
Appeal Decision

Hearing held on 20 August 2014

Site visit made on 20 August 2014

by Louise Phillips MA (Cantab) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 September 2014

Appeal Ref: APP/C1570/A/14/2213863

Sunnybrook Farm, Braintree Road, Watch House Green, Felsted, Essex CM6 3EB

- 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 P & Mrs J Marshall against the decision of Uttlesford District Council.
 - The application Ref UTT/13/2942/OP, dated 30 October 2013, was refused by notice dated 30 January 2014.
 - The development proposed is residential development comprising up to 13 no. dwellings and related infrastructure, school related car parking area, new access from Braintree Road and extended domestic garden adjacent to Moritz.
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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 P & Mrs J Marshall against Uttlesford District Council. This application is the subject of a separate decision.

Procedural Matters

3. The description of development above is taken from the application form. However, the proposal was amended before the application was determined to remove the "school related parking area" and revised plans were submitted accordingly. I have therefore determined the appeal on the basis of the revised description of development given on the decision notice and appeal form. Similarly, I have had regard to the plans listed at paragraph 1.6 of the Statement of Common Ground rather than those listed on the decision notice. Both parties agree that the former list is correct and the Council confirmed that the revised drawings have been subject to public consultation.
4. The application is made in outline with all matters reserved for determination at a later date except for access. Therefore, with the exception of those related to the access shown on drawing no. SP002-004 Rev. A, I have treated the details provided as illustrative.
5. The Council submitted its Draft Uttlesford Local Plan for examination by an independent Inspector on 4 July 2014 and so it has reached a relatively

advanced stage of preparation. However, while I have been provided with one specific objection¹ to the plan, I am advised that there are a number of others which are relevant to the main issues of the appeal. Therefore, having regard to paragraph 216 of the National Planning Policy Framework (the Framework), I give the emerging plan limited weight in my decision.

6. My attention has been drawn, both in the written evidence and at the Hearing, to the Felsted Village Plan prepared by the Parish Council. This was subject to extensive public consultation in the parish, but not beyond, and it has been adopted by the District Council for guidance rather than statutory purposes. I do not have a copy of the plan and, having regard to its status, it is not determinative of the appeal. However, I have taken full account of the representations made in relation to it in reaching my decision.

Main Issues

7. The decision notice includes two reasons for refusal but, at the Hearing, the Council confirmed its view that the second of these is now overcome. I have therefore dealt with the issues raised therein as other matters and so the main issues are:
 - The effect of the proposed development on the character and appearance of the area; and
 - Its effect on the supply of housing in the District.

Reasons

Character & Appearance

8. The appeal site is a rectangular piece of land running along the north side of the B1417 Braintree Road. It lies outside but adjacent to the development limits of Watch House Green and thus it is in the countryside for development plan purposes. Policy S7 of the Local Plan² advises that there will be strict control on new building in the countryside, with planning permission only being given for development that needs to be there.
9. By the Council's own assessment, this negatively worded policy is not strictly in harmony with the more proactive approach promoted by the Framework. However, the core principles at paragraph 17 of the Framework include that development should be genuinely plan-led; and that the intrinsic character and beauty of the countryside should be recognised. Thus the strategy advanced by Policy S7, with the purpose of protecting the countryside for its own sake, is not fundamentally inconsistent with the Framework. Therefore, in respect of the issue of character and appearance, the Framework is not a significant material consideration weighing against the development plan. I turn to the status of Policy S7 in relation to the matter of housing land supply below.
10. Watch House Green is one of four developed areas with a defined boundary in the parish of Felsted. Felsted Village itself is nearby to the west and the appeal site lies in the gap between the two settlements. There are a number of other hamlets in the parish which do not have defined development boundaries and, overall, the locality is characterised by open countryside interspersed by small, distinct built up areas.

¹ Letter from James Stevens on behalf of the Home Builder's Federation, dated 2 June 2014.

² Uttlesford Local Plan, January 2005.

