



Appeal Decision

Hearing Held on 27 March 2018

Site visit made on 27 March 2018

by Amanda Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 08 June 2018

Appeal Ref: APP/C1570/W/17/3178354 **Land west of Hall Road, Elsenham, Essex**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr John Dale, of Bovis Homes Ltd against the decision of Uttlesford District Council.
 - The application Ref UTT/16/1861/DFO, dated 1 July 2016, sought approval of details pursuant to condition 1 of a planning permission, granted on 19 December 2013.
 - The application was refused by notice dated 10 March 2017.
 - The development proposed is: Details following outline application UTT/13/0177/OP for the erection of 116 new build dwellings including 47 affordable dwellings, open space, play areas, land for education use and other ancillary works – details of appearance, landscaping, layout and scale at land west of Hall Road Elsenham.
 - The details for which approval is sought are: details of the layout, scale, landscaping and appearance, hereafter called the Reserved Matters.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Mr John Dale, of Bovis Homes Ltd against Uttlesford District Council. This application is the subject of a separate Decision.
3. An application for costs was also made by Uttlesford District Council against Mr John Dale of Bovis Homes Ltd. This application is the subject of a separate Decision.

Procedural Matters

4. The appellant confirmed at the hearing that that notwithstanding the Council's reasons for refusal, which are concerned with surface drainage and biodiversity, the application was for approval of reserved matters, namely layout, scale, landscaping and appearance. The principle of development has been established and the matter before me is how this is to be achieved.
5. Surface drainage and biodiversity are issues dealt with through conditions attached to the outline permission. I raised this before the hearing and the Council responded by advising that drainage and biodiversity were

interdependent and that furthermore, they could not be dissociated from the development's layout.

6. Having reviewed the evidence before me I have concluded that biodiversity cannot be dissociated from reserved matters. However, the application and appeal do not explicitly seek discharge of the drainage condition and I consider drainage can be dissociated from the layout. As such, issues in relation to drainage are not determinative to this appeal and I have not considered it further in my reasoning.
7. The Council confirmed on the day of the hearing that notification letters had not been issued. Although the appellant and two interested parties arrived, I concluded that I could not be sure that all interested parties were aware of the appeal. As such, I opened the hearing and heard the arguments from those present but then adjourned after the site visit to allow for that formal notification to be sent out. In the event, there were no further representations and I concluded that it was not necessary to return for a further sitting. The main parties agreed that costs applications could be dealt with under the procedure for written representations.

Main Issues

8. The main issues are:

- The effect of the development on the character and appearance of the area, including whether it would preserve the setting of the Grade II listed Old Vicarage and Grade I listed church; and,
- Whether the development would have an adverse effect on local biodiversity.

Reasons

Character and appearance

9. The appeal site is a south facing slope on the edge of the built-up extent of Elsenham, and comprises two large pastoral fields, separated by a mature hedge, which run down to the Stansted Brook (the brook). There are scattered specimens and groups of mature trees, as well as a significant belt of protected and mature riparian vegetation along the valley bottom. The opposing valley slope is largely agricultural with what appeared to be farm buildings on the ridgeline.
10. To the north and west, the site is contained by a railway line and a school playing field. However, to the east there is a short and loosely arranged line of dwellings fronting Hall Road, ending in the large plot of the Old Vicarage. The listed church's tower can be seen in the mid-ground from some parts of the site.
11. The development would comprise mainly two storey dwellings. Nearly half would be pairs of very similar semi-detached dwellings arranged in tight and broadly parallel formations and their garden space would be close to the Council's threshold for acceptability. There would be a uniformity of height, scale and style which would be suggestive of a high degree of urbanisation across a large part of the site.
12. Elsenham is a small settlement and on its eastern edge the building pattern has diverse scale, style and form as it gradually opens out into the countryside.

The undeveloped land opposite the site, modest period cottages and the narrow lane of Hall Road give the approach to the site a distinct semi-rural character. The Inspector for a previous appeal¹ for reserved matters concluded that the site is a sensitive edge of village location, and that this development would be a transition between the built up confines of Elsenham and the rural land to its immediate south. On the basis of my observations I see no reason to disagree with that assessment. This is reinforced by submissions from interested parties who have highlighted that recent considerations of land allocations have concluded that the land to the south of the site is unlikely to be considered for development in the future.

