

Appeal Decision

Site visit made on 16 June 2015

by S Stevens BSc (Hons) MSc DipTP DMS MCMI MRTPI

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

Decision date: 23 July 2015

Appeal Ref: APP/C1570/W/15/3003038

**Land opposite Branksome, Whiteditch Lane, Newport, Saffron Walden
CB11 3UD**

- 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 Peter Frost against the decision of the Uttlesford District Council.
- The application Ref UTT/14/1794/OP, dated 16 June 2014, was refused by notice dated 16 September 2014.
- The development proposed is described as "15 no. new build residential units (incorporating alteration to access road and garage position of previously approved dwelling under Ref: UTT/13/2973/FUL) on land opposite Branksome and south of Bury Grove."

Decision

1. The appeal is allowed and outline planning permission is granted for a 15 no. new build residential units (incorporating alteration to access road and garage position of previously approved dwelling under Ref: UTT/13/2973/FUL) on land opposite Branksome and south of Bury Grove at land opposite Branksome, Whiteditch Lane, Newport, Saffron Walden CB11 3UD in accordance with the terms of the application, Ref UTT/14/1794/OP, dated 16 June 2014, subject to the conditions set out in the attached schedule.

Procedural matters

2. The application is in outline with all matters reserved apart. The planning application included plans showing a layout and access but as these matters are reserved I have treated these as illustrative only.
3. Prior to the determination of the appeal a signed and dated unilateral undertaking was submitted to provide financial contributions towards the provision of educational facilities. This will be considered below.

Main Issues

4. The main issues are:
 - whether, if the adjacent site to the south is not developed, the proposal would or would not harm the countryside; and
 - whether contributions towards affordable housing, wheelchair accessible and education are necessary.

Reasons

5. The appeal site is located on the western side of Whiteditch Lane and is adjacent to and opposite substantial detached dwellings. The site is an elongated rectangle with an area of 0.865 hectares and is currently used as paddocks. It is on the edge of settlement and outside the development boundary and according to Policy S7 of the Uttlesford Local Plan is therefore in the countryside.
6. Outside the settlement boundaries LP Policy S7 seeks to restrict development in the countryside and only permits new development that needs to be in that location, or is appropriate to a rural area. However, the LP predates the Framework and the parties disagree whether the Council can demonstrate a five year supply of housing land. The evidence submitted in respect of the current appeal does not include a detailed analysis of housing land supply but the submissions include a number of recent appeal decisions where this matter has been considered at some length during either an Inquiry or Hearing. Based on the evidence presented the Inspectors have come to different decisions regarding whether the Council can or cannot demonstrate a 5 year supply of deliverable housing land.
7. Even if I were to conclude the Council can demonstrate a 5 year supply of deliverable housing land and that the policies relating to the supply of housing land are up to date I have noted the Council has acknowledged the proposal is considered to be sustainable development and that it would provide environmental, social and economic benefits. From the submissions and my visit and taking into account the representations of interested parties I also conclude the proposal would represent sustainable development. Although it is sited at the edge of the settlement the development would be within relatively easy reach of local services and facilities which would gain some support from the development. It would provide a contribution towards the local housing supply and, with suitable landscaping and biodiversity scheme would enhance the environmental role of the site. Taken together these weigh considerably in favour of the proposal and must be balanced against any harm that might arise.
8. The site forms a strip of land that lies to the northern side of a substantial area of land that is situated adjacent to the Lane and behind existing properties on Burywater Lane. This larger area of land is also outside the settlement boundary and therefore within the countryside. Outline Planning permission has been granted for two developments for 84 dwellings and for a care village on this land but these have not yet built. There are also a number of other planning permissions for single dwellings and a development of 15 dwellings on sites along the Lane.
9. The appeal site already has planning permission for a single dwelling and garage. The proposed development is to provide an additional 14 dwellings to the rear and although the application is in outline it is reasonable to assume, given the characteristics of the site that they would be arranged in a form of linear development running east to west.
10. The Council has not objected to the principle of residential on the site and it therefore must be assumed that it did not consider the development would cause adverse effects to the countryside that would significantly and demonstrably outweigh the benefits identified. However, the Council's views

are caveated in that the proposed development would only be acceptable if the neighbouring development of 84 dwellings to the south was implemented. In the absence of this development it considers the appeal proposal to would represent an elongated form of development that would uncharacteristically intrude into the open countryside beyond the built form in isolation and contrary to LP Policies GEN2 and S7.

