character and a traditional village form. The combination of these elements also creates a picturesque quality, perhaps fortuitously, that results in aesthetic value. This value imparts significance.

10. The appeal site encompasses a meadow located between a small cluster of buildings and the historic core of the village. It is broadly enclosed by hedges, is currently grazed and lacks the formality of the recreation ground opposite. Thus, it is spatially appreciated as a continuation of the agricultural countryside to the south. Vicarage Lane has had little modern development. Where it has occurred at scale in Kings Farm Meadow, it is reasonably discrete. This aids the historic legibility of the lane and that of the western side of the village. It also ensures the rural character of the CA and the historic relationship between the village and its agricultural hinterland endures. Indeed, the gentle transition from village core to countryside is a pleasing feature of Vicarage Lane.
11. The appeal site was included in the CA following a boundary change around 20 years ago. The Conservation Area Review and Character Appraisal (CAR) explains that the appeal site is an important open space on the south side of Vicarage Lane, but it does not explain in detail why this is the case. That said, the CAR is clear that open views are important to the characteristics of Vicarage Lane.
12. The appellant's Heritage Statement does not demonstrate that the appeal site is unimportant to the significance of the CA. Indeed, it is evident that the meadow has a picturesque quality with a pleasant view across it towards Clifton experienced from the adjoining public footpath. There is also a pleasing view from Vicarage Lane across the site towards the open countryside to the south. Neither of these views are specifically identified in the CAR as being 'important', but they are nevertheless of value to the character and appearance of the CA and its significance. Furthermore, the open nature of the appeal site provides a buffer between a small cluster of development on the periphery of the village and the historic core. Historic mapping in the CAR indicates this is a long-standing aspect of the street scape. Therefore, the appeal site in its current undeveloped state adds positively to the significance of the CA.
13. The appeal scheme would result in the erection of five dwellings within the appeal site. The indications are that the appellant intends them to be single storey. Regardless of their scale, the buildings would seriously suburbanise what is currently an attractive meadow situated along a rural lane. Indeed, the indicative layout shows a very suburbanised formal layout dominated by parking with extensive areas of hard surfacing and no front gardens.
14. The suburbanising impact would be very apparent from the adjoining public footpath. From this vantage point the attractive view towards Clifton would be diminished. This would harm the appearance and aesthetic value of the CA. The new houses would also be apparent when looking north towards the site from the broad vicinity of Chapel Lane. The housing would also erode the rural character of Vicarage Lane with views of the properties evident through the site entrance or when planting is not in leaf. The new built form would also likely span the width of the site resulting in a continuum of development between the edge of the historic core and the cluster of buildings that includes Clifton. This

² Also referred to as evidential or research value – *Conservation Principles, Policies and Guidance*, Historic England

would erode the historic pattern of development in Vicarage Lane and make the boundary of the historic core less legible. As a result, the proposal would harm the significance of the CA and this impact would be of a high order.

15. In conclusion, the proposal would harm the significance of the CA. Its character and appearance would not be preserved. For reasons I go into the harm would not be outweighed by public benefits. As a result, the proposal would be at odds with Policies S1(10) and D3 of the LP. These policies are consistent with Chapter 16 of the Framework.

The effect on the character and appearance of the area

16. For the reasons set out above, the appeal scheme would suburbanise an attractive undeveloped meadow that sits in the countryside. In so doing, an important undeveloped space would be built upon, a rural lane stridently suburbanised, a pleasant rural vista towards Clifton (from the public footpath) seriously diminished and the existing hedgerow breached to create two access points from Vicarage Lane. Accordingly, the intrinsic character and beauty of the countryside would be adversely affected.
17. In coming to this view, I have carefully considered the mitigation through design suggested by the appellant in their submissions, including the Landscape and Visual Impact Assessment. Setting aside that all matters of detail are reserved at this stage, the appellant nevertheless states that the proposal could include single storey properties set back from Vicarage Lane and finished in traditional materials softened by landscaping and the retention of some of the meadow. However, these aspects of the scheme would not prevent the development being highly conspicuous from the footpath, safeguard the view of Clifton or address the harm to landscape character that would occur from an attractive rural meadow being built upon. Indeed, for these reasons the proposal would not appear as a logical or appropriate infilling and it would not be an effective use of land as a result.
18. In conclusion, the proposal would harm the character and appearance of the area. It would therefore be at odds with Policies S1(5), S8, D1 and H4, as supported by the Maldon Design Guide, in so far as they seek to secure development that maintains the rural character of the district and local distinctiveness, protects the intrinsic character and beauty of the countryside and respects and enhances the local context. These policies are consistent with Paragraphs 135 and 139 of the Framework.