11. The appeal site comprises open land and, while the trees and hedges along the front boundary provide screening from the road, it is nonetheless apparent that it is undeveloped. The land opposite the site is also open and because there is no screening on this side, there are far reaching views across it of the countryside to the south. Thus the development limits of Watch House Green do very clearly mark a transition from urban to rural character and, when travelling between Watch House Green and Felsted Village, one gets a sense of leaving one place behind and entering another.
12. The proposal is for up to 13 new dwellings on the appeal site and the indicative details provided show that they would be laid out to front the road in a ribbon development across its full width. They would continue the present building line on the north side of the road and, given the variety of house types and styles in Watch House Green, it would be possible to design them to fit in with the existing properties.
13. The presence of the road, combined with the existing and proposed landscaping around the site, would physically contain the development and provide defensible boundaries against incremental expansion. However, for the reasons given above, the existing development limits of Watch House Green are very important in respect of visual containment, and the new development would not be invisible. The development limit on the north side of the road does not reflect any specific natural feature, but it does fall directly opposite that on the south side. This coincides with the long and mature boundary hedgerow of the open land referred to above and thus the existing limits have a logical basis.
14. There is a dense copse of trees at the western end of the site and it is proposed to retain the existing trees and hedge along the road frontage. Consequently, when looking east from the edge of Felsted Village, it is unlikely that the development would be seen. In nearer views, however, and alongside the site itself, the development would be clearly visible through gaps in the vegetation and through the point of access to be created. I appreciate that the scheme would provide for the management of the hedge, but it seems likely that this would require thinning to give it a neater appearance more appropriate to a domestic setting.
15. Therefore, while one would still get the impression of 'leaving' Felsted Village if the new dwellings were constructed, the gap between it and Watch House Green would be substantially reduced because the appeal site would mark the point of arrival in the latter place. I acknowledge that the remaining gap as measured would be similar to the average distance between the various other settlements in the parish. The development limits of Felsted and Watch House Green would not physically coalesce and the proposal would not be the only example of ribbon development. However, I do not accept that the character of the area would be preserved if all the gaps were reduced to a lowest common denominator. It is my view that the intrusion of built development to this particular location, which is open on both sides of the road, would be significantly harmful.
16. The visual effects of the development would be most apparent in long views from the south. I have taken account of the photographs in the appellants' Landscape Appraisals³, which suggest that views of the site frontage from

³ Wider Landscape Impact Appraisal, February 2014 & Summer Update, July 2014.

footpath No 48 are limited by distance and intervening vegetation. However, when I walked the footpath in person, I could clearly see the frontage at several points along the path and its natural appearance makes an important contribution to the visible detachment of the settlements. The line of houses proposed would certainly be obvious despite the planting on the boundary, and thus they would detract significantly from the present rural setting. Furthermore, they would undermine the contribution made by the open land opposite the site.

17. For these reasons, I consider that the proposed development would be harmful in the wider landscape. I agree with the appellants that the development would affect only near views from the north. Moreover, it would be seen in a narrower context, against the existing dwellings to the east rather than the open landscape to the south. Therefore, I do not consider that it would be unduly harmful in this view, but that does not outweigh or alter the conclusions I have reached above. In this respect, I have had regard to the appeal decisions referred to by the appellants in 10-14 of their statement, but I consider that significant, demonstrable harm would result from the proposed development in this particular case.
18. Consequently, I find that the proposed development would be seriously detrimental to the character and appearance of the area, contrary to the aims of Policy S7 of the Local Plan and also to Policy GEN2, which, amongst other things, requires development to safeguard important environmental features in its setting.

