



Appeal Decision

Site visit made on 1 October 2024

by E Catcheside BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th October 2024

Appeal Ref: APP/C1570/W/24/3339429

Land East of Porters, Watch House Green, Felsted CM6 3EF

- 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 D Stevens against the decision of Uttlesford District Council.
 - The application Ref is UTT/23/1245/OP.
 - The development proposed is *"outline application for the construction of five detached dwelling and garages using existing access off the Braintree Road, with only access considered"*.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Darren Stevens against Uttlesford District Council. The application for costs is the subject of a separate decision.

Preliminary Matters

3. The appeal is in outline, with all matters reserved except for access. I have therefore treated the submitted site plan and street scenes as illustrative.
4. In support of the appeal, I have been provided with further ecological evidence, including a reptile assessment and a signed unilateral undertaking (UU), which provides for a financial contribution towards measures to mitigate effects on the Blackwater Estuary Special Protection Area (SPA) and Ramsar Site and the Essex Estuaries Special Area of Conservation (SAC). This information was not before the Council when it determined the application. However, the Council has previously considered the additional information as part of a revised planning application for the development, which has subsequently been withdrawn.
5. In its evidence, the Council has confirmed that, in light of the additional ecological information submitted, the sole reason for refusal on the decision notice has been addressed and it no longer wishes to contest the development on ecological grounds. I have therefore proceeded to determine the appeal on the basis that the Council's initial reason for refusal, and any associated conflict with Policies GEN7, ENV7 and ENV8 of the Uttlesford Local Plan (Adopted January 2005), and Policy FEL/CW4 of the Felstead Neighbourhood Plan 2018-2033 no longer applies.
6. The Council has introduced a new suggested reason for refusal in its evidence, citing concerns about the lack of affordable housing. The appellant has had the

opportunity to respond to the issues raised by the Council as part of the appeal process, and I have had full regard to the comments made. I have identified the main issue in this appeal based on the evidence provided.

7. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) require that, before deciding to give permission for a plan or project which is likely to have a significant effect on a European site, the competent authority must make an appropriate assessment of the implications of the plan or project on its conservation objectives. I have had regard to this duty and will return to this matter later in my decision.
8. On 30 July 2024, the Government published a consultation on “proposed reforms to the NPPF and other changes to the planning system” and the “National Planning Policy Framework: draft text for consultation”. A Written Ministerial Statement (WMS) entitled “Building the homes we need” was also published. Whilst a direction of travel has been outlined within the WMS, the changes to the National Planning Policy Framework (the Framework) can only carry limited weight at this stage, given that the document has not been finalised. Because the proposed reforms are not pertinent to the main issue in this appeal, I have not invited further comments from the parties.

Main Issue

9. The main issue is whether or not the proposed development would make adequate provision for affordable housing.

Reasons

10. The appeal site lies adjacent to a housing development that was under construction at the time of my site visit. It is proposed that the appeal scheme would utilise the access from Braintree Road that serves the adjacent development. Both the appeal site and the adjacent site have been within the ownership of the appellant’s company since before February 2021 when planning permission was granted for the adjacent development.
11. Given the proximity of the appeal site to the adjacent site, as well as their shared access from the main road, the developments would have a close, physical and functional relationship. Indeed, the appeal scheme is referred to as ‘phase 2’ of the Watch House Green development in correspondence between the parties. Consequently, I have no reason to conclude that the sites should be treated separately in respect of the need for affordable housing. The appellant does not dispute that the two sites together cover a site area of over 1 hectare (ha). Therefore, the requirement for affordable housing in the Framework is triggered.
12. Moreover, given that the appeal site is 0.62ha in size, it would not be excluded from the requirement to seek affordable housing provision even as a stand-alone development. This is because the Framework requires affordable housing to be secured on sites where 10 or more homes will be provided, or where the site has an area of 0.5ha or more.
13. Whilst I have no reason to conclude that the appellant deliberately sought to withhold a contribution to affordable housing, it remains the case that no affordable housing was secured as part of the adjacent development, and none is proposed as part of the appeal scheme. Moreover, there are no mitigating circumstances before me to persuade me that a contribution to affordable

housing is not necessary to make the development acceptable in planning terms.

14. I conclude that the proposed development would not make adequate provision for affordable housing. Therefore, there would be conflict with Policy H9 of the LP and the Framework, which seek to ensure that appropriate affordable housing provision is secured.
15. The Council has referred to Policy GEN6 of the LP in its evidence. This policy relates to infrastructure provision rather than affordable housing. Therefore, I have not found Policy GEN6 to be determinative to my consideration of the main issue in this appeal.

Other Matters

16. The appeal site lies within the zone of influence of the Blackwater Estuary SPA and Ramsar Site and the Essex Estuaries SAC, which are European sites as defined by the Habitats Regulations. The parties have agreed a financial sum to be put forward for habitat mitigation projects identified in the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy and I have been provided with a UU that seeks to secure the funds. However, it is not necessary for me to carry out an appropriate assessment because I am dismissing the appeal for other reasons.
17. I acknowledge the appellant's frustration that the Council did not raise its concerns about the main issue in this appeal at the time it determined the application. This matter is considered further in my separate decision on the application for costs. However, I have necessarily considered the appeal with regard to development plan policy for affordable housing and the Framework, and with consideration to the evidence on the main issue that is before me.

Planning Balance

18. Although the Council's concerns with regard to ecology have been overcome, the proposal would conflict with Policy H9 of the LP in respect of affordable housing provision. This is sufficient to bring the development into conflict with the development plan when read as a whole. Development that conflicts with the development plan should normally be refused unless material considerations indicate otherwise.
19. The Council concedes that it cannot currently demonstrate a five-year supply of deliverable housing sites. The evidence indicates that the current supply is 4.5 years, which is a modest shortfall. Nonetheless, in this circumstance, paragraph 11(d) of the Framework is engaged.
20. The proposed development would deliver five dwellings, which would contribute towards local housing needs. There would also be economic benefits arising from the proposal, including through the creation of construction jobs. Given its proximity to Felstead, new residents would undoubtedly support local services and facilities in the village as well as in other villages nearby. However, whilst the social and economic benefits arising from an additional five dwellings would be meaningful, the shortfall of housing is modest. Therefore, these benefits carry moderate weight in favour of the scheme.
21. The Council has not identified any harm in respect of the proposed residential use of the site, its effect on the character and appearance of the area, the

proposed access arrangements, or highway safety. Based on the evidence, I have no reason to disagree. The absence of harm weighs neither for nor against the proposal.

22. Overall, the moderate weight I attach to the benefits of the scheme would be significantly and demonstrably outweighed by the harm caused through the lack of affordable housing when assessed against the policies of the Framework, when taken as a whole. Consequently, the presumption in favour of sustainable development does not apply.

Conclusion

23. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons given above the appeal should be dismissed.

E Catchside

INSPECTOR