13. An interested party has argued that the development would be unsympathetic to its location. In particular the central green corridor, highlighted by the appellant as a notable feature within the layout to mitigate the development's effect on this sensitive site, would be significantly reduced compared to what was shown on the illustrative layout. The importance of maintaining the physical and visual links of a central green corridor was also highlighted by the previous Inspector.
14. A transition site could reasonably be expected to contain features which reference its particular location, in this case giving the development a semi-rural character as well as allowing visual links through built form. Along the southern site boundary, swales and a large play area would allow appropriate separation between the valley bottom and the dwellings. However, moving towards the site entrance, although the building pattern would be separated alongside two sections of retained hedge, there would be a notable pinch point between Plots 112 and 41, and to a lesser extent between Plots 69 and 27. Furthermore, the ongoing route to the site entrance would comprise the highway verge and frontages of Plots 113 -116, on one side of the road only. In this section, the green corridor would appear as little more than a widened highway verge in a housing estate.
15. As such, the visual flow and physical extent of the 'green corridor' would be interrupted. Furthermore, the haphazard and illogical alignment of dwellings on Plots 26, 41, 42, 66, 67, 68, and 69, and the squeezing in of play areas between the retained hedge, plot boundaries and awkward level changes to fit the development on the sloping site within the corridor, is suggestive of a poor relationship between the building pattern and open space.
16. The illustrative layout has a legible and spacious green framework, with a functional relationship between the built form and public realm. Clusters of dwellings of varying scale are set between areas of generous open space and existing vegetation, and there is a clear sense that the site and its existing features have informed the overall concept. The central corridor is a broad tree lined road running from the brook and opening out into a generous space suggestive of a village green at the site entrance. Although I would normally consider that an illustrative layout is just that, the appellant argued at the hearing that drawings which were cited in the outline permission should be given weight. Accordingly, I give the illustrative layout weight in my reasoning.
17. However, whereas the building pattern for the illustrative layout appears informed by the open space framework, the green corridor for this appeal

¹ APP/C1570/W/15/3006105

appears to be a disruption. Furthermore, much of the open space along this route would be highly engineered space comprising highway verge, and swale margins, both of which would have specific maintenance requirements to ensure their functionality, which would have an urbanising effect.

18. Consequently, I am not satisfied that this route through the site would have the spatial qualities needed to provide a true green corridor, or be able to accommodate vegetation of sufficient stature to have the character of a semi-rural pathway to the countryside. Moreover, the continuity and extent of this corridor would be significantly weaker than that shown on the illustrative layout.
19. At a more detailed level, a number of concerns have been drawn to my attention by interested parties. The positioning of Plots 24 and 25, which would back onto the brook on the southern edge of the development, would deviate from the underlying building pattern. These dwellings would be prominent and intrusive in the street scene. There also appears to be inconsistency between drawings, and dwellings with garden areas that fall slightly short of the Council's guidelines. Moreover, I am not satisfied that locating play areas next to conveyance swales or private drives would meet the requisite safety or buffer needs of such areas.
20. These conclusions reinforce my reasoning in respect of the layout, a large part of which would have a uniformity and rigidity that is absent from the informality and fluidity of the illustrative layout. Furthermore, the engineered, irregularly shaped and highly maintained spaces that would comprise most of the open space would not be reflective of the site's rural position and would represent a degree of urbanisation which would be inappropriate in this semi-rural context.
21. Although the Council withdrew its early objections to the development's design, this does not diminish the weight I give to the concerns of the Parish Council and other interested parties in this regard.
22. Paragraph 132 of the Framework makes it clear that the significance of a heritage asset can be harmed by development within its setting. Accordingly, I consider it prudent to pay special attention to the effect of the development on its setting and proximity to a listed building. This is also in line with the provisions of Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
23. There is limited information before me in relation to the significance of the setting of either the Old Vicarage, which abuts the site, and the nearby parish church. However, the Old Vicarage sits within a generous plot and its existing mature vegetation would be retained. The glimpsed views from the road would be unchanged.
24. With regard to the church, the mid-distance views of the church would still be apparent from within the site, albeit between dwellings. On both counts I am satisfied that the development would have a neutral effect on the settings of the buildings. As such, the development would preserve the setting of the listed buildings and would not be contrary to the provisions of either the Framework or the Act.

