



Appeal Decision

Site visit made on 27 March 2019

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 20 June 2019

Appeal Ref: APP/C1570/W/18/3210034

Land East and North of Clifford Smith Drive, Watch House Green, Felsted CM6 3UG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr D Payne against the decision of Uttlesford District Council.
 - The application Ref UTT/18/0784/OP, dated 21 March 2018, was refused by notice dated 8 August 2018.
 - The development proposed is erection of up to 30 no. dwellings served via new access from Clifford Smith Drive, complete with related infrastructure, open space and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for erection of up to 30 no. dwellings served via new access from Clifford Smith Drive, complete with related infrastructure, open space and landscaping at Land East and North of Clifford Smith Drive, Watch House Green, Felsted CM6 3UG in accordance with the terms of the application, Ref UTT/18/0784/OP, dated 21 March 2018, subject to the attached Schedule of Conditions.

Application for costs

2. An application for costs was made by Mr D Payne against Uttlesford District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was submitted in outline. The application form indicates that approval was sought only for access with all other matters reserved. I have determined the appeal on this basis.
4. I note the Uttlesford Regulation 19 Pre-Submission Local Plan (emerging Local Plan) and that the appeal site is allocated for housing under this emerging Local Plan. I also note that the preparation of the emerging Local Plan has progressed since the application was determined. However, it is at a relatively early stage and there is no certainty that the policies within it will be adopted in their current form. I have therefore attached it limited weight.

Main Issues

5. Since the decision notice was issued, the Council has confirmed that they no longer contest the second and third reasons for refusal which state that the application does not include a mechanism to secure suitable affordable housing

provision and the application does not include a mechanism to secure suitable contributions towards education respectively. During the process of the appeal, the Council stated that the Zone of Influence of Blackwater Estuary Special Protection Area includes the appeal site. Therefore, the main issues are the effect of the proposed development on:

- the character and appearance of the area; and
- the Blackwater Estuary Special Protection Area (BESPA) and Ramsar site.

Reasons

Character and appearance

6. The site lies outside settlement development boundaries and falls within the countryside for the purposes of Uttlesford Local Plan Adopted 20 January 2005 (LP). It is therefore assessed against LP Policy S7 which relates to development in the Countryside.
7. The proposal would introduce built form on undeveloped land and would therefore alter the intrinsic character of the site. The appeal site is an area of unmanaged scrubland and is contained by built development to the south, Weavers Farm to the north and a distinct area of arable farmland to the east. The site therefore has a close relationship with the existing built development as well as with the arable farmland to the east. Given that it is largely bounded by hedgerow, the site is self-contained in this respect.
8. The site would be accessed from Clifford Smith Drive and from the indicative plans before me, the proposed scheme would appear as an extension of the existing development. The indicative layout shows that the proposed dwellings would be of a range, size and layout that would be in keeping with the existing dwellings of Clifford Smith Drive. Therefore, subject to careful consideration of reserved matters, the dwellings would not be out of keeping with the pattern of development of the existing development on Clifford Smith Drive.
9. Similarly, the view from the approach to the site via Braintree Road from the north consists of hedgerow along the boundary and open fields on the opposite side of the road with the existing houses of Felsted forming the setting to this view. From the indicative layout plan the hedgerow along Braintree Road and to the north and east of the site is proposed to be retained and while I am mindful that landscaping is a matter for future consideration, the retention of this hedge would go some way to limiting the impact of the proposed dwellings on the character and appearance of this approach.
10. While parts of the proposal may be visible from the public rights of way to the north of Weavers Farm and from the east of the appeal site, the visibility of the upper storeys and rooftops of the properties would be limited by retention of the existing hedge. Furthermore, given close relationship with the existing development to the south, any rooftops that may be visible would not be out of keeping with the character and appearance of the area. Likewise, given the adjacent existing development and slight change in ground levels across the arable fields, the proposed dwelling would have limited impact on wider views of the site from the countryside subject to careful consideration of reserved matters.

