

Appeal Decision

Site visit made on 13 August 2024

by David Cliff BA Hons MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2024

Appeal Reference: APP/C1570/W/24/3339629

Four Winds, Old Mead Lane, Henham, Essex CM22 6JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Peter Cranfield against the decision of Uttlesford District Council.
 - The application reference is UTT/23/1382/FUL.
 - The development proposed is erection of a new detached 4 bedroom dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a new detached 4 bedroom dwelling at Four Winds, Old Mead Lane, Henham, Essex CM22 6JJ in accordance with the terms of application reference UTT/23/1382/FUL and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The appellant has submitted a revised site layout drawing (300 Rev 04) with the appeal documentation seeking to alter the location of a proposed pond in the rear garden of the proposed dwelling. Notwithstanding this, the creation of a new pond would be contrary to a suggested condition from the safeguarding authority for Stansted Airport that no ponds should be constructed to minimise the risk of bird strike. Therefore, there is no need to substitute this drawing for that considered by the Council in its determination of the application.
3. On 30 July 2024, the Government published a consultation on proposed reforms to the National Planning Policy Framework ('the Framework') and other changes to the planning system. Whilst they are capable of being material considerations, they are currently under consultation and carry only limited weight in the context of this appeal. I have therefore not considered it necessary to revert back to the parties on this matter.

Main Issues

4. The main issue is whether the proposed development would be suitable in this location, having regard to relevant policies for the location of housing, the

effect upon the character and appearance of the area and accessibility to services and facilities.

Reasons

Policy relevant to location of housing

5. The proposal would be located outside of any defined development limits. Policy S7 of the Uttlesford Local Plan 2005 ('the Local Plan') relating to development in the countryside beyond the Green Belt is therefore applicable. It states that permission will only be given for development that needs to take place, or is appropriate to, a rural area. It goes on to state that this will include infilling in accordance with paragraph 6.13 of the housing chapter of the Local Plan. Furthermore, Policy S7 also states development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside or there are special reasons why the development in the form proposed needs to be there.
6. Paragraph 6.13 of the Local Plan, relating to infilling, explains that there are some settlements that are not included in any boundary and these are settlements where there are no apparent opportunities for infilling because there are no gaps left for development or the approaches to a village are too loose in character for development to be appropriate. In this instance, notwithstanding the location of the existing house to the rear, there is a clear gap in the existing pattern of development along Old Mean Lane and I do not consider that this is a case where the form of existing development is too loose in character for development to be appropriate.
7. Paragraph 6.14 goes on to explain that isolated housing will need exceptional justification. It says that if there are opportunities for sensitive infilling of small gaps in small groups of housing outside development limits but close to settlements these will be acceptable if development would be in character with the surroundings and have limited impact on the countryside in the context of existing development.
8. In the context of Policy S7, there is no specific or special reason why the development needs to take place in the countryside outside of a settlement boundary. However, the policy goes further than simply restricting residential development in the countryside. It is relevant in this case that the site is located reasonably close to the existing settlements of Henham and Elsenham, noting the explanatory text in paragraph 6.14 in this regard. It is also agreed by the main parties that the proposal would not lead to an isolated dwelling in the countryside.
9. The appellant refers to Local Plan Policy H1 which under criterion (c) makes provision for 450 dwellings through the re-use of existing buildings and previously developed land outside of the urban areas. The Framework's definition of previously developed land makes clear that this can include residential gardens outside of built-up areas. As the proposed dwelling would be located within the garden area of an existing dwelling outside of the built-up area, this provides some support in principle for the proposal as it indicates that new housing is possible outside urban areas, subject to other requirements.

10. Policy S7 and associated sections of the Local Plan regarding housing outside of the settlement boundaries might be more clearly worded. However, whilst it generally seeks to restrict development beyond settlement boundaries, it does not rule out the possibility of any new homes being built in the countryside. My reading of the Council's housing location policies is similar to that of the Inspector in The Cedars appeal decision¹ in this regard, though I note that the subject of that appeal decision was a replacement dwelling rather than for an additional dwelling. In conclusion, I am satisfied that Policy S7 does include infilling as a possible exception to the general restraint in the countryside. I go onto consider other relevant matters below.

