

Decision Notice and Statement of Reasons

Site visits made on 11 and 12 April 2023

by S Dean MA MRTPI

A person appointed by the Secretary of State

Decision date: 11 May 2023

Application Reference: S62A/2023/0015

Site address: Grange Paddock, Ickleton Road, Elmdon, Essex CB11 4GR

- The application is made under section 62A of the Town and Country Planning Act 1990.
 - The site is located within the administrative area of Uttlesford District Council.
 - The application, made on 27 January 2023 was validated on 14 February 2023.
 - The development originally proposed was an "Application for outline planning permission for the erection of 18 dwellings including provision of access road, car parking and residential amenity space, a drainage pond, and communal open space, with all matters reserved for subsequent approval except for means of access and layout".
 - The determined application is for outline planning permission for the erection of 18 dwellings including provision of access road, car parking and residential amenity space, a drainage pond, and communal open space, with all matters reserved for subsequent approval except for means of access.
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Decision Notice

Planning permission is refused for the following reasons;

1. Having regard to its countryside location, agricultural land quality and accessibility, the site is not a suitable location for the development proposed, contrary to Policies S7 and ENV5 of the Uttlesford Local Plan, adopted January 2005 (the Local Plan) and Government guidance set out in the National Planning Policy Framework (the Framework).
2. The proposal, by virtue of its location, the nature of the site, and its relationship to its surroundings would harm the established character and appearance of the area, contrary to Policy GEN2 of the Local Plan and Government guidance set out in the Framework.
3. Owing to the location of the access, the proposed visibility splays which would give rise to a substandard access, and the proposed pedestrian connections, the proposal would not be safely and suitably accessed, contrary to Policy GEN1 of the Local Plan and Government guidance set out in the Framework.

Statement of Reasons

Procedural matters

1. The application was made under Section 62A of the Town and Country Planning Act 1990, which allows for applications directly to the Planning Inspectorate where a Council has been designated by the Secretary of State.
2. The original application for 18 dwellings was made in outline with approval sought for access and layout. Appearance, landscaping and scale would be the subject of future applications for approval of reserved matters. Plans were submitted showing proposed street-scenes but in light of the nature of the application, these were treated as indicative.
3. Following screening by the Planning Inspectorate, it was found that the proposal would not give rise to significant adverse effects and an Environmental Impact Assessment was not required.
4. Consultation was undertaken on 17 February 2023 and allowed for responses by 16 March 2023. Responses were received from parties listed in Appendix 1. A number of interested parties and local residents also submitted responses.
5. Comments from the Council's Landscape Officer and Senior Ecological Consultant were received after the end of the representation period. As they were to be taken into account in determining the application, in line with the Regulations, the Planning Inspectorate notified in writing the applicant and any interested person of this information, giving them the opportunity of making written representations on this new information only.
6. Uttlesford District Council (UDC) submitted an Officer's Report, covering letter and minutes following their meeting on 8 March 2023. At that meeting, the Head of Development Management and Enforcement *"referred to making an objection in principle to include; the location being unsustainable; harms to the setting of the village, in respect of urban design, landscape and character; Loss of agricultural land; Biodiversity concerns; Drainage, elevation, and general topography concerns; and, Support for the views expressed by the Parish Council and Urban Design."* It was then noted in the letter that *"The Planning Committee wishes to formally record that The Council objects to the proposed development"* and that *"the Council RESOLVED that they object to the scheme"*.
7. After the end of the representation period, a procedural review of the case was undertaken in line with the published criteria. That review established that this application was to be determined on the basis of representations in writing; being neither of a significant scale, nor raising issues which could not be clearly understood from the written submissions.

8. Following their own review of consultation responses, the applicant sought to withdraw the layout of the proposal from their application. I have had regard to the Wheatcroft Principles, the interests of fairness, the degree of engagement of all parties with the proposed layout and the comments from the applicant explaining their reasons for originally submitting layout for approval. As deferring consideration of layout to any future application for reserved matters did not add anything to this application, I considered it appropriate to remove it and was satisfied that further consultation or opportunity for representations was not required.
9. The determined application for 18 dwellings was therefore made in outline with approval sought only for access. Layout, appearance, landscaping and scale would be the subject of future applications for approval of reserved matters. All plans have therefore been treated as indicative, but for those showing the details of the access.
10. In determining this application, the Planning Inspectorate has worked with the applicant in a positive and proactive manner to seek solutions to problems arising in relation to dealing with the planning application. In doing so, the Planning Inspectorate gave clear advice in advance of, and during the application of the expectation and requirements for the submission of documents and information, ensured consultation responses were published timeously, gave clear deadlines for submissions and responses and accepted amendments requested by the applicant.