11. Nevertheless, since the proposal would introduce significant areas of built development, hardstanding and domestic gardens to an undeveloped greenfield site, the proposed scheme would adversely impact the landscape character of the site.
12. I note the Chris Blandford Associates Landscape Character Assessment (2006) which describes the site as having a low to moderate sensitivity and that the report recommends measures to protect and enhance positive features that are essential to contributing to local distinctiveness and sense of place. Although landscaping and the layout of the site including the distance of the proposed dwellings from the highway would be considered as part of a reserved matters application, since the proposal would extend the built form of the existing development, it would have the effect of urbanising the site thus diminishing the rural character and appearance of the area.
13. I note that Weavers, also referred to as Weavers Farm, is located near the site and comprises a number of buildings including a Grade II listed building. Although the Council has not referred to the effect of proposal on the setting of the nearby listed buildings in their reasons for refusal, I am required, as a statutory consideration, to have regard to these matters when determining the appeal. The significance of the listed building lies in the evidence of historic architecture and given its traditional vernacular appearance, it contributes to the rural character of the area.
14. The appeal site lies to the south of the property and given the boundary treatment and vegetation along the boundary of Weavers and Braintree Road and along the southern boundary with the appeal site, views of Weavers from the appeal site are largely screened. Furthermore, since layout is a matter for future consideration and as suggested by the indicative site plan, the proposed dwellings could be set out on the site such that the effect of the proposed development on the setting of the listed building would preserve its significance.
15. Overall, I consider the proposed development would harm the character and appearance of the area and would conflict with LP Policy S7 which states that development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set. However, the harm identified would be limited given the localised and self-contained nature of the site and the limited impact on views to the development described above.

Effect on BESPAs and Ramsar site

16. The appeal scheme proposes up to 30 dwellings on a site that lies within the Zone of Influence (ZoI) of BESPAs and Ramsar site. New housing development within the ZoI would be likely to increase the number of recreational visitors to BESPAs, potentially resulting in disturbance to the integrity of the habitats of qualifying features.
17. Since the appeal site lies near the outskirts of the ZoI, some 20km from BESPAs, and the number of additional recreational visitors from 30 dwellings would be limited, the likely effects on BESPAs from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on BESPAs and

Ramsar site. Consequently, an Appropriate Assessment (AA) is necessary to ascertain the implications for the site.

18. I note the comments of the Inspector for the case at Bures Hamlet which concluded that an AA was not necessary. The Council for this appeal has stated that the distance by road to the habitats site is approximately 40km, substantially greater than the 22km set out in the RAMS Strategy. While the site at Bures Hamlet may be closer by road to the habitats site than this proposal would be, since no other evidence has been submitted to demonstrate that an AA would not be necessary, and given that in combination with other developments the proposal is likely to have significant effects on the BESPAR and Ramsar site, in this case I nevertheless consider an AA is necessary.

Appropriate Assessment

19. The qualifying features for the BESPA designation are the overall water bird assemblage and the Conservation Objectives include maintaining the structure and function of the habitats of the qualifying features and the supporting processes on which the habitats of the qualifying features rely. Since the site is near the perimeter of the ZoI, while the residential development may lead to disturbance of birds in coastal habitats (European) site, the adverse effects would be likely to be smaller in scale than other sites closer to the BESPA.
20. I note the draft Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document 2019 (draft RAMS SPD), which sets out a strategic approach to mitigation by several councils across Essex. Since the original ZoI did not include land within Uttlesford District, the Council is not a partner identified in the SPD. However, given that the draft RAMS SPD is endorsed by Natural England and there is no evidence before me to indicate that the Council would not adopt the strategy, I attach significant weight to it.
21. The draft SPD sets out detailed mitigation measures that would be funded by S106 contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education and communication, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on BESPA and Ramsar site.
22. The Council has accepted a signed Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 that would ensure that the financial contribution would be paid before the commencement of development. The UU states that, in the event that the RAMS is adopted at the date of commencement of development, the owners would pay the RAMS contribution rather than the Natura 2000 Contribution figure which is the figure stated in the draft RAMS SPD.
23. This would mitigate any uncertainty regarding the timing of the adoption of the draft RAMS SPD. Furthermore, the UU defines the meaning of the Natura 2000 Contribution as being funding towards additional visitor management measures relating to Blackwater Estuary SPA/Ramsar and Essex Estuaries SAC. It also defines RAMS Contribution as a sum of money payable towards works identified by RAMS to mitigate the increased use of the development at the designated sites. Furthermore, Natural England confirmed that a Unilateral Undertaking to collect mitigation measures in accordance with the Essex Coast RAMS would be appropriate. On this basis, I am persuaded that the contribution via a UU would

be effective in mitigating the adverse effects of the proposal on the BESPAs and Ramsar site.

24. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the CIL Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.
25. I have had regard to an appeal decision for a site near this appeal site¹. While parallels may be drawn given the location of that site and its position within the ZoI of the BESPAs site, further details are not before me and in any event, each case must be determined on its individual merits.
26. Consequently, the proposed development would not adversely affect the Blackwater Estuary Special Protection Area (BESPAs) and Ramsar site and would not conflict with the National Planning Policy Framework (Framework) in this regard.