Character and appearance

11. Old Mead Lane has a prevailing semi-rural character including detached residential properties of varying designs set in generally spacious and well landscaped plots with open countryside beyond. There is no defined building line, with some dwellings located towards the front of their plots and others located further back into their plots. On the eastern most section of the lane, development is restricted to only the southern side with open countryside on the northern side.
12. Given the space between the two existing dwellings on either side of the appeal site, within a long row of existing development, I am satisfied that this proposal constitutes infill development. Furthermore, there is sufficient room to the front of the existing property for a new dwelling in this location. The space between the proposed dwelling and those adjacent on either side would be generally commensurate with the layout of existing development along Old Mead Lane. Given the overall pattern of development, including along the eastern most part of the lane, I do not consider that the open space of the current appeal site makes any significant contribution to the overall character and appearance of the area.
13. Whilst the proposal would be higher than the dwellings on either side, it would be of a similar height to several other dwellings along the lane. Its design would incorporate a gable in the front elevation that would represent an assertive feature. However, it would not be dissimilar to the design of other existing dwellings along the lane.
14. The dwelling would be visible from the open countryside, including in between breaks in the hedge and trees from the public footpath that runs to the north. However, the views from that footpath would be limited and the proposal would be seen in the context of the existing ribbon of development along the lane. Whilst longer distance views would be barely affected, given the existing verdant character, it would be important that a landscaping scheme, the details of which could be secured through a condition, includes strong landscaping to the front of the dwelling, which would soften the views of the dwelling and help to assimilate it within the verdant character of the lane.
15. I am therefore satisfied that the proposed development would safeguard the character and appearance of the area. It would accord with the relevant design and countryside protection aims of Policies S7, GEN2 and those of the

¹ APP/C1570/W/16/3165787

Framework. Henham Parish Council also raises objection in relation to Policy H4 of the Local Plan, but from the details of this policy that have been made available to me, I also find no conflict in this respect.

Accessibility

16. There are limited local facilities, including a nursery and primary school, in the nearby village of Henham. However, the village centre is approximately a 1.4km walk from the site via the public footpath. Whilst this is an option for able walkers, it is not a realistically viable year-round option given the distance, the lack of lighting and the likely poorer condition of the footpath during winter months.
17. There are a wider range of local facilities in Elsenham, meeting some day-to-day needs, but these are also a considerable walking distance from the appeal site. Both Elsenham and other villages would be feasibly accessible by cycle but the lack of street lighting on several roads and lack of designated cycle ways or cycle lanes would limit this option.
18. In terms of public transport, the site is located approximately 1km from Elsenham railway station (providing frequent services terminating at London Liverpool Street and Cambridge North). Occupiers of the proposed dwelling could walk to this station, although the lack of a pedestrian footpath and streetlighting along the route would limit its accessibility by foot, particularly during hours of darkness. Alternatively, occupiers of the development might cycle to the station although again the lack of street lighting would make this less attractive during darkness. Although the appellant refers to a car park at the station, I did not see any such car park at my site visit. A fairly limited bus service is also available from a nearer bus stop approximately 450m from the site, running between Stanstead Airport and Bishops Stortford.
19. Overall, there would be some options for sustainable modes of transport and some facilities located in the nearby villages that would be likely to be supported by the proposal, albeit to a limited extent. The appeal site is not one that I would consider as being in a good location to encourage sustainable modes of travel as an alternative to the private car. A significant proportion of trips would most likely need to be made via car, although some of these would be shorter than for other more remote locations. I have taken account of the option for the use of electric vehicles and the limited vehicle movement likely to arise from only a single dwelling. I also note that paragraph 109 of the Framework recognises that opportunities to maximise public transport solutions will vary between urban and rural areas.
20. I acknowledge the recent grant of planning permission by the Council at The Barn on Old Mead Road, although that site is closer to Elsenham, including the railway station, than the appeal site. I have also taken into consideration the Inspectors' findings on accessibility in other recent appeal decisions including at land at Chickney Road² and Dunroamin, Old Mead Road³. There are however, differences in locations and distances to facilities and, in the case of Dunroamin, a significantly greater number of houses were proposed.

² APP/C1570/W/19/3239905

³ APP/C1570/W/23/3314576

21. Given the above, I find that there would be some, albeit fairly limited harm arising when considered against the aim of Policy GEN1(e) of the Local Plan to encourage movement by means other than the private car. In the context of this appeal, it carries a small amount of weight against the proposal.

