



Appeal Decision

Site visit made on 6 September 2022

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/C1570/W/21/3282098

Land East of St Edmunds Lane, St Edmunds Lane, Great Dunmow, Essex CM6 3AT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Rupert Kirby of St Edmunds Lane Management Ltd against the decision of Uttlesford District Council.
 - The application Ref UTT/20/1744/FUL, dated 3 January 2020, was refused by notice dated 11 June 2021.
 - The development proposed is 30 no. new self build and custom dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant has submitted a Unilateral Undertaking with the appeal (the UU), signed 13th August 2021. This relates to custom and self build homes, education and bus strategy contributions, and I have taken this into account in determining the appeal.

Background and Main Issues

3. The land to the south west of the appeal site was granted outline planning permission at appeal in May 2015, for 22 custom and self build homes¹. Full planning permission was subsequently granted by the Council for 22 custom and self build homes on that site in June 2020². This land is currently being developed and is partially occupied. This development is referred to throughout the evidence as Phase 1.
4. During the course of the appeal, the Council has also granted planning permission for 32 custom and self build homes on land to the south of the appeal site³.
5. The main issues in this appeal are:
 - i. The effect of the development proposed on the character and appearance of the area;
 - ii. The effect of the development on the setting of the nearby grade II listed building of Tower House;

¹ APP/C1570/A/14/2223280, following refusal of UTT/14/0472/OP

² UTT/19/1508

³ UTT/21/2719/FUL

- iii. The effect of the proposed development on community infrastructure, including schools, transport and affordable housing.

Reasons

Character and Appearance

6. The appeal site forms the southern end of a wider field of undeveloped agricultural land. The wider site is bound by belts of trees and hedgerows, and the ground levels slope downwards from north to south. As a consequence, the appeal site occupies the lower lying ground. The appeal site includes a strip of land to the north which links the main area of the proposed development to an existing public footpath on higher ground to the north.
7. The site is directly adjacent to Phase 1 of the development to the south west, through which the proposed development would be accessed. It is also adjacent to residential properties on Tower View Drive to the west and Tower House, a grade II listed building. Open countryside extends beyond the appeal site to the east, interspersed by woodland and hedgerows which divide irregular shaped fields. As above, I have noted the recent grant of planning permission for development on an undeveloped agricultural field to the south of the appeal site.
8. The appeal site lies outside the boundaries of Great Dunmow, as defined by the Uttlesford Local Plan 2005 (the ULP). The site is also outside the areas defined as the Town Development Area by the Great Dunmow Neighbourhood Plan 2015- 2032, adopted 2016 (the GDNP). As such, the site is within the countryside for the purposes of these policy documents.
9. Policy S7 of the ULP relates to development in the countryside. It states, among other things, that there will be strict control on new building in the countryside and that planning permission will only be granted for development that needs to take place there, or is appropriate to a rural area. It is relevant, however, that the settlement boundaries defined by the ULP were set out in order to respond to growth over the Plan period, up to 2011. The Inspector in the appeal decision for Phase 1⁴ found that the restrictions to development outside the settlement boundaries set out in Policy S7 to be out of date for this reason. The policy is only partially compliant with the Framework and should be given moderate weight.
10. Despite this, Policy S7 also requires development to protect or enhance the character of that particular part of the countryside, and this is consistent with the National Planning Policy Framework (the Framework) paragraph 174 insofar as it requires decisions to recognise the intrinsic character and beauty of the countryside. The objectives of Policy DS1 of the GDNP also relate to protection of the distinct rural identity of the parish, as well as prevention of sprawl into the countryside.
11. The appeal site and the surrounding developments lie outside the development area defined by the GDNP. They also lie outside the Character Area for St Edmunds Lane defined by the GDNP. The GDNP nonetheless identifies the importance of the character of St Edmunds Lane as a landscape edge to the town.

⁴ APP/C1570/A/14/2223280

12. The proposed development would inevitably entail a reduction in the openness of the appeal site and some encroachment of the settlement into the surrounding countryside. Despite this, the appeal site would form one of a cluster of developments set around both sides of St Edmunds Lane which together form a more gradual transition between the settlement and the countryside. Together with the recently approved development to the south⁵, the appeal scheme would effectively infill and round-off the edge of the settlement. This limits its visual impacts and the development would not represent a significant encroachment into the countryside when viewed combination with those other developments.
13. While the exact location of the houses on the plots and the design of the houses, will vary, the proposal includes a detailed design code which would place restrictions on parameters including eaves and ridge heights, as well as building footprints, materials and boundary treatments. Together with the strategy for landscaping on the site, the development would respect the character and appearance of those neighbouring developments and provide a suitable transition to the countryside beyond.
14. Visibility of the appeal scheme from St Edmunds Lane would be limited due to its position behind Phase 1 and as the site wraps around the rear of properties on Tower View Drive. The appeal scheme would be visible from the public footpath to the north, and particularly from the proposed extended footpath. However, the extensive areas of landscaping shown, together with the slope of the land and the building heights proposed, would limit views to parts of the first floors of the houses and their roofslopes, as evidenced by the appellant's visual representations. While the introduction of the buildings in those views would be at odds with the open countryside to the east, given the attributes of the development described above and together with the backdrop of the adjoining residential developments, the development would respect the character of the area in which it would lie.
15. For the reasons given, the proposal would not cause harm to the character and appearance of the area. While there would be some encroachment of the settlement into the countryside, given the site's location this impact would be limited. Consequently, the proposal would not conflict with the aims of Policy S7 of the ULP or Policy DS1 of the DNP insofar as they relate to protection of the town's rural setting and the character of the countryside. The proposal would comply with the objectives of the Framework relating to the intrinsic character and beauty of the countryside.

