



Appeal Decision

Site visit made on 28 October 2024

by V Goldberg BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2024

Appeal Ref: APP/C1570/W/24/3340571

Serena, Chelmsford Road, Hatfield Heath, Essex CM22 7BD

- 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 Michelina Alferi and Gabriella and Victoria Adams against the decision of Uttlesford District Council.
 - The application Ref is UTT/23/3040/FUL.
 - The development proposed is described as 'demolition of garage and erection of replacement garage. Erection of 2no. detached dwellings, together with associated parking, residential curtilages and landscaping, and creation of new vehicular access'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Reference has been made to the site being within the Metropolitan Green Belt, but this was not addressed within the officer's report or appeal statement. On this basis, in the interests of clarity, the main parties were therefore asked whether the proposal would be 'inappropriate development'. Agreement was reached between the main parties that the built form would be located outside of the Metropolitan Green Belt. I have therefore determined the appeal on this basis.
3. On 12 December 2024 the Government published a revised National Planning Policy Framework (the Framework). Having reviewed the changes, I am satisfied that they do not affect the substantive matters of the appeal and that proceeding without further consultation with the main parties would not be prejudicial to their respective cases. The paragraph numbers referred to, have been updated to align with the updated Framework.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the character and appearance of the area; and
 - the biodiversity of the site and its surroundings.

Reasons

Character and appearance

5. The appeal site lies within the rear garden of Serena, a detached dwelling on Chelmsford Road, a street characterised by large, detached houses of differing designs in spacious plots.
6. Backland development is characteristic in the immediate area including Holly Barn, Hamilton House and others further along the road providing a second building line to the rear of the properties fronting Chelmsford Road. There is limited visibility of these backland properties from Chelmsford Road.
7. The Council's sole concern relates to obscure glazing to the first-floor front elevations of the new dwellings. However, while its use would be unusual, it would not negatively affect the character and appearance of the street scene as the properties would not be visible from Chelmsford Road. Whilst views of the dwellings would be achieved when accessing the properties from the proposed access, the dwellings would not be viewed in the context of other properties, and it is unlikely that the type of glazing would be perceptible from a distance.
8. Whilst all first-floor windows of both dwellings would be obscurely glazed, the varied design of properties and fenestration in the area means the glazing would not appear out of place in its context. In particular, the proposed dwellings would have a similar design to one another and would be read together. Moreover, the use of obscure glazing based on the internal layout of the proposed dwellings would be acceptable due to the windows serving non habitable rooms. The use of obscure glazing to ensure privacy to the existing dwelling, would therefore not amount to poor design as the proposed dwellings would be compatible with the appearance and materials of surrounding buildings.
9. For the reasons above, I conclude that the proposed development would not have a harmful effect on the character and appearance of the area. It would therefore comply with GEN2 of the Uttlesford Local Plan 2005 (ULP) insofar as it seeks development to be compatible with the appearance and materials of surrounding buildings.

Biodiversity

10. A number of trees are located within the site and an area of Lowland Mixed Deciduous Woodland (a priority habitat) exists to its rear.
11. During the course of the application, it was considered that insufficient information had been submitted to assess the impact of the proposal on bats and Great Crested Newt (GCN). Surveys were therefore required to comply with Government standing advice which requires surveys for GCNs if there is a pond within 500m of the development, and a survey for bats if the area includes buildings or trees with features that bats tend to use nearby.
12. The appellant's Preliminary Ecology Assessment (PEA) considers that the site is a typical managed garden which would appear to have few opportunities for wildlife. It concludes that no further environmental studies would be necessary, contrary to the consultee response from the Council's ecologist and the technical report by Ecology Solutions commissioned by third parties.
13. Within the Ecology Solutions report, reference is made to Lea Hall which is located approximately 160m north of the site whereby surveys were required

for reptiles, GCN, badgers and bats in the determination of planning application UTT/19/3172/FUL. The report advises that this application refers to two ponds being surveyed and GCN presence being identified through eDNA testing.

14. Given the proximity of Lea Hall to the site, it is likely that the water bodies considered in that application would also be within 500m of the appeal site. This therefore casts doubt to the claim within the PEA that there are no ponds or watercourses on or near the site. Moreover, the PEA and ecological rebuttal fail to address if there are any water bodies within 500m of the proposed development. This is important as Government standing advice requires a survey for GCN if there's a pond within 500 metres of the development, even if it only holds water some of the year. Given the evidence of licensable activities at Lea Hall, third-party representations cast further doubt that the proposal would not affect biodiversity at the site. On this basis, the request for additional surveys during the application appears to have been reasonable and necessary.
15. Moreover, the presence or absence of protected species and the extent to which they could be affected by the proposed development should be established before planning permission is granted. Accordingly, it would not be appropriate to require further surveys via planning condition.
16. Reference is made to planning permission for an earlier scheme that was refused (UTT/22/2625). An extract from the officer's report is provided which notes that there is no standing water or priority habitats on site. From this extract it is unclear if the application identified the priority habitat to the rear of the site or water bodies within 500m. Whilst the previous planning application did not have a reason for refusal relating to ecology, this previous decision does not preclude the appeal from considering the current scheme on its own merits, including the latest evidence before me and the significance of protecting European protected species.
17. For the reasons above, from the evidence before me, I am not satisfied that the extent to which protected species may be affected by the proposed development has been satisfactorily addressed. Accordingly, notwithstanding that Natural England has not been consulted, it has not been demonstrated that the proposed development would not have a harmful effect on the biodiversity of the site and its surroundings. On this basis, there would be conflict with the nature conservation aims of Policies GEN7 of the ULP and paragraph 193 of the Framework.

Planning Balance and Conclusion

18. The proposal would be likely to have a harmful effect on the biodiversity of the site and surroundings. As a result, protected species are likely to be negatively affected by the proposal. Whilst the proposed development would not have a harmful effect on the character and appearance of the area, the harm identified in respect of biodiversity brings the scheme into conflict with the development plan taken as a whole. Substantial weight is afforded to this conflict.
19. The proposal would provide two dwellings in the Borough. This would make a small but useful contribution as indicated by paragraph 73 of the Framework, particularly given that the Council concedes it is unable to demonstrate a five-

year supply of deliverable housing sites. The 5.14-year provision stated, does not include the required 20% buffer due to the ULP being more than five years old. The Council has not provided a revised figure but accepts that the Local Plan cannot be considered as being fully up to date.

20. Paragraph 11(d) of the Framework is a relevant consideration as a result of the Council's housing supply. It indicates that in the circumstances of this case, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
21. Whilst the appeal proposal would create two additional properties constructed with an environmentally low impact, in a sustainable location with associated social and economic benefits, given the quantum of development these benefits would be limited or short term in nature. These are benefits of the scheme that are afforded moderate weight in favour of the development.
22. Taking all of the above into account, I consider that the harm identified in relation to the effect of the proposal on biodiversity, significantly and demonstrably outweigh the stated benefits when assessed against the policies in the Framework when taken as a whole.
23. Consequently, 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.
24. For the reasons given above the appeal should be dismissed.

V Goldberg

INSPECTOR