Main Issues

11. Having regard to the application, the consultation responses, comments of the interested parties, the report, committee resolution and minutes, the main issues to be considered in respect of the application are:
 - Whether the site is a suitable location for the development proposed;
 - the effect of the proposed development on the character and appearance of the area; and
 - whether or not the proposal could be safely and suitably accessed.

Reasons

12. The application site is a broadly rectangular parcel of land, adjacent to, but outside of, the settlement boundary of Elmdon as defined in the Local Plan. The site slopes gently downwards towards its long boundary with Ickleton Road, but is elevated above it. An existing access serves this site and other dwellings to the north. There is a Conservation Area within Elmdon, although not adjoining the site, and several listed buildings are nearby.

Location

13. The Local Plan defines the site as open countryside. Policy S7 requires therefore that it be protected for its own sake, and states that planning permission will only be given for development that needs to take place there or is appropriate to a rural area. Several other factors also feed into my consideration of this main issue.
14. There is agreement between parties that the site lies beyond the established settlement boundary of Elmdon, and that as such, it is within open countryside. I do however note that properties opposite the site, on Ickleton Road are within that settlement boundary. As the proposal is not for development which needs to take place in the countryside and is not infill, then it is contrary to Policy S7.
15. The Transport Statement sets out that there are facilities, albeit limited which already exist in the village. However, it is clear from representations made to the application, and my site visit, that Elmdon lacks facilities and services which residents would use to meet their day-to-day needs. The Minutes of the Council Committee report reinforce this conclusion, noting the distance of the site from schools, medical facilities, shops, towns, and supermarkets.
16. Indeed, although there is a bus service to the village, its frequency and the location of the stops relative to the site (and its internal layout), lead me to consider that residents of the proposal would rely on the private car for most of their day-to-day journeys. As such, the site is in an unsustainable location.
17. The application site is mostly Grade 2 Agricultural Land, and so falls under the Framework definition of Best and Most Versatile Agricultural Land (BMV). Policy ENV5 of the Local Plan only allows development of such land where opportunities have been assessed for accommodating development on other sites.
18. The applicant acknowledges that they have not undertaken a detailed assessment of whether or not there are other opportunities, either on previously developed land or within settlement limits, not on BMV land as required by the Local Plan policy. They suggest that this is not required simply because the Council does not have a sufficient supply of housing land.
19. The Council notes that the loss of this BMV land could be balanced against Policy E4. This allows the diversification of agricultural land in situations where, amongst other things, development includes proposals for landscape and nature enhancement, and it would not place unacceptable pressures on the surrounding rural road network. I note however that the applicant does not seek to rely on this balance and matters of character and appearance will be addressed below. On its face, the proposal therefore conflicts with Policy ENV5 of the Local Plan.
20. Taking all of the above together, I find that the site is not a suitable location for the development proposed, contrary to Policies S7 and ENV5 of the Local Plan.

Character and appearance

21. As noted above, the layout, appearance, landscaping and scale of the proposal would be the subject of future applications for approval of reserved matters. Notwithstanding that, comments have been received expressing concerns about, and significant objection to, the development of the site, regardless of its ultimate layout, appearance, landscaping and scale, because of its effect on the character and appearance of the area.
22. At present, the site is an open field, given prominence in wider views owing to the gentle slope towards the road and substantial elevation above the road and its surroundings. It is visible from many locations around the village, including from a number of public rights of way, and contributes towards the open, rural and undeveloped backdrop and setting to much of the rest of the village.
23. Despite the substantial retained boundary screening of the site and the settlement boundary established in the Local Plan, the proposal would plainly expand the built-form of the village well beyond established building lines and the built-form envelope.
24. Notwithstanding that layout is a reserved matter, given the nature of the site and the proposed retention of the significant boundary screening, to my mind, development of it would give the impression of a development isolated from and distinct from its surroundings. Coupled with the elevation of the site above Ickleton Road, this effect is reinforced by the commentary in the Planning Statement around screening and visibility. I consider therefore that there are clear differences between the relationship of Horseshoe Close and Elm Court to their surroundings, such that they do not lend support to the proposal. I also do not find support in the elevated location of the houses on Bury Gardens, as they are set behind an open, gentle slope, which visually connects them to Ickleton Road. This impression is reinforced by the comments from the Urban Design Officer and other representations.
25. I agree with both the applicant and the Council's Landscape Officer that the visual effect of the proposal on the wider rural landscape would be limited by its location, aspect, form and boundary treatment. However, to my mind this does not alter or reduce the effect of the proposal on the character and appearance of the immediate area and the village itself.
26. As noted, the application site is near but not adjacent to the Elmdon Conservation Area (CA). Given the distance and the intervening built-form, having given great weight to the conservation of the CA as a heritage asset, I am satisfied that the proposal would not harm its setting.