Effect on the Setting of Tower House

16. Tower House is a Grade II listed building located to the north west of the appeal site. It comprises a brick tower windmill with domed cap, without sails, which is attached to a two storey mill house with grey slate hipped roofs and rendered elevations. Together both component parts are in use as a single residential property.
17. Evidence suggests that Tower House has historically been in a rural location and positioned far from any other buildings. This has changed over time as nearby development began to emerge from around 1920 and today the building is positioned close to housing developments to the north and south.

⁵ UTT/21/2719/FUL

Today, the immediate setting of the building comprises its irregular shaped plot containing a landscaped garden with a number of mature trees which provide a degree of screening from the road. The setting is also formed by the open countryside to the east, in particular the adjacent open field of which the appeal site forms a part. A public footpath which extends across the northern side of the field provides important views of Tower House across the field and in those views the listed building can be experienced in a setting of some isolation and tranquillity. In summary, the semi-rural setting contributes to the appreciation of, and therefore the significance of, this heritage asset.

18. Through introducing development to this open field, the appeal scheme would impact upon the setting of the listed building. The northern part of the field would remain undeveloped, and this would retain the main open area across which the listed building is viewed from the public footpath.
19. The appellant has provided a Visual Representation document which considers the impacts of the development on key views, including those from the public footpath (viewpoints 1 and 2). In those existing views, the residential development immediately to the south of Tower House is visible, and forms part of the backdrop of the listed building. The proposal would introduce development alongside the listed building over part of the existing open field, and would partially obscure the views of the rolling countryside to the south. The impacts of the recently approved scheme⁶ are not included within the Visual Representations document. Should this be constructed, this would also be likely to be visible in long views from the footpath, contributing to the awareness of the settlement behind the listed building.
20. Due to the gradient of the land and the distance of the proposed development from the footpath, it would primarily be the roofslopes as well as parts of the first floor levels which would be apparent in those views. The landscaping buffer proposed to the northern side of the development would also provide screening to varying degrees. As a result, whilst the development would alter the sense of the listed building being set in a wider rural landscape, the development would not be dominant in those views nor visually detract or compete with it.
21. The development may entail additional external lighting and a degree of light pollution, alongside general movements and noise associated with the use of residential properties. However given the distance of the proposed development from the listed building, proximity of other residential uses, and clear separation by boundary treatments, these impacts on the setting of the listed building would not be harmful.
22. Nonetheless, the appeal scheme would have some harmful effects on the important views of the listed building through bringing development closer to the building and reducing the ability to appreciate the contribution the rural setting makes to its significance.
23. The development would conflict with Policy ENV2 of the ULP which states, among other things, that proposals that adversely affect the setting of a listed building will not be permitted. However, Policy ENV2 is more restrictive than the Framework in that it omits the subsequent requirement for a balancing

⁶ UTT/21/2719/FUL

exercise. It is therefore only applicable in so far as it addresses the presumption against heritage harm.

24. In line with the requirements of Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am required to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. This is a matter to which I attach considerable importance and weight. I find the extent of harm to the significance of the heritage asset, by reason of the impact to its setting, to be less than substantial. In line with paragraph 202 of the Framework, this harm should be weighed against the public benefits of the proposal. I shall return to this matter as part of the overall planning balance below.

Effect on Community Infrastructure, including Schools and Affordable Housing

25. The UU intends to make financial contributions to education and to public transport, as well as securing the entirety of the development as custom and self build housing plots.
26. Notwithstanding my comments below, I have concerns about the document itself, its execution and thus whether the Council could rely on it to secure the obligations it contains. Most notably the UU refers to a planning permission granted by the Council, which would not be the case here if the appeal were allowed. For this reason, I am not satisfied that the submitted UU would be capable of taking effect and securing the intended obligations. As such I cannot afford weight to the obligations which it contains.
27. I have assessed the obligations in light of the Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 57 of the Framework, which includes consideration of their necessity, below.
28. Custom and self build housing: The UU would have secured the entirety of the development for custom and self build homes, which would contribute to an uncontested identified need in the District. By comprising entirely self-build plots, the proposed development would have been exempt from making an affordable housing contribution under the provisions of paragraph 65 of the Framework. In the absence of a mechanism to ensure that the proposal conforms to the exceptions given in paragraph 65, and in the absence of any other affordable housing being secured, the development would not accord with the objectives of the Framework insofar as they relate to delivery of affordable housing. The absence of such a contribution to affordable housing therefore weighs against the development.
29. Education contributions, for early years, primary and secondary education: Policy GEN6 of the ULP requires development to make provision for infrastructure including, among other things, school capacity and public transport provision that are made necessary by the proposed development. In addition, the GDNP includes an objective relating to provision of educational facilities, with policies that should be applied when such proposals come forward. The proposed mix of houses, which would include family accommodation, would be likely to have an impact on local education facilities. However, while the Council have identified that financial contributions should be made, there is no detailed evidence as to why these contributions are necessary to make the development acceptable or how the sums are fairly and

reasonably related in scale and kind to the development. As such, based on the evidence before me, these contributions would not meet the required tests.