25. In the light of the above I conclude that the spread and uniformity of development would represent significant urbanisation which would be inappropriate on this site. The open space network in general and the central green corridor in particular, would fail to provide the visual and spatial qualities required of development in this location. As such, I conclude that the development would have an adverse effect on the character and appearance of the area and would be contrary to the general design aims of Policy GEN2 of the Local Plan² (LP) and Paragraph 17 of the Framework which requires development to have regard for the different roles and character of different areas.

Biodiversity

26. The habitat survey undertaken at outline application stage concluded that the habitats and features of high ecological value in the local context included mature/veteran trees, and the brook and its tree-lined margins. It states that the veteran trees have inherent ecological and landscape value as well as being potentially important for specialist invertebrates and bats and owls. The survey concludes *that assuming the mature and veteran tree interest within the site and adjoining land areas can be retained and protected, then significant adverse impacts on ecology and nature conservation are unlikely to occur as a result of future development.*
27. The importance the Council attached to the existing vegetation is set out at outline application stage. The officer's report states that the majority of the trees on the site would be retained and incorporated into the development, and that appropriate conditions would ensure that the trees within the site are retained as far as possible. The Parish Council notes that notwithstanding that the application is for outline permission, the Council should make every effort to ensure that all the trees on the site are retained and properly protected. I conclude that the importance of the existing vegetation was highlighted at outline stage, and reinforced by the pre-commencement conditions relating to tree protection that were attached to the outline permission.
28. This development would remove more mature and veteran trees than was indicated at outline stage. There is an updated ecological survey³ but although this notes that the trees to be removed have low bat roost potential, there is no mention of their inherent ecological value. The report concludes that the loss of habitats to the proposed development would not result in significant ecological or biodiversity impact. However, this statement appears to be inconsistent with the conclusions of the original ecological survey, repeated above, and conducted by the same consultants⁴.
29. I appreciate that some of the existing veteran trees are generally in poor health and reaching the end of their life. However, there is nothing before me to suggest that their ecological value has diminished in the last few years. The trees were considered of sufficient value for their retention to be shown in the illustrative layout. Their retention in the appeal before me would bring ecological benefits to the development.

² Uttlesford Local Plan, adopted January 2005

³ Applied Ecology Ltd, September 2016

⁴ Applied Ecology Ltd, July 2012

30. The appellant stated that the layout had to be altered to allow more amenity space for dwellings and to rationalise the swale layout. This left less space for retained trees. However, having reviewed the evidence before me I have concluded that the housing mix, range and distribution of plot sizes has also altered since the outline permission. In any case, whilst I appreciate that these are determinative factors, it does not necessarily follow that site features have to be lost as a consequence. There is nothing before me to suggest that the design principles set out in the illustrative layout are no longer valid.
31. Moreover, although the development proposes additional street and garden planting, partly as mitigation for the loss of site vegetation, a considerable proportion of the development's open space would constitute areas of swale and highway verge which would have specific maintenance constraints to ensure water percolation and efficient conveyance of runoff, and highway visibility. Play areas would also occupy a proportion of open space. The proposed amenity areas of dwellings would not be particularly generous and whilst new tree planting could provide some compensation for the loss of existing vegetation, small domestic gardens and highway verges are unlikely to have significant ecological value.
32. Realistically, I conclude that there would be minimal opportunity to develop compensatory natural habitats within a layout that has limited and fragmented open space. In this regard, I concur with Essex County Council (ECC) that the ecological value of the landscape proposals suggested is overstated. Furthermore, notwithstanding that the site's future management agency would have to approve works to new trees in the public realm, in my experience there is little tolerance amongst the general public for the perceived nuisance of trees in close proximity to dwellings and parking areas. Even if conditions were imposed to require the planting of native species, it is unlikely that they would be allowed to attain the stature and full ecological potential of the veteran trees to be removed.
33. The appellant submitted a proposal for veteran tree mitigation which comprised the relocation of felled tree trunks to the banks of the brook, where they would be amongst other areas of mature vegetation. Although I recognise there is some ecological merit in this proposal, I am not satisfied that it represents adequate mitigation for the loss of biodiversity within the site.
34. The appellant has also submitted an ecological strategy. However, the areas outlined as primary and secondary ecological corridors would be largely made up of swales and their mown margins, play areas, or areas of road surface and adjacent verge. Whilst I acknowledge that wild flower verges would have some ecological value, the fragmentation of such areas and their proximity to roads, dwellings and footways would, in my view, significantly reduce their mitigation effects. In any case, the ecological value of such areas on other development schemes has not been independently assessed.
35. Whilst the appellant argued that the landscape proposals could be amended to address these concerns, I am not satisfied that additional ecological value could be added to the layout without fundamental changes to the underlying design. This is not a matter that could be dealt with by condition.
36. The appellant argued that the Inspector for the previous appeal did not raise veteran trees as a concern. However, I am unaware of the full and specific details upon which that Inspector reached his conclusion. In any case, the

layout for that appeal indicates that more trees were to be retained than would be the case for this appeal. Moreover, each appeal is determined on its merits and ECC argued at the hearing that the effect of this development on the trees is relevant to a consideration of layout. I have also come to this conclusion.

