



Appeal Decision

Site visit made on 23 October 2024

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th November 2024

Appeal Ref: APP/A1530/W/24/3342003

Elms Farm Bungalow, Messing Road, Tiptree, Essex CO5 9TG

- 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 Ms Zoe Collins against the decision of Colchester City Council.
 - The application Ref is 230067.
 - The development proposed is erection of detached bungalow.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of making the appeal, the appellant confirmed that it was intended to complete a planning obligation under section 106 of the Town and Country Planning Act 1990, with a view to addressing the fourth reason for refusal. Despite evidence that there has been some engagement between the parties on this matter, no completed obligation has been submitted in accordance with the appeal timetable or the subsequent deadline I set. Consequently, I have not been able to take any intended planning obligation into account.

Main Issues

3. Taking account of the appellant's expressed intention to resolve the matters raised in the fourth reason for refusal, the main issues are:
 - the effect of the proposal on the character and appearance of the area,
 - the effect on protected species and biodiversity, and
 - whether the proposed development would be a suitable location for housing having regard to the Council's spatial strategy and the conclusions reached on the preceding main issues.

Reasons

Character and Appearance

4. Lying immediately to the south of Elms Farm Bungalow, the appeal site is a self-contained plot with its own access. A post and rail fence separates it from the adjacent garden and driveway. The site currently contains a single storey building in a gravelled yard near the road and a paddock at the rear where horses were grazing at the time of my site visit. There is a dense and continuous hedgerow along the front boundary and additional hedgerows at the rear.

5. At present, there is a fairly abrupt change in character between the urban area of Tiptree, nearby to the south, and the rural landscape to either side of New Road/Messing Road, where the appeal site is located. On leaving the built-up area, the road quickly narrows and is lined with hedgerows and soft verges, without pavements or street lighting. To either side are arable fields and smaller parcels of open land. Although there are some houses, they are widely spaced and there is no coherent or continuous built-up frontage. There are also sporadic agricultural buildings, stables and other typical rural buildings. As such, the appeal site stands in a clearly rural context, despite its proximity to the settlement.
6. The appeal site itself has a largely open character, despite the modest building on the frontage, which is itself well screened behind the hedge. Much of the site is rough pasture. Apart from the existing bungalow to one side, the site adjoins other paddocks and undeveloped land. The dwelling and barns at Elms Farm are somewhat further to the south, beyond an intervening parcel of scrub. As such, there is a very clear sense of connection between the site and the surrounding countryside.
7. The proposed dwelling would have a similar design and form to the existing bungalow and would have a comparably spacious plot. Therefore, there would be a reasonable level of visual consistency with the other sporadic dwellings. Nevertheless, the proposal would introduce additional buildings along the road frontage, together with a substantial residential curtilage, including hard surfacing, parking, and all the other paraphernalia associated with residential use of land. Since the existing housing is well spread out, there would be no sense that the development would round off an existing cluster of housing or infill a well-defined gap between buildings. Rather, it would extend and consolidate the existing sporadic development, diminishing the level of connection with the surrounding countryside.
8. Land opposite and to the south is allocated in the Tiptree Neighbourhood Plan, made in May 2023, for a sizeable residential development. The evidence before me includes an illustrative masterplan sketch submitted with an outline planning application, which indicates that this would include housing in the field opposite the appeal site. While the masterplan does not include a detailed layout, or show how the new housing would address the New Road frontage, there is a reasonable expectation that the planned housing would establish a more urban character along the west side of the road.
9. However, the site allocation does not include the appeal site or the land immediately to the north, east or south. Therefore, the appeal site would not be surrounded or engulfed by new development. Although there is some allocated land further to the south, the masterplan indicates a significant amount of green space and soft landscaping within that area. Explanatory evidence submitted with the outline application¹ also expresses an intention to maintain an undeveloped buffer around the Grade II listed buildings at Elms Farm. On that basis, there would still be a strongly rural context around the new housing, taking in much of the countryside to the east of New Road. The proposed development would introduce further piecemeal urbanisation which would erode that rural context to a modest but harmful degree.