27. There are a number of Grade II listed buildings (two dwellings and a telephone kiosk) close to the site, the setting of which the Council has identified as being affected by the proposal. At present, the site contributes to their setting in so far as it is an undeveloped parcel of land at the edge of the village, with the established verges and vegetation reinforcing that edge-of-settlement character. Whilst this would obviously change with the development of the site, the immediate setting of these buildings would not change as it is proposed to retain much of the boundary screening, and the proposed density of the site is low.
28. Therefore, having had special regard to the desirability of preserving its setting, and giving great weight to the asset's conservation, I agree with the applicant and find that the proposal would neither harm the setting of the listed buildings nor their significance as designated heritage assets.
29. I note third-party objections to the proposal in terms of its effect on heritage assets, but for the reasons given above do not consider that they alter my reasoning in this regard.
30. Taking all of the above together, I find that although the effect on heritage assets would not be harmful, the proposal would have an unacceptably harmful effect on the character and appearance of the area; giving rise to development in a location and at a scale alien to the surrounding area. This would be contrary to Policy GEN2 of the Local Plan.

Access

31. It is proposed to improve the existing access to Ickleton Road, at the eastern end of the site, to allow vehicular and pedestrian access to the site and the existing dwelling already using that access. Despite third-party objections on this point, the submitted Transport Statement (TS) clearly demonstrates that the trip generation from the development would be well within the capacity of the local road network and would not cause harm to it.
32. The TS also includes the results of speed surveys, and it primarily (although not solely) is on the basis of these that the County Council as Highway Authority (HA) objects to the proposal. Whilst the proposal would provide adequate visibility splays for the signed speed limit at the access to the site, it is clear from the evidence that actual speeds are in excess of that limit. Given that, the HA would wish to see longer visibility splays, appropriate for the observed speeds and they are concerned that these may not be on land in the control of the owner or the HA. Whilst I note the proposed new relocated gateway features and speed warning signs, on the basis of the evidence before me, in combination with third-party comments on highway safety, road conditions in the area and my observations during my site visits, I am not convinced that these would be sufficient mitigation to ensure that visibility splays designed for the speed limit alone would be sufficient.

33. As a result, I find that although the level of traffic arising from the development could be accommodated within the local road network, the proposed access would be substandard and could lead to unacceptable harm to highway safety for all users.
34. I note the Manuden appeal decision referred to by the applicant, in which there were opportunities for access to facilities by non-car means of travel. I also note that this proposal seeks to provide pedestrian access to the footway on the south side of Ickleton Road. However, given the differences between Manuden and Elmdon, most notably in terms of the facilities actually available within walking distance of that site and this one, I do not find any support in the Manuden appeal decision for the proposal before me.
35. I am also concerned that the pedestrian access relies on the use of the existing footway on the south side of Ickleton Road, requiring users to cross that road in a location where the applicant already identifies westbound traffic speed as being significantly in excess of the speed limit and where parked cars restrict visibility.
36. This arrangement also means that for future occupiers to access the proposed play area, they would have to cross Ickleton Road twice, and the single point of access to the site would unduly extend walking route distances from certain parts of the site. The HA has also objected to the proposal on the basis of pedestrian links to the existing network.
37. Whilst I note access improvements are proposed which are intended to have a positive effect on vehicle speeds, taking together the above, the objections from third-parties, the objections from the HA and my observations on site, I do not consider that the site could be safely and suitably accessed, contrary to Policy GEN1 of the Local Plan.

Other issues

Ecology

38. Although I note a significant number of third-party objections to the proposal on ecological grounds, the Council's Senior Ecological Consultant is satisfied that there is sufficient ecological information available to determine the application. They raise no objection, subject to the imposition of a number of conditions.

Flooding and drainage

39. Essex County Council, as Lead Local Flood Authority raise no objection to the proposal, on the basis of the submitted information, subject to the imposition of a number of conditions, and it appears that these would address the concerns of third-parties, particularly around off-site flooding and drainage issues.

Living conditions

40. I note objections from neighbouring properties around potential effects on living conditions, arising, amongst other things from potential overlooking, external illumination. However, I note that appearance and scale would be the subject of any future applications for approval of reserved matters, and there is a significant distance between the site and existing houses.

Play area and open space maintenance

41. The Council is concerned that the play area and open space is proposed to be open to the entire village but maintained and managed by a management company paid for by a service charge on future residents alone. As a result, this may require an agreement to control, fund and manage the provision of long-term ongoing maintenance of the play area and open space. The submitted planning obligation includes provision both for a management company to undertake that as well as a mechanism to offer the transfer of the play space and/or the open space to the Parish Council.