Other Matters

27. From the evidence before me regarding the Felsted Neighbourhood Plan (FNP), it is beyond Regulation 14 stage. I note the inconsistency between the FNP and the emerging Local Plan with regard to the site being allocated within Policy FEL2 of the emerging Local Plan, and not being allocated in the FNP. I recognise the effort and time that has been invested in the preparation of the FNP, the response by statutory consultees, that vocal support may have been given for the FNP by Council members as well as other concerns including that the progress of the FNP would be undermined by approval of the scheme. I also note that submission of the draft FNP for Final Examination has been delayed by issues relating to Natural England. However, since the FNP has not been approved at referendum and that there is no certainty that it would be brought into force in its current form, I attribute it only limited weight.
28. I note concerns including the pressure on local education. While the additional residents may put some pressure on local schools in particular Felsted Primary School, the Council has accepted a Section 106 agreement that it considers would mitigate the impact on local provision of education and consequently withdrew this reason for refusal. I have considered this contribution in the section on Planning Obligations below.
29. I also acknowledge local highways safety concerns including traffic congestion at school opening and closing times. During my site visit on a weekday at school pick up time I noted some traffic congestion near Felsted Primary School. However, since the proposed development would be roughly within a kilometre of the school and therefore within walking distance, a significant increase in traffic congestion as result of the proposed scheme is unlikely. I also acknowledge concerns regarding the walking route from Clifford Smith Drive to the school, however, the Highway Authority has not objected to the proposal and from the evidence before me, I see no reason to disagree.
30. With regard to the capacity of the existing doctor's surgery, while discussions may be ongoing with regard to a longer term expansion of the practice, the

¹ Appeal ref: APP/C1570/W/18/3210501

Local GP confirmed that Felsted Surgery has the capacity to accommodate any new patients generated by the proposal.

31. I acknowledge local concerns including the implementation of the existing development on Clifford Smith Drive with regard to wildlife and habitat mitigation issues. The evidence acknowledges that the site was intended to be a mitigation area for the existing development. I note the Addendum to Great Crested Newt and Reptile Survey Report (Hybrid Ecology, May 2018) dated 26th June 2018 which considers that an updated mitigation area would address the concerns raised. The Council are satisfied the proposed measures adequately mitigate any risk and from the evidence before me I see no reason to disagree.
32. I also note other local concerns including the level of engagement with the local community, communication with the Council regarding housing numbers, drainage issues relating to the existing development and the effect on views from the existing properties of Clifford Smith Drive. However, such matters are not an influential factor on the outcome of this appeal and I have necessarily considered the proposal on its merits.
33. None of the other matters raised outweigh or alter my conclusions on the main issues.

Planning Obligations

34. The appellant has completed a Section 106 Agreement in conjunction with Uttlesford District Council and Essex County Council which includes a number of obligations to come into effect if planning permission is granted. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. They relate to the following matters:
35. Affordable Housing: LP Policy H6 requires developments on sites which provide for 11 dwellings or more, or residential floorspace of more than 1,000sqm (combined gross internal area), to provide 40% of the total number of dwellings as affordable dwellings on the application site and as an integral part of the development. The agreement makes such provision and I consider is fairly and reasonably related to the development proposed and as such passes the statutory tests.
36. Education Contribution: The sum in respect of education is undisputed and the terms related directly to the development and Felsted Primary School and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework.

Planning Balance

37. The Council acknowledge that LP Policy S7 is partially compatible with the Framework since it has a more protective rather than positive approach towards development in rural areas and therefore carries limited weight. I note the comments of the Inspectors for the cases at Saffron Walden and Newport in relation to the consistency of LP Policy S7 with the Framework. From the evidence before me I have no reason to disagree and take a similar approach to the Inspectors of these cases and attribute limited weight to the conflict with this policy.

38. Furthermore, the main parties acknowledge that the Council cannot demonstrate a 5-year housing land supply, consequently the provisions of paragraph 11(d) of the Framework are triggered. Following the publication of the updated Framework in 2019 and the updated Planning Practice Guidance, the Council contends that it can demonstrate roughly a 3-year supply of housing land. This represents a significant shortfall.
39. The proposed development would provide a moderate benefit of contribution of up to 30 dwellings to the shortfall of housing, of which 40% would be affordable housing. There would be temporary economic benefits during the construction phase and moderate benefits in terms of the additional residents supporting local services and community. I therefore attribute moderate weight to the benefits of the proposal.
40. Since the Council has accepted Section 106 agreements relating to affordable housing and education provision, and have found that the location is otherwise suitable, given that the harm to character and appearance of the area would be limited, I do not consider the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits.