¹ Appellant's Statement of Case, Appendix A3: ADP Planning Statement for Land at Elms Farm, Tiptree, para 4.38

10. For the above reasons, I conclude that the proposal would have a harmful effect on the character and appearance of the area. That would be contrary to the general requirement in Policy SP7 of the Section 1 Local Plan² and Policy DM15 of the Section 2 Local Plan³ that new development should respect and respond positively to local character and context. It would more specifically conflict with requirements in Policies OV2 and ENV1 of the Section 2 Local Plan that the intrinsic character and appearance of the countryside should be respected.

Protected Species and Biodiversity

11. Although the appeal site adjoins an existing dwelling and includes a building and gravelled yard, it is outside the manicured garden area. Furthermore, there are existing features both within the site and in the immediate vicinity which are likely to be of biodiversity value and which could be detrimentally affected by the proposed development.
12. In particular, the plans indicate a new native species hedge along the front boundary, to either side of a central vehicular access and behind visibility splays. That clearly implies that the existing, dense and apparently very well-established hedgerow would be removed. A new hedgerow of equivalent biodiversity value is likely to take a long time to become established. The hedgerow at the rear is less likely to be affected, since it could be retained as a boundary feature. However, the rough grazing would give way to a domestic garden with lawns. There is also a small pond nearby, outside the site boundaries, and no evidence has been presented to confirm whether or not any protected species making use of that waterbody would be affected.
13. The Council has not alleged that there would be any effect on designated nature conservation sites. However, in the absence of any baseline ecological evidence, the presence or otherwise of protected species cannot be reliably established and the effect on biodiversity cannot be fully assessed.
14. It appears the appellant was not specifically invited to provide the required ecological evidence prior to the Council's decision. Nevertheless, Circular 06/2005⁴ makes clear that it is essential that the presence or otherwise of a protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. Policy ENV1 of the Section 2 Local Plan also requires that development proposals are supported by appropriate ecological surveys where necessary. In light of the third reason for refusal, had additional ecological evidence been included with the appellant's statement of case, I could have considered whether, exceptionally, to take that evidence into account⁵. However, the appeal timetable does not include an opportunity for substantial additional technical evidence to be sought at a later stage.
15. Based on the evidence before me, I am not persuaded that the proposed development would satisfactorily avoid or mitigate harm to protected species and biodiversity. Consequently, it would conflict with Policy ENV1 of the Section 2 Local Plan, which requires amongst other things that development

² North Essex Authorities' Shared Strategic Section 1 Plan, adopted February 2021

³ Colchester Borough Local Plan Section 2, adopted July 2022

⁴ Office of the Deputy Prime Minister Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System, 16 August 2005

⁵ Procedural Guide: Planning Appeals - England, paragraph 12.2.3

conserves or enhances the biodiversity value of the site and avoids harm to protected species, taking a precautionary approach where insufficient information is provided. It would also conflict with paragraph 180 in the National Planning Policy Framework (the Framework), which requires that development minimises impacts on biodiversity and with the statutory duty on public bodies to conserve and enhance biodiversity⁶.

Suitability of Location

16. The appeal site is outside the settlement boundary of Tiptree in the Local Plan and also outside the boundary of the site allocation described above. Therefore, for purposes of the development plan, it is regarded as being in the countryside. While Policy SP3 of the Section 1 Local Plan allows for development outside but adjoining settlements according to their scale, sustainability and existing role within each individual district and the wider North Essex area, it also states that growth will be planned to ensure, amongst other things, that existing settlements maintain their distinctive character and conserve their setting.
17. In the Section 2 Local Plan, Policy SG1 and the supporting table defines Tiptree as a Sustainable Settlement. It is among the larger settlements within this tier of the settlement hierarchy and the supporting text recognises that the settlement provides a concentration of jobs, services and facilities. Additional housing is planned within the Sustainable Settlements, as detailed in Policy SG2, and in the case of Tiptree, the Neighbourhood Plan includes site allocations to deliver planned growth, which include the land opposite the appeal site as described above.
18. Given the rural nature of the road, which lacks pavements and street lighting, walking into Tiptree or to the nearest bus stop would not be a realistic option for all future occupiers, or in all circumstances. Although the allocated site is accessed from the same road and includes land further from the settlement, the illustrative masterplan indicates that the point of access to the highway network would be rather closer to the built-up area. The Council has stated that there is no expectation of a new footpath being provided and, while the appellant questions that statement, no specific evidence has been presented of any proposed accessibility enhancements.
19. However, cycling from the appeal site into the settlement would be feasible for a reasonably competent cyclist, and journeys by car to local services would generally be short. Consequently, future occupiers would have access to jobs, services and facilities in Tiptree, albeit with some reliance on travel by car.
20. The dwelling would not be isolated, given its reasonably close relationship with the settlement. Furthermore, the Framework recognises that housing can contribute to sustainable development in rural areas, where it would enhance or maintain the vitality of rural communities. However, the Framework does not preclude the use of settlement boundaries to direct and define areas of growth, including within rural areas. Furthermore, while the settlement as a whole is regarded as a sustainable location for plan-making purposes, land outside the settlement boundary is defined in the development plan as countryside and is not a focus for growth.