Supply of Housing

19. The presently adopted Local Plan pre-dates the Framework and, following the revocation of the Regional Spatial Strategy for the East of England (RSS), there is currently no up-to-date housing provision requirement for the District in a statutory development plan. However, in preparing its replacement Local Plan, which has now been submitted for examination, the Council has proposed to provide an average of 523 dwellings per year during the period 2011/12 – 2030/31. It considers that this requirement will meet the objectively assessed needs of the District.
20. The figure represents forecast housing need using the 2010-based sub-national population projections and is the highest requirement resulting from several demographic scenarios modelled for the Council by an external Consultant. The Consultant has done similar work for other local authorities in Essex and uses a recognised method/programme. Whilst more recent statistical releases indicate that household growth could be slightly greater, I understand that they cover a shorter time period and use data which has not been fully updated to reflect the 2011 Census in any case. Therefore, it seems to me that the forecasts used by the Council are appropriate at this point in time.
21. The Council has not allowed for the possibility of accommodating any shortfall in housing delivery which might arise in neighbouring areas. However, it was confirmed at the Hearing that none of the neighbouring authorities has asked the Council to consider this matter; and that none has objected to its submitted Local Plan in relation to the Duty to Cooperate (paragraph 178 of the Framework). Whilst Braintree District Council is yet to identify sites for all the

dwelling it needs to deliver, its letter to landowners, dated 18 August 2014⁴, indicates that the search for appropriate sites is presently being conducted within its own boundaries. Thus the evidence before me does not demonstrate that the Council will need to provide housing required elsewhere.

22. For these reasons, while the Council's proposed housing requirement has not been tested in light of all the matters which might arise at the examination of its Local Plan, I consider it to be realistic for the purposes of this appeal. I therefore turn to the matter of its five-year land supply as required by paragraph 47 of the Framework.
23. The Council has set a target to provide 2885 dwellings over the five-year period 2014/15 – 2018/19. This includes 133 dwellings not delivered since 2011; and 137 dwellings to provide a 5% buffer in addition to the 523 dwellings required annually. The appellants consider that the Council has a record of persistent under-delivery of housing and that the buffer should be increased to 20% accordingly.
24. The dispute centres on how the previous RSS target for the period 2001/02 – 2010/11 should be apportioned to individual years and by the Council's interpretation, delivery against the annual target was achieved in most of them. By the appellants' interpretation, it was not. Either way, the overall target for the 10 year period was met and the Council has not carried forward any pre-2011 shortfall into its present assessment of objectively assessed needs. On this basis, I am satisfied that there is no record of persistent under-delivery.
25. The Council's housing trajectory for 2014/15 – 2018/19 indicates that 3592 dwellings will be delivered as compared to the 2885 required and thus the target would be exceeded by 707 dwellings. The rate of delivery is expected to vary across the five-year period, with a shortfall anticipated in the first two years followed by a peak in the final three. Whereas the appellants consider this to be contrived, I accept the Council's point that the variation reflects the increase in the housing requirement since 2011 and that additional planning permissions have been granted in consequence. It was suggested that the building industry may not physically be able to deliver this peak, but as the appeal site would likely suffer the same fate, I give this little weight in my decision.
26. The Council's housing land supply consists of sites with planning permission; sites with a resolution to grant planning permission subject to a suitable legal agreement; and a windfall allowance of 50 dwellings per annum. The appellants contend that a discount of 10% should be applied to sites in the first category to cater for non-implementation, but I have seen no evidence to suggest that a significant proportion of consents will lapse.
27. Sites in the latter two categories represent a significant proportion of the total land supply, and it is true that delivery is less secure. However, in cases where there is a resolution to grant planning permission, it seems to me that there is a reasonable prospect of housing being delivered within five years. The developments are considered by the Council to be acceptable in principle and it is actively negotiating with applicants to complete the necessary legal agreements. Indeed, while I acknowledge the views of another Inspector in

⁴ Additional document No 3.

this regard⁵, the Framework would, in the right circumstances, permit sites to be included in the five-year supply if planning permission had not yet been sought.