The effect on the setting of Clifton

19. Clifton is an attractive cottage believed to date from the mid-19th Century. It has a thatched roof, cosmetic beams and pebble dashed render that were probably intended to invoke a bucolic picturesque quality. This effect is heightened by its orientation overlooking the meadow. As previously mentioned, the composition of the meadow and this traditional vernacular style cottage creates a pleasant scene in views from the appeal site, Vicarage Lane and the nearby public footpath. As a result, Clifton has architectural and artistic value which affords the building significance as a non-designated heritage asset (NDHA). Accordingly, it is understandably on the local list. The openness of the appeal site enables this significance to be experienced.

20. The indicative drawings indicate that it would be possible to set the proposed dwellings back from Vicarage Lane so that the nearest properties do not sit directly in front of Clifton's eastern elevation. The main eastern outlook from this property could also be towards additional landscaping. However, for the reasons already given, the appeal scheme would seriously erode views from the public footpath towards Clifton and this would diminish the ability to experience the picturesque qualities of the cottage, which is an important component of its design and how the building is experienced. As such, the ability to experience the architectural and artistic value would be diminished and therefore the setting of Clifton, and thus its significance as a NDHA, would be harmed. This is a matter to be taken into account in the planning balance as per Paragraph 209 of the Framework.

The effect on the settings of Stow Farmhouse and 3 Vicarage Lane

21. Stow Farmhouse is located around 200m to the west of the appeal site. It is an impressive timber framed building of early origins and is of considerable heritage interest as confirmed by the Grade II* listing. Being a building of vernacular background, its rural setting is important to how it is experienced, as is its position near a farmyard detached from the village. The appeal scheme would erode the wider rural setting of the building by extending the built-up form of the village further along Vicarage Lane. However, the development would not be seen from Stow Farmhouse or its immediate vicinity. Indeed, the listed building would still be flanked to its south, east and west by open fields or agricultural buildings. Accordingly, it would retain an essentially rural setting and the sense of being remote from the village.
22. In coming to this view, it is important to note that intervisibility between a listed building and a proposed development is not essential for harm to the former's setting to occur. I am also mindful that Historic England has indicated that the appeal scheme would detrimentally impact the setting of Stows Farmhouse given the relevance of Vicarage Lane as a route to the building. Nevertheless, I am satisfied that in this instance the spatial gap and retained rural context of Vicarage Lane beyond Clifton would be sufficient to preserve the setting of Stow Farmhouse.
23. 3 Vicarage Lane (No 3) is a modest vernacular cottage style building the core of which probably dates to the late 17th Century. It is broadly constructed and finished in materials that would have been available in the local landscape, these being timber, plaster and thatch. Given the building's modest scale and simple construction it may have once been an agricultural labourer's cottage.
24. The building is therefore of historic and architectural value and significance as a rare survivor of forgone building traditions and ways of life. Given the close proximity of other buildings either side, No 3 lacks a direct spatial connection to the open landscape and is experienced from a narrow visual envelope. There is no intervisibility between the listed building and the appeal site.
25. It is unclear why the building was constructed where it was divorced from the village. There is nothing before me to suggest its remote position was a result of its function. The location may have been chosen as a matter of expediency due to land ownership. Ultimately, the submissions do not demonstrate that No 3's position remote from the village is especially important to understanding its architectural and historic significance, which principally lies in its construction and modest scale. As a result, the continuum of development

caused by the appeal scheme would not have a harmful impact on the setting of this building and the ability to experience and appreciate its significance.

26. In conclusion, the appeal scheme would preserve the settings of Stow Farmhouse and 3 Vicarage Lane and therefore a conflict with Policy D3, in so far as it relates to this main issue, would not occur. Nor would the scheme undermine the statutory duty in s66 of The Planning (Listed Buildings and Conservation Areas) Act 1990.