⁶ s40 of Natural Environment and Rural Communities Act 2006

21. To that end, both Policy SG1 and Policy TIP01 of the Tiptree Neighbourhood Plan direct that development outside the settlement boundary should be considered against Policy OV2 of the Section 2 Local Plan. This requires amongst other things that any residential development in the countryside respects the character and appearance of landscapes and the built environment and preserves or enhances biodiversity. As previously explained, I have concluded that the proposed development would do neither.
22. It has not been clearly demonstrated that the whole site falls within the definition of previously developed land in the Framework, given that the undeveloped, grassy paddock is fenced off separately from both the garden and the yard in the front part of the site. In the Council's Officer Report, it was described as an open field and there is no reference to it being regarded by the Council as existing residential curtilage. In any case, Policy SP3 refers to re-use of previously developed land within settlements, which is not the case here, and Policy OV2 does not offer any specific support for residential redevelopment of previously developed land in the countryside. Similarly, the support in the Framework for use of brownfield land does not extend to sites which are unsuitable for other reasons.
23. Therefore, for the reasons given above, I conclude that the proposal would not accord with the Council's spatial strategy, as articulated in Policy SP3 of the Section 1 Local Plan and Policies SG1, SG2 and OV2 of the Section 2 Local Plan, due to the conclusions reached on the preceding main issues.

Other Matters

24. The proposal would provide a new home suitable for a range of occupiers, including a family or those requiring accommodation mainly on one level. There would be some modest economic and social benefits associated with construction process and future occupiers' use of local services. Nevertheless, the Council's Officer Report details that a five year housing land supply is in place, based on the Local Plan housing requirement, which is less than five years old. No updated or contrary evidence has been provided in relation to the adequacy of the housing land supply. While even a single dwelling would help to boost the supply of housing, against that background, the modest benefits of the proposal do not outweigh the harm identified above.
25. The provision of suitable internal accommodation, vehicular access, garaging and parking are neutral factors which weigh neither for nor against the proposal. There is no clear evidence that the level of energy efficiency or use of sustainable construction methods would provide benefits beyond the usual requirements of the development plan and/or Building Regulations.
26. The Grade II listed buildings at Elms Farm comprise a farmhouse and associated barns, standing in a well-defined group. As noted above, there is a parcel of scrub between the listed buildings and the appeal site, which would continue to provide a clear sense of separation. The Council did not allege any harm to the setting of these designated heritage assets and based on my observations on site, I concur that their setting would be preserved. However, that is also a neutral consideration.
27. While Policy SP1 of the Section 1 Local Plan states that development which complies with the development plan will be approved without delay, unless material considerations indicate otherwise, in this case the proposal would not

accord with the development plan for the reasons given above. As such, the proposal does not find support from the provisions of Policy SP1 or the similar provisions in paragraph 11c of the Framework.

28. The proposed development would trigger a requirement for financial contributions in relation to community, sport and recreation facilities, in accordance with Policy SP6 of the Section 1 Local Plan, Policy PP1 of the Section 2 Local Plan and the Supplementary Planning Documents listed in the fourth reason for refusal. As noted above, the appellant is agreeable to making the required contributions but, since no planning obligation has been completed, this matter has not been fully resolved. However, since I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter in any further detail.
29. Likewise, since I am dismissing the appeal, it is not necessary for me to give further consideration to whether the RAMS payment which has been made adequately addresses any likely significant effects of the development on European Sites, either alone or in combination with other development.

Conclusion

30. The proposal would conflict with the development plan and there are no material considerations which indicate that a decision should be made otherwise than in accordance with the development plan. Therefore, the appeal should be dismissed.

Jane Smith

INSPECTOR