Other Matters

Highway and pedestrian safety

22. Signs along Old Mead Lane indicate a 10mph speed limit. Whilst it is a private road and therefore not subject to enforcement, the narrowness of the lane and its primary purpose as a residential cul-de-sac means that it is unlikely that vehicles would travel along it at an excessive speed. Furthermore, volumes of traffic using it are relatively limited and would not be significantly increased by the new development taking place. Taking account of the low traffic speeds and limited overall traffic flow, I am satisfied that the proposed visibility splays at the site are sufficient to prevent any adverse highway or pedestrian safety issue arising from vehicles accessing and egressing the site.
23. Whilst the lane is narrow, given the low frequency of traffic movements and the limited additional trip generation from the proposed development, there would not be any significant effects on the safety and convenience of traffic travelling along the lane.
24. I note that a hedge to the north of Old Mead Lane has been trimmed back which provides for improved visibility to the north. Reasonable visibility is also achievable to the south following the recent demolition of an adjacent building. Whilst the maintenance of these visibility splays would not be in control of the appellant, the access is already used in connection with the existing dwellings on Old Mead Lane and there is nothing to suggest that the existing levels of visibility would not be able to be retained. There is also no record or evidence of existing traffic incidents occurring at this junction. Taking account of the existing visibility at the junction of Old Mead Lane with Old Mead Road and the small increase in the overall level of traffic using this junction, I am satisfied that the proposed development would be unlikely to result in any significant highway safety effects at this junction.
25. Old Mead Lane is also used as part of a public right of way. A public footpath branches off it, just east of the appeal site, firstly heading to the north and subsequently east to the nearby village of Henham. A public footpath also continues from the lane directly to the east. Whilst there is no separate footpath along the lane for walkers and pedestrians, the small traffic flows, the limited likely speed of traffic and the limited increase in vehicle movements arising from the proposed development would ensure that there would also not be likely to be any significant effects on the safety and convenience of users of the public right of way.
26. I am therefore satisfied that the proposed development would satisfactorily accord with the road and highway safety aims of Policy GEN1 of the Local Plan and the Framework.

Other issues

27. There is no robust evidence to suggest that the proposal would lead to any significant flooding, drainage or sewerage issues. Nor is there any indication backed up by evidence to suggest that matters of water pressure or effect upon other infrastructure are such to justify any harm arising from the proposal. Any future proposed development would be treated on its individual merits and circumstances at that time and, given my overall findings on this appeal, the fear of setting an undesirable precedent does not weigh against the proposal.

Housing land supply

28. The Council has submitted its 5 year land supply statement and housing trajectory status at 1 April 2023 which concludes that, at that time, it could demonstrate a housing supply of 5.14 years. However, the Inspector in determining the recent Kunduci appeal⁴ drew attention to the more recent December 2023 Housing Delivery Test (HDT) figures that showed the Council had only delivered 58% of its housing target over the previous three years. Whilst having little detailed information, the Inspector stated that it would not be unreasonable to consider the supply is slightly less than 4.5 years. In any case he stated that as the HDT figure is below 75%, paragraph 11(d) of the Framework is engaged.
29. The Council's officer report does not refer to housing land supply. The Council has not submitted a Planning Statement in response to the appellant's appeal statement and consequently has not sought to argue against the appellant's position. The 2023 document it has provided does not appear to provide the most up to date assessment. No further update has been provided. Therefore, whilst I do not have full up to date details before me, the evidence submitted through this appeal regarding the HDT leads me to the conclusion that this is a case where paragraph 11(d) of the Framework is applicable.

Planning balance

30. I have found that there would be some limited harm in terms of accessibility to local services, contrary to Policy GEN1(e) of the Local Plan to which I have ascribed a small amount of weight against the proposal. No harm would result upon the character and appearance of the area and therefore, as acceptable infilling development, whilst acknowledging the general restraint on housing outside of defined settlement boundaries, I find no material conflict with Local Plan policies GEN2 or S7.
31. The Council's officer report acknowledges that the appeal site can be considered as previously developed land. Policy H1 of the Local Plan provides for 450 dwellings through the re-use of existing buildings and previously developed land outside the urban area. There is no indication of how many of these 450 dwellings in these circumstances have been implemented, but there is clearly an on-going need to provide for the supply of new housing taking account of the latest HDT figures showing housing delivery to be considerably below 75%. Paragraph 60 of the Framework highlights the

⁴ APP/C1570/W/23/3320060

Government objective of significantly boosting the supply of homes. The proposal would provide for one new family sized dwelling. When considered cumulatively, this and other small housing developments can make an important contribution towards the Council's supply of housing. This carries moderate weight in favour of the proposed development.

32. When assessed against the policies in the Framework, the proposal would not lead to an isolated dwelling in the countryside and would provide some albeit limited support for services in both nearby villages. It would provide for a family sized dwelling making a small yet still important contribution to the supply of housing. Despite some limitations in terms of accessibility, the proposal would still provide some options for sustainable means of travel. Overall, the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
33. Therefore, whilst finding some limited conflict with the Development Plan in terms of accessibility, material considerations indicate that planning permission should be granted for the proposed development.