11. If the appeal proposal was built but the larger developments to the south were not built the appeal proposal would result in a narrow development that would protrude into the countryside beyond the existing development along the west of the Lane. However, the appeal site has a significant amount of hedgerows and trees along the northern and southern boundaries and although this is predominantly deciduous it would nevertheless provide screening even during the winter months. It is inevitable the development would be visible but given the topography and that there are no public footpaths to the north, west or south of the site views towards the site would be limited. The details of the design, layout and landscaping would be considered at a later stage, if the appeal is allowed, so that the visual impacts of the development could be minimised.
12. Newport is identified as key rural settlement where further residential and/or employment development may be proposed to protect or strengthen the local community. Although the site is adjacent to but not within the development boundary the proposal would not be isolated from the built up area. I am also not persuaded that a linear form of development would have any greater impact on the countryside than the much larger developments already approved by the Council to the south. Although, if built alone it would project further to the west than existing development along the Lane do not consider this would result in any adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Furthermore, I consider that it would be very unlikely that the other approved residential developments would not take place given the shortage of development sites and demand for housing in the area.
13. The parties have referred to the possibility of imposing a condition on any permission that would prevent the development taking place without the development approved under reference UTT/13/1769/OP taking place first. As I consider the proposed development to be acceptable in its own right I do not consider the imposition of such a condition necessary or reasonable.
14. Having taken into consideration all the matters raised I conclude the proposal would not harm the countryside and it complies with LP Policies S7 and GEN 2.

Financial contributions

15. The second reason for refusal relates to the absence of any mechanism to secure contributions towards educational facilities, wheelchair accessible housing and affordable housing. Since the Council determined the planning application a unilateral undertaking has been submitted that would provide contributions towards educational facilities.
16. In accordance with paragraph 204 of the National Planning Policy Framework (the Framework) and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 any obligations sought in an undertaking must be

necessary; directly related; and fairly and reasonably related in scale and kind to the development proposed.

17. LP Policies GEN1, GEN2 and GEN6 set out the Council's commitment to ensure new developments provide a contribution towards infrastructure that is made necessary by the proposed development and to ensure developments meet the needs of people with disabilities and encourages movement by means other than cars. The LP also includes a commitment to secure affordable housing to meet the housing needs of those unlikely to be able to meet their needs in the housing market without some assistance.
18. The Council has adopted a Developer Contributions Guidance Document (DCGD). This sets out for all forms of contributions when such contributions will be sought and how the amount is calculated. Reference is made to other sources of information, such as the Essex County Council Developers Guide to Infrastructure Contributions and the Housing Strategy (2012) which provide the reasoning and justification for the contributions.
19. From the submissions I am satisfied that contributions towards education and affordable housing are necessary in order the Council's objectives set out in the LP are addressed. The contributions are also directly related and fairly and reasonably related in scale and kind to the development proposed and they meet the tests set out in regulation 122. I have therefore taken into account the unilateral undertaking in my determination of the appeal in respect of educational facilities.
20. In respect of affordable housing the DCGD requires a provision of 40 per cent affordable housing provision on site of 15 or more dwellings or sites over 0.5 hectares. The site area is in excess of 0.5 hectares and it is the stated intention of the appellant to provide 6 units of affordable housing on the site as opposed to a financial contribution for its provision elsewhere. However, there is no mechanism in place to ensure its provision. As the intention is to provide the affordable housing as part of the proposed development I consider in the circumstances this can be dealt with by the imposition of a condition which I shall impose. I also consider the provision of wheel chair accessible housing can be dealt with in a similar manner.
21. I therefore conclude, having taken the undertaking into account and subject to conditions that I will impose that the proposal would comply with LP Policies GEN1, GEN2 and GEN6.

Other matters

22. A number of interested parties have submitted comments. Many of these have been considered within the main issues set out above. A number of concerns also relate to highway safety, delivery vehicles blocking the lane and to drainage and sewage problems.
23. The highway authority was consulted in respect of the proposal and has not raised any objections to the development subject to the imposition of conditions. Furthermore, I note it considers the agreement that the appellants have entered into with Newport Free Grammar School regarding proposed highway works to address capacity issues generated by the other larger development proposals would, in respect of this appeal development not be reasonable or accord with regulation 122. The evidence submitted with the

appeal provides no grounds for me to take a different view but I will impose the conditions suggested. Given the indicative layout vehicles would not need to park on the Lane in order to deliver to the proposed properties. The site is within an area with a low risk of flooding and no objections from the statutory undertaker have been submitted in respect of sewage disposal.