28. I do have reservations in relation to the size of the Council's proposed windfall allowance given that its own evidence indicates that an average of just 46 dwellings per annum come from this source. This increases to 80 dwellings per annum if certain additional small sites are taken into account, but they include residential gardens which are specifically excluded by paragraph 48 of the Framework. Consequently I am not persuaded that the windfall allowance is justified but, in light of the surplus identified above, this has no significant effect on my conclusions.
29. My attention has been drawn to a recent appeal decision, dated 23 April 2014, in which the Inspector concluded that the Council's five year housing land supply was fragile⁶. However, I have more recent information than did the previous Inspector and, on the basis of the evidence before me, I consider that the Council can demonstrate a sufficient land supply. My view is consistent with that of another Inspector who determined an appeal in Thaxted, dated 23 June 2014⁷.
30. Therefore, Policy S7 of the adopted Local Plan is not out of date as a relevant policy for the supply of housing by virtue of paragraph 49 of the Framework. Consequently, while the appeal scheme would provide a benefit of new homes, having regard to paragraph 12 of the Framework, I conclude that its contribution to the supply of housing in the District would not be sufficient to justify a grant of permission other than in accordance with development plan policy. The proposal would conflict with Policy S7 of the Local Plan by virtue of being in the countryside as well as for the reasons given above in respect of character and appearance.
31. The appellants refer to the test in paragraph 14 of the Framework which states that development proposals should be approved unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. However, this applies in cases where the development plan is absent or silent, or where relevant policies are out of date. In this case, I have concluded that they are not.

Other Matters

32. The Council's second reason for refusal was that the scheme would not include a mechanism to secure the provision of affordable housing; financial contributions towards education and highway infrastructure; or on-going maintenance of surface water drainage facilities. Before the Hearing, the Council confirmed that no contributions towards highway infrastructure would be required. At the Hearing, it expressed the view that the matters of concern in relation to surface water drainage could be adequately addressed by conditions and I agree.
33. The appellants submitted a completed S106 agreement in respect of affordable housing and education contributions during the appeal process and I have had regard to it in reaching my decision. It would provide for the construction of

⁵ Ref APP/H1033/A/11/2159038.

⁶ Ref APP/C1570/A/13/2206357.

⁷ Refs APP/C1570/A/14/2212188.

40% of the total number of housing units as affordable, and would secure a financial contribution of £81,842 towards education. The Council is satisfied that this would overcome its second reason for refusal and I have no reason to disagree.

34. The provision of affordable housing would be a benefit of the scheme and I have weighed it in the overall planning balance accordingly. However, while there is an identified need for affordable housing in the District, the provision of up to six units does not outweigh or alter my conclusions in respect of the main issues of the appeal. Whilst the appellants also consider the education contribution to be a benefit of the scheme, paragraphs 203-204 of the Framework require that planning obligations should be necessary to make otherwise unacceptable development acceptable in planning terms. Therefore I have not treated it as a benefit which weighs in favour of the proposal and I do not need to reach a finding as to its necessity.
35. In reaching my decision, I have taken account of the accessible location of the site and of the other potential benefits of the scheme as highlighted by the appellants. In light of my conclusions in relation to character and appearance, I do not consider landscape maintenance and planting for biodiversity to be significant advantages. I accept that some economic benefits would arise for the construction industry and for local shops & services, as well as in the form of the New Homes Bonus. However, this does not outweigh my fundamental concerns expressed above.
36. I have also taken account of the other concerns raised by interested parties in relation to protected species, specifically wild orchids, and traffic generation. The appellants have provided an Extended Phase 1 Habitat Survey⁸ to address the first issue and this did not give rise to any significant concerns. Furthermore, my own observations confirmed that the site comprises managed, short-mown grass that does not appear to be an ideal environment for wild orchids. In relation to traffic, while I can accept that both Felsted and Watch House Green can become congested at peak times, I have no reason to consider that the proposed development would make matters noticeably worse.
37. Therefore, none of the other matters to which I have had regard, either in favour of the development or against it, outweigh or alter my conclusions in relation to the main issues of the appeal.

Conclusion

38. I find that the proposed development would be significantly harmful to the character and appearance of the area. I also find that the Council's housing land supply position is not a material consideration which weighs against the policies in the development plan. Therefore, I conclude that the scheme does not represent sustainable development for which there is a presumption in favour at paragraph 14 of the Framework and, consequently, the appeal should be dismissed.

Louise Phillips

INSPECTOR

⁸ Extended Phase 1 Habitat Survey (Preliminary Ecological Assessment), by t4 Ecology, dated October 2013.

