



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: 11th November 2024

Appeal Ref: APP/C1570/W/23/3335591

Land to the North of Brookfield, The Downs, Bran End, Stebbing CM6 3RJ

- 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 Ms Elaine Preou against the decision of Uttlesford District Council.
 - The application Ref is UTT/23/1286/OP.
 - The development proposed is 5no. dwellinghouses.
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Decision

1. The appeal is allowed and planning permission is granted for 5no. dwellinghouses at Land to the North of Brookfield, The Downs, Bran End, Stebbing CM6 3RJ in accordance with the terms of the application, Ref UTT/23/1286/OP, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of the development is taken from the application form insofar as it describes development.
3. The application was made in outline with all matters reserved except for access. I have determined the appeal on this basis and have regarded the details shown on the submitted site plan as illustrative, save for the proposed access arrangements.
4. The Council has commenced the preparation of a new local plan, which it has stated is at consultation stage. The emerging plan has not yet been submitted for examination and is subject to change, which limits the weight that can be afforded to it. My attention has not been drawn to any specific emerging policies that indicate a change in approach with regard to the main issue in this appeal. Consequently, I have determined the appeal based on the statutory development plan.

Main Issue

5. The main issue is whether the site is a suitable location for housing, having regard to the spatial strategy set out in the development plan, accessibility to services and facilities, and the effect of the proposal on the character and appearance of the area.

Reasons

6. The appeal site lies close to the well-established residential area on this part of The Downs, which extends to the northwest along Brick Kiln Lane. The Paddocks and Elm Croft lie to the northwest of the site, on slightly higher

ground. The character of Brick Kiln Lane becomes more rural as it heads eastwards along the northern border of the site. This is due in part to its narrow width and the absence of heavy traffic. The boundary between Brick Kiln Lane and the site is marked by a steep embankment and dense vegetation, which limits intervisibility.

7. The site lies outside of the defined settlement boundary of Stebbing, on land identified as open countryside by Policy S7 of the Uttlesford Local Plan (Adopted January 2005) (LP). Development in the countryside is precluded through Policy S7 other than where development needs to take place there or is appropriate to a rural area. These circumstances do not apply to the appeal scheme, therefore there is conflict with Policy S7 of the LP.
8. However, whilst the site was not identified in the Strategic Housing Land Availability Assessment (2018), it has since been allocated for residential development under Policy STEB:H5 of the Stebbing Neighbourhood Development Plan 2019-2033 (Made 19 July 2022) (NP), which forms part of the statutory development plan for the area. The proposal for 5 dwellinghouses accords with the allocation in principle, which allows for approximately 2-3 large dwellings or up to 5 small bungalows on the site.
9. There is clearly some tension between Policy S7 of the LP and Policy STEB:H5 of the NP. The Planning Practice Guidance (PPG) states that, under section 38(5) of the Planning and Compulsory Purchase Act 2004 if a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published¹. Given that the NP post-dates the LP by a significant margin, I attach greater weight to Policy STEB:H5 of the NP than I do to the conflict with Policy S7 of the LP. Consequently, the proposal is in accordance with the spatial strategy set out in the development plan when read as a whole.
10. Stebbing village contains some facilities to support the needs of nearby residents, including a primary school, public house, community store, a church, and sport and recreation facilities. The core of the village is around a 15-minute walk or a 4-minute bike ride from the appeal site and, from my observations, is connected to the village by a footpath. Although the footpath involves crossing the road, it nonetheless provides a route that segregates pedestrians from vehicular traffic. Whilst some future residents may choose not to use the path due to its narrow width and the distance to the village, there is nonetheless a viable option to access the village on foot or by bike.
11. Moreover, on my site visit I observed that the appeal site is within walking distance of a bus stop, which provides some connectivity to higher order settlements, and the Council has not disputed that the site is also served by the Essex Demand Responsive Transport.
12. Consequently, whilst it is likely that the development would result in some additional journeys by private car, these journeys would be reasonably low in number given the small-scale of the proposal. There would, however, be genuine alternatives for future occupants to prioritise travel by sustainable modes.

Planning Practice Guidance Paragraph 012 Reference ID: 21b-012-20140306, revision date 06 03 2014.