Conditions

41. I have considered the conditions suggested by the Council. I have made some minor changes to these having regard to the tests set out in the Framework and the guidance contained in the Planning Practice Guidance. I have amended some of the wording of the conditions in the interests of precision and clarity.
42. I have attached conditions relating to the submission of reserved matters and the time limits associated with this. I have also included a condition specifying the relevant plans and details of the proposed vehicular and pedestrian access as this provides certainty as well as safeguarding highways safety. A condition relating to unbound materials is also necessary in the interests of highways safety.
43. Archaeological excavation in the adjacent housing development found the remains of Saxon and medieval occupation. Therefore, given that the proposed development lies within a potentially highly sensitive area of heritage assets, a condition relating to archaeology is necessary. I have attached one condition rather than the four archaeology related conditions suggested by the Council as it is more concise.
44. A condition relating to surface water drainage is required to prevent flooding. The four surface water related suggested conditions have been replaced by a single condition which deals with the relevant matters in a more concise manner.
45. The condition relating to accessible and adaptable dwellings is necessary to comply with LP Policy GEN2(c).
46. Conditions relating to Great Crested Newts and Reptiles and ecology are necessary to conserve protected species. The former condition needs to be pre-commencement as it affects development to be carried out early in the construction phase.
47. Since it is possible that bats may be present in the wider landscape, a condition relating to lighting for biodiversity is required.

48. A condition relating to landscape and ecological management plan is necessary to safeguard the long-term ecology of the site. The clause relating to legal and funding mechanisms has not been attached as it would fall outside of the scope of the condition. A condition relating to a licence issued by Natural England is necessary in accordance with the development plan.
49. In accordance with Section 100ZA(5) of the Town and Country Planning Act 1990, the appellant confirmed that they approve of the pre-commencement conditions.

Conclusion

50. For the reasons given above, the appeal is allowed subject to conditions.

R Sabu

INSPECTOR

Richborough Estates

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place 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 no later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place no later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) Prior to occupation of any dwelling, an access shall be formed at right angles to Clifford Smith Drive, as shown on drawing no. DR1 (dated 06/03/2018), to include but not limited to: minimum 5.5 metre carriageway width with two 2 metre wide footways (around each radii) extending along Clifford Smith Drive to suitable dropped kerb pedestrian crossing points across Clifford Smith Drive, and a clear to ground visibility splay with dimensions of 2.4 metres by 25 metres, in both directions, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be retained free of any obstruction at all times.
- 5) Prior to occupation of any of the proposed dwellings, a pedestrian link to connect the proposed development to public footpath no. 15 (Felsted) as indicated on drawing SP005-PL-05 shall be provided. Details of the pedestrian link, including a suitable surface, shall be submitted to the Local Planning Authority, in consultation with the Highway Authority, and approved prior to occupation of any dwelling.
- 6) No demolition/development shall take place until a Written Scheme of Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions:
 - the programme and methodology of site investigation and recording;
 - the programme for post investigation assessment;
 - the provision to be made for analysis of the site investigation and recording;
 - the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - the provision to be made for archive deposition of the analysis and records of the site investigation;
 - the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.

No demolition/development shall take place other than in accordance with the approved Written Scheme of Investigation.

- 7) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - include a timetable for its implementation; and,
 - provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 8) 5% of the dwellings approved by this permission shall be built to Category 3 (wheelchair user) housing M4(3)(2)(a) wheelchair adaptable standard. The remaining dwellings approved by this permission shall be built to Category 2: Accessible and adaptable dwellings M4(2) of the Building Regulations 2010 Approved Document M, Volume 1 2015 edition.
- 9) No unbound material shall be used in the surface treatment of any vehicular access within 6 metres of the highway boundary.
- 10) Prior to commencement, all ecological mitigation & enhancement measures and/or works shall be carried out in accordance with the details contained in the Addendum to Great Crested Newt and Reptile Survey Report (Hybrid Ecology) dated 26th June 2018.
- 11) Prior to occupation, all ecological mitigation & enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal Report (T4 Ecology Ltd, March 2018).
- 12) Prior to occupation a landscape and ecological management plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority prior to the occupation of the development. The content of the LEMP shall include the following.
- a) Description and evaluation of features to be managed (common lizard and great crested newt habitat).
 - b) Ecological trends and constraints on site that might influence management.
 - c) Aims and objectives of management.
 - d) Appropriate management options for achieving aims and objectives.

- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) Details of the body or organization responsible for implementation of the plan.
- h) Ongoing monitoring and remedial measures.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan shall be implemented in accordance with the approved details.

- 13) The development shall not commence unless the local planning authority has been provided with either:
- a licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 authorizing the specified activity/development to go ahead; or
 - a statement in writing from the relevant licensing body to the effect that it does not consider that the specified activity/development will require a licence.
- 14) Prior to occupation, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme.

END OF SCHEDULE