37. I conclude that the development would have an adverse effect on biodiversity and would therefore be contrary to LP Policies GEN7 and ENV7 which taken together, are concerned with nature conservation and the protection of the natural environment. It would also be contrary to Paragraph 118 of the Framework in respect of the conservation and enhancement of biodiversity.

Other matters

38. The amenity space of the flatted development was highlighted by interested parties at appeal. Having reviewed the original and revised layouts it appears that the footprint of the flatted development has been revised by shifting it to the east to give slightly more usable amenity space on its western side. There would be about 200 sq.m of amenity space for the eight one bedrooomed flats which would comply with the Council's guidelines.
39. There is a dispute between the parties as to the disclosure of the full officer's report and evidence supporting the reasons for refusal. However, whether either party can be considered to have acted unreasonably in this regard is considered in the applications for awards of costs.
40. Interested parties have raised other concerns in relation to the amenity provision for other dwellings, the nearby railway crossing, visitor parking and public footpaths, consultation and the range of accommodation to be provided. However, as I have found harm in relation to the main issues, it is not necessary for me to consider these concerns further.
41. The appellant noted that a plan titled *Parameters Pan* was one of the approved drawings at outline stage and that therefore this should be given weight. However, this drawing is very similar to the outline illustrative layout. The only additional information relates to the distribution of building height. Furthermore, although there is no key, this plan also appears to show the retention of more existing vegetation than the appeal now before me. As such, this plan does not support the appellant's argument with regard to the layout, extent and spread of built form, or the retention of existing trees. The appellant also argued at the hearing that the layout has not changed since the outline permission. However, I disagree with the appellant on this point.

Planning balance

42. The main parties do not dispute that the Council does not have a five year housing land supply (HLS). However, even where policies for the supply of housing are out of date, the lack of five year HLS does not automatically lead to a grant of planning permission. The weight given to conflict with the development plan remains a matter of planning judgement.
43. In this case, the principle of development on this site has already been established. I appreciate that the development would make an important contribution to the Council's future housing supply. Nonetheless, in the light of the above I conclude that the adverse impacts of granting approval would significantly and demonstrably outweigh the benefits when assessed against

the policies of the Framework when taken as a whole. The presumption in favour of sustainable development should not be applied.

Conclusion

44. It is argued by the appellant that the application can only be refused if harm to land use and layout can be shown. As I have noted above, the principle of development is not in dispute. However, I have found harm in relation to the development's layout in relation to reserved matters and biodiversity.
45. For the reasons given above and taking all matters into account, I conclude that the development would be contrary to the relevant policies of the Council's development plan and there are no material considerations of such weight as to warrant a decision other than in accordance with the aforementioned development plan. Consequently, the appeal should be dismissed.

Amanda Blicq

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT

Barthomelew James Blake	James Blake Associates
John Dale	Bovis Homes Ltd
Trevor Dodkins	Phase 2 Planning
Doug Law	Bovis Homes Ltd
Duncan Painter	Applied Ecology Ltd
Keven Slezacek	James Blake Associates
Sam Tordoff	Bovis Homes Ltd
Matthew Wood	Phase 2 Planning

FOR THE LOCAL PLANNING AUTHORITY

Neil Harvey	Essex County Council
Peter McEvoy	Uttlesford District Council

INTERESTED PERSONS

Graham Mott
Peter Johnson

ANNEX 1

Documents submitted at the Hearing (by agreement)

Officer's Report (Although not supplied to the Inspector before the hearing, all parties confirmed that they had had sight of it beforehand).

Officer's Report (Outline Application)

Saved Policy S8, Local Plan

Ref. 14/0721 – Site Layout

Documents submitted after the Hearing (by agreement)

Landscape and Visual Impact Assessment, Outline Application

Section 106 Agreement, Outline Application

Phase 1 Habitat Survey