13. The development would introduce dwellings to a site that is largely devoid of large buildings. However, the illustrative site plan shows that the site could be developed without unduly compromising the nearby Important Open Gap identified in the NP. The rural character of the area would, therefore, be maintained. Moreover, the site is currently well-screened from The Downs and Brick Kiln Lane by dense hedging and trees, most of which could feasibly be retained as part of the landscaping details. It follows that the development would have a relatively discrete presence in longer views from the surrounding roads. Whilst the development would be likely to be visible in closer views, including from neighbouring properties, it would be viewed in context with the existing built-up area on this part of The Downs. Consequently, it would not be unsympathetic to local character.
14. Overall, notwithstanding its countryside location and the associated conflict with Policy S7 of the LP, I conclude the site would represent a suitable location for housing with regard to the spatial strategy due to its allocation for residential development under Policy STEB:H5 of the NP. The site would also have reasonably good access to services and facilities, and it would protect the character and appearance of the area. The development would be in accordance with Policy GEN2 of the LP which, amongst other things, expects developments to be compatible with surrounding buildings and to safeguard important environmental features in its setting. It would also accord with the National Planning Policy Framework (the Framework), insofar as it seeks to prioritise sustainable modes of travel and to recognise the intrinsic character and beauty of the countryside.

Other Matters

15. I note the comments expressed by third-parties that the development should comprise only bungalows. It is clearly the intention of the appellant that the five homes would be bungalows, and this would not be precluded by the use of the term 'dwellings' in the description of the development. However, because scale is a reserved matter, the height of the proposed buildings falls beyond the scope of this appeal.
16. Concerns have been raised by third parties in respect of mutual overlooking between the proposed dwellings and nearby properties. This issue will be an important consideration at the reserved matters stage. However, I see no reason why the development could not be designed to prevent unacceptable overlooking, including with respect to the layout, height, and orientation of the dwellings and windows, amongst other things. Therefore, whilst I acknowledge the concerns raised, this matter would not justify the refusal of outline planning permission.
17. The appeal site would utilise the existing access from The Downs, in accordance with Policy STEB:H5 of the NP. I note that third party concerns have been raised in relation to highway safety at the junction. However, from my observations there is good visibility in both directions from the proposed access. Consequently, I have no reason to depart from the view of the Highway Authority, which did not raise any objection to the scheme.

Planning Balance

18. There would be conflict with Policy S7 of the LP due to the site's location outside of the settlement boundary. However, this conflict is resolved in favour

of Policy STEB:H5 of the NP which post-dates the LP and allocates the site for housing development. Given that I have found the site would have reasonably good access to services and facilities and that it would not cause harm to the character and appearance of the area, the proposal would be in accordance with the development plan when read as a whole. In this circumstance, paragraph 11(c) of the Framework states that the development proposal should be approved without delay.

19. Because the proposal is in accordance with the development plan when read as a whole, paragraphs 11(d) and 14 of the Framework are not engaged.

Conditions

20. The Council provided a list of suggested conditions, which I have considered against the tests set out in the Framework and the PPG. Where appropriate, I have adjusted the wording of the conditions to improve precision and enforceability, and to prevent unnecessary duplication.
21. As the application is made in outline, it is necessary to impose conditions relating to the timing and nature of the reserved matters applications and the subsequent commencement of development, as required by statute. A condition listing the approved plans is also necessary to provide certainty.
22. A pre-commencement condition is imposed to require that contamination risks are assessed and remediated. This is necessary to protect the health and wellbeing of future occupants of the dwellings, local residents, and the environment.
23. A pre-commencement condition is required to secure a programme of archaeological works to ensure that harm to potential archaeological remains is mitigated and any assets are recovered before the site is developed. A separate condition is included to secure the reporting and publication of the archaeological findings in the interests of recording the non-designated heritage asset.
24. The Council suggested multiple conditions to manage the effects of construction on local residents, the highway network, and biodiversity including protected species. It is necessary to protect these features and so I have combined the Council's suggested conditions into two conditions to avoid unnecessary duplication. In doing so, I have omitted the Council's reference to the Uttlesford Code of Development Practice. This document is not before me and, therefore, I cannot be satisfied that compliance with its contents would meet the Framework's tests for conditions. The conditions are pre-commencement conditions because they relate to the construction period.
25. I have included a condition requiring the submission of a biodiversity enhancement strategy in order to ensure the enhancement of biodiversity features.
26. I have imposed a number of conditions to secure details relating to the layout and construction of the site access. These conditions have been imposed in the interests of highway safety. I have not included the Council's originally suggested condition to ensure the access is constructed with unbound material, because the Council subsequently suggested it could not be enforced, and I have no reason to disagree.

27. The Council suggested conditions relating to the details of external lighting and the accessibility and adaptability of the dwellings. The conditions relate to matters of detail that would be considered at the reserved matters stage. Therefore, I have not included these conditions.
28. The installation of electric vehicle charging points is now covered by separate legislation. Therefore, it is not necessary for me to include the Council's suggested condition on this matter.