Conditions

24. I have considered the conditions suggested by the Council and, where appropriate, amended them to ensure they comply with the advice in Planning Practice Guidance. In addition to the standard time limit a condition requiring the submission and approval of all external materials is necessary to ensure the development provides a satisfactory appearance. I shall also impose a condition relating to the provision of affordable housing in order that the development provides for identified local housing needs.
25. To ensure the safety of highway users conditions requiring the details of access, vehicle cleaning arrangements, construction phase parking and turning facilities and details of estate roads are necessary. To ensure the development protects wildlife and biodiversity conditions are required regarding the timing of any vegetation removal, a reptile and amphibian search and lighting. To ensure the development provides housing that is accessible to all conditions are required regarding the Lifetime Homes Standard and wheelchair access.

Conclusion

26. For the reasons given above I conclude that the appeal should be allowed.

Sarah Stevens

INSPECTOR

Schedule of conditions

- 1) Approval of the details of the layout, access, scale, landscaping and appearance (hereafter called "the Reserved Matters") shall be obtained from the Local Planning Authority in writing before development commences and the development shall be carried out as approved.
- 2) (A) Application for approval of the Reserved Matters shall be made to the Local Planning Authority not later than the expiration of 3 years from the date of this permission.

(B) The development hereby permitted shall be begun no later than the expiration of 2 years from the date of approval of the last of the Reserved Matters to be approved.
- 3) No development shall take place until samples of materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented using the approved materials. Subsequently, the approved materials shall not be changed without the prior written consent of the local planning authority.
- 4) No development shall take place until a scheme for the provision of affordable housing as part of the development shall have been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
 - v) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 40% of housing units/bed spaces;
 - vi) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - vii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing;
 - viii) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - ix) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

The affordable housing shall be retained in accordance with the approved scheme.
- 5) No development shall take place until details have been submitted and approved by the Local Planning Authority of the provision of suitable access arrangements to the application site in connection with the construction of the development, to include wheel and under body cleaning facilities for the duration of the development to prevent the deposition of mud and other debris onto the highway network/public areas, turning and parking facilities for delivery/construction vehicles within the limits of the application site together with an adequate parking area for those employed in developing the

site. The development shall be carried out in accordance with the approved details.

- 6) No development shall take place until details have been submitted and approved by the Local Planning Authority of details of the estate roads and footways to accord with the Essex Design Guide (including layout, levels, gradients, surfacing and means of surface water drainage). The development shall be carried out in accordance with the approved details.
- 7) No tree, hedgerow or scrub removal shall be carried out on site between the 1st March and 31st August in any year, unless an ecological assessment of the affected vegetation which confirms that no bird nests will be affected has been undertaken, and submitted and approved in writing by the Local Planning Authority.
- 8) A fingertip search of the entire area east of the post-and-rail fence (horse manure storage area); shall be carried out by a qualified ecologist immediately prior to ground works commencing. If any reptiles are found, works shall cease immediately and advice shall be sought from the Council.

All potential hibernacula shall be inspected by an ecologist and removed by hand if reptiles are confirmed absent from them. If reptiles are found, works shall cease immediately and advice shall be sought from the Council.

The central grassland area shall be cleared under the supervision of an ecologist according to the method set out on page 4 of the Reptile Survey and Mitigation Report.
- 9) No fixed lighting shall be erected or installed until details of the location, height, design, sensors, and luminance have been submitted to and approved in writing by the Local Planning Authority. The details shall ensure the lighting is designed in such a way to minimise any potential impacts upon nocturnally mobile animals. The lighting shall thereafter be erected, installed and operated in accordance with the approved details.
- 10) Should the development hereby approved not have been commenced within one year of the date of this permission, a further ecological assessment of the site shall be carried out to update the information previously submitted with the application, together with an amended Biodiversity Mitigation and Enhancement Plan to mitigate/compensate the impact of the development upon any identified priority or protected species. The new ecological assessment and Biodiversity Mitigation and Enhancement Plan shall be submitted to and be approved in writing by the Local Planning Authority prior to the commencement of the development and thereafter the development shall be implemented in accordance with the approved ecological assessment and Biodiversity Mitigation and Enhancement Plan.
- 11) All dwellings shall be designed to Lifetime Home Standards.
- 12) At least one of the dwellings shall be adaptable for wheelchair use. A plan showing the location of this/these proposed dwellings shall be submitted and approved in writing, by the Local Planning Authority, prior to the commencement of works on the site and shall be retained thereafter.

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