30. Bus Strategy contribution: Policy GA3 of the GDNP requires transport infrastructure and support for services to be sought where appropriate from developers to ensure developments are integrated into the local bus network and public transport infrastructure. The Highways Authority states that the sum is required as a contribution towards the Outline Public Transport Strategy for Great Dunmow which seeks to provide a more regular bus service on St Edmunds Lane which the Council have detailed is infrequent and under threat. However, I do not have detailed evidence to demonstrate that the extent of the contribution is proportionate to the appeal scheme. Consequently, it has not been demonstrated that this sum is fairly and reasonably related to the development proposed.
31. I have seen no evidence to justify the Council's monitoring fee or to justify an additional obligation requiring the appellant to pay the Council's legal fees. In the absence of this, it has not been demonstrated that such obligations are fairly and reasonably related to the development proposed nor necessary in planning terms.
32. Taking the above matters into consideration, it has not been demonstrated that the obligations relating to education and bus strategy contributions meet the required tests and I am unable to take those into account in determining the appeal.
33. However, as above, the absence of a mechanism to secure the custom and self build homes, or an affordable housing contribution, presents conflict with the Framework, particularly at paragraph 65 where it requires a minimum contribution to affordable housing as part of its objective to deliver a supply of homes for varying groups in the community.
34. I have considered whether this matter could be addressed through the imposition of a negatively worded planning condition to prohibit the development until a satisfactory planning obligation is entered into. Planning Practice Guidance (PPG) states that such a condition is unlikely to be appropriate in the majority of cases and this should be done in exceptional circumstances. I do not have evidence before me of exceptional circumstances in this case and as such, in line with the PPG, such a condition would not be appropriate.

Planning Balance

35. The Council accept that it does not have a 5 year land supply for housing, and the parties agree there is around a 3.52 year supply. As such, the provisions of paragraph 11 of the Framework are relevant to the appeal.
36. In terms of the balancing exercise required under paragraph 202 of the Framework, the proposal would introduce a new footpath linking the proposed houses to the network of public footpaths to the north. By doing so, new public views of the listed building would be created. This would increase opportunities for the public to appreciate and experience the heritage asset across the open field, which is an important part of its setting and significance. This would be a significant public benefit. In addition, the proposed development would provide new housing which would contribute to the supply of housing in the District and

include children's playspace. For these reasons together, the public benefits which would be delivered as part of the development would outweigh the harm identified to the significance of the heritage asset.

37. As those benefits have been found to outweigh the harm, the heritage policies in the Framework do not provide a clear reason for refusing the development proposed. Consequently paragraph 11d)ii. is engaged and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
38. I have considered whether paragraph 14 of the Framework applies as the site is not allocated for housing in the GDNP. However, certain criteria contained in paragraph 14 do not apply, particularly as the GDNP became part of the development more than two years ago. As such this is not engaged in the determination of this appeal.
39. The proposal would deliver 30 new homes which would make a notable contribution to the District's housing stock, as well as making a positive contribution to the national objective to boost the supply of homes. This weighs in favour of the development, particularly given the significant shortfall in the housing land supply. In addition, the site is one which paragraph 69 of the Framework acknowledges can make an important contribution to meeting the housing requirement of an area, and can often be built out quickly. The development would bring economic benefits in terms of construction jobs and ongoing local expenditure by new residents. Taken together, and in light of the scale of the proposal, these attributes attract moderate weight.
40. The proposal would link the homes to the public footpath to the north which in turn links into the wider network of public footpaths. As above, this would allow greater appreciation of Tower House and its setting. Improved linkages to the countryside also align with the objectives of paragraph 120 of the Framework insofar as it seeks to improve public access to the countryside. To this benefit I ascribe moderate weight.
41. Set against these benefits, my conclusions in relation to the UU means that the appeal scheme would not be exempt from affordable housing requirements. The proposal would cause harm through a failure to provide a policy compliant affordable housing contribution. This would undermine the national objective to address the need for different types of housing and the ULP Policy H9 requirement for affordable housing. The effects of this lack of provision would be significant and long lasting, and would be in direct conflict with the Framework. As such I ascribe this harm substantial weight.
42. Overall, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. The appeal scheme would not therefore benefit from the presumption in favour of sustainable development.

Conclusion

43. For the above reasons, having taken account of the development plan as a whole, the approach in the Framework, along with all other relevant material considerations, the appeal is dismissed.

C Shearing

INSPECTOR

Richborough Estates