Conclusion

29. I conclude that the proposal would accord with the development plan when read as a whole and the material considerations do not indicate that a decision should be made other than in accordance with it. Therefore, for the reasons given above the appeal should be allowed.

E Catchside

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the layout, scale, appearance, and landscaping (hereafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development commences and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall commence no later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans, only insofar as the details relate to the site area and the approved matter of access: 002 (Site Plan – Existing) and 101 Rev B (Location and Site Plan – Proposed).
- 5) No development shall take place until a Phase 1 Desk Study report documenting the ground conditions of the site with regard to potential contamination has been submitted to and approved in writing by the local planning authority. The report shall adhere to British Standard BS 10175:2011 (or any replacement standard).

Where shown to be necessary by the Phase 1 Desk Study, a Phase 2 Site Investigation adhering to British Standard BS 10175:2011 (or any replacement standard) shall be submitted to and approved in writing by the local planning authority.

Where shown to be necessary by the Phase 2 Site Investigation, a detailed Phase 3 remediation scheme shall be submitted to and approved in writing by the local planning authority. The remediation scheme shall detail measures to be taken to mitigate any risk to human health, groundwater, and the wider environment. Any works that form part of the Phase 3 remediation scheme as approved by the local planning authority shall thereafter be completed prior to the commencement of the development.

Upon completion of the remediation scheme, a verification report shall be submitted to and approved in writing by the local planning authority before the development is occupied.

- 6) No development, nor any preliminary groundworks of any kind, shall take place until a programme of archaeological investigation has been undertaken in accordance with a written scheme of investigation that has first been submitted to and approved in writing by the local planning authority.
- 7) Within six months of the completion of the archaeological investigation carried out pursuant to condition 6, a post-excavation assessment shall be submitted to and approved in writing by the local planning authority. The assessment shall include post-excavation analysis, the preparation of a full site archive and report, and details for publication of the report. The approved report shall thereafter be made available for publication in accordance with the approved details.
- 8) No development shall take place until a construction management plan has been submitted to and approved in writing by the local planning authority. The management plan shall include details of the following:
 - provisions to be made for the control of noise and dust,
 - construction site access,
 - parking arrangements for site operative's and visitor vehicles,
 - loading, unloading, and storage arrangements for construction plant and materials, and
 - vehicle and wheel washing arrangements.

The approved management plan shall thereafter be adhered to throughout the construction period.

- 9) No development shall take place until a Construction Environment Management Plan (CEMP) for biodiversity has been submitted to and approved in writing by the local planning authority. The CEMP shall include all of the construction phase recommendations included in the Preliminary Ecological Appraisal Incorporating Bat Survey Inspection, dated November 2022 and the following details:
 - a risk assessment of construction activities that have the potential to cause harm to biodiversity features,
 - identification of biodiversity protection zones,
 - measures to be taken to protect the Bran End Special Roadside Verge and Local Wildlife Site during the construction process,

- precautionary methods to be taken to avoid harm to priority and protected species, including Great Crested Newts,
- the location and timing of works to avoid harm to biodiversity features,
- the role and responsibilities of an ecological clerk of works, including details of construction activities that would be overseen by a suitably qualified ecologist,
- named persons with responsibility for implementing the CEMP and lines of communication, and
- protective fencing, exclusion barriers, and warning signs.

The approved CEMP shall thereafter be adhered to for the duration of the construction period.

- 10) Prior to the commencement of any development above slab level, a biodiversity enhancement strategy shall be submitted to and approved in writing by the local planning authority. The strategy shall include:
- the purpose and conservation objectives of enhancement measures,
 - detailed designs or product descriptions to achieve the objectives,
 - locations, orientations and heights of proposed enhancement measures, with maps and plans where appropriate,
 - a timetable for the implementation of the enhancement measures, to be aligned with the construction phasing of the development,
 - details of named persons with responsibility for implementing the strategy,
 - details of aftercare and maintenance measures.

The biodiversity enhancement strategy shall thereafter be implemented in accordance with the approved details.

- 11) No dwelling hereby permitted shall be occupied until the vehicular access from The Downs, as shown on approved plan ref. 101 Rev B, has been laid out with a 5.5 metre carriageway width with appropriate radii, two 2-metre wide footways, and visibility splays with dimensions of 2.4 metres by 43 metres as measured from the nearside edge of the carriageway. The access shall thereafter be retained free of any obstruction above 600mm in height at all times.
- 12) The access from The Downs, as shown on approved plan ref. 101 Rev B, shall have a gradient no steeper than 4% (1 in 25) for the first 10 metres from the highway boundary, and no greater than 8% (1 in 12.5) thereafter.
- 13) There shall be no discharge of surface water onto the public highway.

END OF SCHEDULE