Conditions

34. I have considered the Council's suggested conditions. I have also considered those, not included within the Council's list, suggested by MAG Aerodrome Safeguarding Authority in response to consultation under the Town and Country Planning (Safeguarding Aerodromes, Technical Sites and Military Explosive Storage Areas) Direction 2002 (the site is under a flightpath of Stansted Airport).
35. Where necessary I have made minor alterations to suggested conditions for precision and clarity without altering their essence or meaning. Both main parties have agreed to my draft wording of the conditions, including the appellant's agreement with the two pre-commencement conditions.
36. Condition 2 is required for certainty as to what has been approved, including the omission of the proposed pond as it would be contrary to the Stansted safeguarding requirements. Conditions 3 and 4 are necessary to provide for good overall design in the interest of the character and appearance of the area. The visibility splay element of condition 4 is also necessary for highway safety. I've added further detail to this condition to ensure the effective implementation and maintenance of the landscaping works.
37. Condition 5 is necessary to minimise the effect on neighbouring amenities during construction and to safeguard the Stansted flightpath. Condition 10 is also required to protect the flight path. Conditions 6, 7 and 8 are required to provide for biodiversity mitigation and enhancement, whilst protecting against aviation bird strike (condition 7). Condition 9 is necessary to promote the use of electric vehicles in the interests of sustainability.
38. I have not imposed a contamination condition suggested by the Council's Environmental Protection Officer (EPO) as there is no indication that the site is of particular risk from contamination. The Council has also suggested a condition for internal noise protection, the response from the EPO stating that this is necessary due to the proximity to the M11 and railway line.

However, the site is not so near to these routes to justify such a condition. The EPO does not refer to the Stansted flightpath, but in any case I have doubts over the enforceability of the condition as drafted (including the reference to open windows) and do not consider it meets the relevant tests in paragraph 56 of the Framework.

39. Conditions 4 and 5 are pre-commencement conditions as they involve matters where adverse effects are possible from the onset of construction works.

Conclusion

40. For the above reasons I conclude that the appeal should be allowed.

David Cliff

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved drawings: 1001 Rev 01, 300 Rev 03, 301 Rev 01, 302 Rev 00, 311 Rev 01, 312 Rev 01, 401 Rev 00 and 402 Rev 00, except in respect of the pond shown on plan 300 Rev 03 which shall not be implemented.
3. No development above ground level shall take place until details/samples of the materials to be used in the construction of the external surfaces of the development hereby permitted are submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details/samples.
4. a) No development shall take place until details of both hard and soft landscape works, including tree protection measures, have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) proposed finished levels or contours;
 - ii) means of enclosure;
 - iii) car parking layout;
 - iv) other vehicle and pedestrian access and circulation areas (including site visibility splays);
 - v) hard surfacing materials;
 - vi) proposed and existing functional services above and below ground;
 - vii) soft landscaping works including new planting (noting species, plant sizes and proposed numbers/densities);
 - vii) measures to protect the existing trees to be retained; and
 - viii) an implementation programme with timings for all the above works including landscape management measures.b) All the above works shall be carried out and retained in accordance with the approved implementation programme. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size or species.
5. No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority following consultation with the Stansted Airport and Civil Aviation Authority. The statement shall include:

i) provisions to be made for the control of noise and dust emanating from the site consistent with the best practicable means as set out in the Uttlesford Code of Development Practice;

ii) measures to prevent the scavenging of any detritus by birds; and

iii) the prevention of fires and any smoke at the site.

The approved Construction Method Statement shall be adhered to throughout the construction period.

6. Ecological mitigation measures and works shall be carried out in accordance with the details contained within the Full Common Reptile Survey (Cherryfield Ecology, May 2023) and Ecological Appraisal (Cherryfield Ecology, September 2022).
7. No development shall take place other than footings and foundations until a Biodiversity Enhancement Layout for bespoke biodiversity enhancement has been submitted to and approved in writing by the local planning authority. The Biodiversity Enhancement Layout shall include (i) detailed designs or product descriptions, (ii) locations, orientation and heights for bespoke biodiversity enhancements and (iii) measures to prevent species of birds that are hazardous to aircraft being attracted to the site. The approved enhancement measures shall be implemented in accordance with the approved details prior to occupation of the development and all features shall be retained thereafter.
8. a) Prior to occupation of the development hereby permitted, a lighting design strategy shall be submitted to and approved in writing by the local planning authority. The strategy shall i) identify those areas/features on site that are sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and ii) show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places. All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. No other external lighting shall be installed without prior written approval from the local planning authority.

b) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order), all exterior lighting shall be capped at the horizontal with no upward light spill.
9. Prior to first occupation of the development hereby permitted, an operational electric car charging facility shall be installed at the development and retained as such thereafter.

10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) no reflective materials (including solar PV) other than clear or obscure glass shall be added to the building without the prior written consent of the local planning authority in consultation with Stansted Airport.