The effect on highway safety

27. Vicarage Lane is a quite rural thoroughfare that provides access to several houses as well as a primary school, preschool and recreational facilities. A pavement terminates at an entrance to the recreation ground after the primary school so that beyond this point pedestrians walk in the single width carriageway. The appeal scheme will intensify traffic along Vicarage Lane and the Council are concerned that this would result in conflict between pedestrians and motorists. However, evidence provided by the appellant, undisputed by the Council, is that traffic travels at around 23mph along the lane and is therefore slow moving. The data is from a survey in 2016 but circumstances are unlikely to have changed significantly.
28. Thus, the slow moving nature of the traffic, taken with the good forward visibility, means motorists and pedestrians can respond to the presence of one another in good time. Indeed, this is what I observed with pedestrians, including one with a pram, and motorists easily passing one another or pedestrians stepping off the carriageway onto grass verges or into parking spaces. Although a snapshot in time, there is nothing of substance to suggest what I saw was untypical. In some respects, the section of Vicarage Lane beyond where the pavement terminates seems to act as a shared surface. The presence of a pavement outside the school means children need not be in the carriageway. There is nothing before me to suggest there have been accidents between pedestrians and motorists along Vicarage Lane. Accordingly, the low level of traffic generated by the appeal scheme is unlikely to alter the prevailing circumstances to a harmful extent.
29. Although 'access' is a reserved matter the appellant has provided indicative access points as required by Article 5(3) of the DMPO. The two access points would create an in/out carriage driveway and would be located close to the eastern and western boundaries of the appeal site rather than in the middle of the road frontage. Given the low speed and volume of traffic along the road, visibility splays would not need to be extensive and certainly not the 215m suggested by the Local Highway Authority. In this instance, the village context and character of the lane is such that visibility splays in accordance with Manual for Streets would be more appropriate than any devised from the Design Manual for Roads and Bridges.
30. Nevertheless, the plans submitted with the application do not detail the position of visibility splays. It is unclear whether splays in accordance with Manual for Streets could be achieved given the retention of the existing roadside hedge along the northern boundary of the appeal site, the position of Clifton and its front garden and the enclosed garden of Willow Cottage on the eastern side of the public footpath, the frontage of which is planted and includes fencing. These features would obscure views. As a result, there is uncertainty whether visibility splays could be achieved within land owned by

the appellant and/or the public highway. This could result in collisions between motorists. Any collisions may not be serious due to the low speeds, but they could result in damage. Moreover, cyclists could be put at more significant risk if cars pull out of the appeal site without adequate visibility.

31. In conclusion, the appeal scheme would not result in harmful conflict between users of Vicarage Lane. However, in the absence of details to the contrary, the appellant has failed to demonstrate that the appeal scheme would provide adequate visibility at the site entrances. As such, the risk of collision cannot be ruled out to the detriment of highway safety. The proposal would therefore be at odds with Policies T1 and T2 of the LP, which seek to secure safe and suitable access to a development site. This objective is consistent with Paragraphs 114 and 115 of the Framework.

The effect on biodiversity

32. The Council's sixth reason for refusal was predicated on the absence of an up-to-date assessment of the scheme's effect on biodiversity. To this end, the appeal has been submitted with a Preliminary Ecological Assessment (PEA). This has been prepared by a qualified and experienced ecologist following a recognised methodology. Although undertaken at a sub-optimal time of the year for botanical species, the ecologist was content that enough information could be gleaned to render further botanical surveys unnecessary.
33. The PEA concludes that no further surveys are required and subject to mitigation measures, including hedgerow planting to compensate for that lost, and new bat and bird boxes, there would be no net adverse impact on biodiversity. The report also sets out several enhancements to achieve the objective in Paragraph 180d) of the Framework. The Council has not disputed or raised concerns with any of the findings in the PEA. Accordingly, the evidence before me demonstrates the proposal could slightly enhance biodiversity and therefore a conflict with Policies S1, S8, D1 and N2, in so far as they relate to this main issue, would not occur.

Other Considerations

The public benefits of the scheme

34. The proposal would be a small scheme that could deliver five new homes quickly, and this would contribute to the housing land supply in the district and support small and medium sized builders. That said, the Council has confirmed that the housing land supply stands at somewhere in the region of 5.97 years, which is healthy. The appellant has questioned this but has not provided a detailed analysis underpinning any suggested alternative figure. As a result, I favour the Council's position. In these circumstances, the modest contribution to the housing land supply is a public benefit of modest weight.
35. Although scale is a reserved matter the indications are that the scheme would probably deliver five 2–3-bedroom bungalows. The most recent local housing needs assessment confirms that there is a need for this type of accommodation. The appeal scheme would make a modest contribution towards this. In addition, Policies I2 and H3 of the LP provides some support for development that caters for an aging population, although there is nothing before me to suggest the occupation of the proposal would be restricted in this way. Overall, this matter carries moderate weight in favour of the scheme.

36. Furthermore, the delivery of new homes in this location only a short walk from the centre of the village and the services and existing occupants there would provide a modest boost to the vitality of the village. The future occupants may also support local services and facilities such as the pub, school and local clubs and construction would boost the economy. This also carries moderate weight in favour of the scheme. The limited net gain to biodiversity would also be a matter of minor weight in favour of the proposal.
37. The appellant has offered to provide a contribution to footpath improvements but no appropriate mechanism to secure this is before me, and it does not appear necessary to make the development acceptable in any event.

The heritage balance

38. For the reasons already set out, the appeal scheme would harm the significance of the CA. The harm would not be severe and would therefore be less than substantial within the meaning of the Framework. Paragraph 208 of the Framework requires such harm to be weighed against the public benefits of the proposal.
39. In calibrating this balance, the Framework states that designated heritage assets are an irreplaceable resource that should be conserved for existing and future generations and that great weight should be given to an asset's conservation. Conservation in this context means sustaining, and thus not harming, an asset's significance. It is also of note that the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area³ is a matter that must be given considerable importance and weight. This is not an instruction to dismiss a proposal that would harm a conservation area, but it nevertheless provides a strong presumption in favour of preservation.
40. The proposal would result in significant harm to the CA as a designated heritage asset. This matter carries weight of a high order. Against this, the public benefits of the proposal are only cumulatively of moderate positive weight. Overall, the benefits are not of sufficient force to outweigh the less than substantial harm that would occur. Accordingly, there would be a conflict with Paragraph 206 of the Framework as harm to the significance of a designated heritage asset would not have clear and convincing justification.

Other residual matters

41. The appellant submits that Paragraph 11d) of the Framework is engaged because the most important policies for determining this application are out of date due to a lack of a five-year housing land supply or the failure of the Council to review its local plan within five years of adoption. I have already reached a finding on the former.
42. It is true that the Council has not completed a formal review of its local plan. Moreover, there seems to be some reliance on windfall sites outside of settlement boundaries to establish a five-year housing land supply. These factors may add weight to the appellant's argument that the policies comprising the spatial strategy are out of date. However, the most important policies for considering the proposal, which I have set out through this decision, need to be considered as a collective basket. Most of these are

³ See Sections 72 of The Planning (Listed Buildings and Conservation Areas) Act 1990

consistent with the Framework for the reasons I have already given. As a result, I have some doubt over the relevance of Paragraph 11d). Nevertheless, even if the most important policies, as a collective basket, are out of date, the application of policies in the Framework that protect designated heritage assets provide a clear reason for refusing the proposal under Paragraph 11d(i). Accordingly, the tilted balance in Paragraph 11d(ii) is not engaged.

43. The appellant has referred to the Council's 'call for sites' and the positive comments from the report's authors that development would be 'suitable'. However, this document is part of the evidence base of the Council's emerging local plan, which is at an early stage. Moreover, the comments are caveated on account of the rural character and conservation area designation. In any event, a 'call for sites' is a high-level theoretical exercise that lacks the rigorous assessment involved in considering a planning application. As a result, the findings of the exercise, which I do not agree with for the reasons given, are a matter of limited weight in favour of the appeal scheme.
44. As I am not minded to grant planning permission the proposal would have no effect on any European designated nature sites and therefore I have not undertaken an appropriate assessment. Nor has it been necessary to assess the Conservation Officer's concerns regarding the setting of the Old Vicarage⁴ or the residual concerns of interested parties.

Conclusion

45. The proposal would not harm biodiversity or the setting of listed buildings. However, there would be harm to the significance of the CA, and this would not be outweighed by public benefits. It therefore follows that the benefits of the scheme would not outweigh the totality of the harm I have identified either, which includes a conflict with the spatial strategy, an adverse impact on highway safety and the significance of a NDHA, and harm to the character and appearance of the area more generally.
46. As a result, the proposed development would be contrary to the development plan taken as a whole and there are no other considerations which outweigh this finding. Accordingly, the appeal has failed.

Graham Chamberlain
INSPECTOR

⁴ Not mentioned in the Council's third reason for refusal