Planning obligation

42. It is common ground between the Council and the applicant that the proposal should deliver seven dwellings as affordable housing, in the type and tenure required by the Council, in line with Policy H9 of the Local Plan.
43. The applicant was unable to enter into an agreement with the Council to secure affordable housing, but a unilateral undertaking (UU) under section 106 has now been submitted, and this would secure affordable housing of the amount, type and tenure required by the Council.
44. The UU also includes provision for the management of the play area and open space, in accordance with a management scheme to be approved by the Council. This also provides options for control by a Management Company or the Parish Council.
45. I have considered whether the UU meets the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010. On the basis of the evidence before me I am satisfied that the UU is necessary to make the development acceptable in planning terms, directly related to the development and fairly related in scale and kind to the development.

Planning balance

46. Both the Council and the applicant agree that UDC does not currently have a five-year supply of housing-land as required by national policy. In addition, the Local Plan is from 2005. As a result, in Framework terms, the Local Plan is deemed out-of-date. The tests at paragraph 11d of the Framework therefore apply.

47. In relation to paragraph 11di, there are no clear reasons for refusal in relation to the areas or assets of particular importance referred to by the Framework. The test at paragraph 11dii of the Framework is therefore engaged, such that 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.
48. I have found, in my reasoning above that the location of the site, its effect on the character and appearance of the area and its accessibility would all lead to conflict with the Local Plan, over and above the site simply being beyond the Local Plan settlement boundary. Despite the common ground between the Council and the applicant around the weight to be given to Local Plan policies, I find that these adverse impacts would also conflict with policies in the Framework.
49. The rural, unsustainable location of the site conflicts with the overall aim of the Framework to deliver sustainable development, as well as guidance around delivering a sufficient supply of homes in suitable locations. The location of the site on BMV agricultural land, the loss of which is not justified, conflicts with the aims of the Framework to conserve and enhance the natural environment.
50. Although the site and surrounding landscape are not valued landscapes in explicit Framework terms, there remains a requirement to recognise the intrinsic character and beauty of the countryside. In addition, in achieving well-designed places, decisions are required to ensure that developments are sympathetic to local character, including the surrounding built environment and landscape setting. The elevated, prominent location of the site, its visibility and its contribution to the established character and appearance of the area and the effects on this of the development, which I have identified above, would therefore conflict with the Framework taken as a whole.
51. The accessibility and consequent highway safety harm matters considered above clearly demonstrate that the proposal would have an unacceptable impact on highway safety. Furthermore, it would not appear to give priority to pedestrian and cycle movements or create places which minimise the scope for conflict between pedestrians, cyclists and vehicles. This is clear conflict with the Framework.
52. I find that these are all significant adverse impacts which the Framework as a whole, seeks to guard against.
53. I agree with applicant that the provision of both market and affordable housing would be benefits of the proposal, particularly in the context of the housing land supply shortfall in the area and the aim of the Framework to support the Government's objective of significantly boosting the supply of homes. I also acknowledge that the provision of public open space could be a benefit, although I note the Council has some concerns over its delivery and long-term management.

54. However, given the scale of the proposal, I find these benefits to be limited and find that they are significantly and demonstrably outweighed by the adverse impacts set out above. As such, the proposal does not benefit from the presumption in favour of sustainable development set out in the Framework.

Conditions

55. The Council, consultees and third parties have recommended and requested conditions to be imposed should the application be permitted. Having reviewed these conditions I do not consider that their imposition would overcome or otherwise outweigh the harm I have found in my reasoning above.

Conclusion

56. The proposal, by virtue of its location, effect on the character and appearance of the area and effect on highway safety would significantly conflict with the Local Plan. Furthermore, the proposal would conflict with Government guidance in the Framework.

57. Whilst there are material considerations which weigh in favour of the proposal, they do not outweigh the development plan conflict I have found, such that a decision be taken other than in accordance with the development plan.

58. The application should therefore be refused for the reasons set out above.

S Dean

INSPECTOR

Informatives

1. The decision of the appointed person (acting on behalf of the Secretary of State) on an application under section 62A of the Town and Country Planning Act 1990 is final. This means there is no right to appeal. An application to the High Court under s288(1) of the Town and Country Planning Act 1990 is the only way in which the decision made on an application under Section 62A can be challenged. An application must be made within 6 weeks of the date of the decision.
2. These notes are provided for guidance only. A person who thinks they may have grounds for challenging this decision is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655) or follow this link: <https://www.gov.uk/courts-tribunals/planning-court>

Appendix 1 - List of consultee responses

Uttlesford District Council (UDC)
Cadent Gas Ltd
Essex Police
HSE
MAG Highways
National Gas
UK Power Networks
NATS
ECC Place Services - Historic Environment Consultant
Historic England
UDC - Housing Strategy Enabling Development Officer
ECC Minerals and Waste Planning
Natural England
CPRE Essex
Elmdon Duddenhoe End Wenden Loft Parish Council
Environment Agency
UDC Environmental Health
UDC Principal Urban Design Officer
MAG Aerodrome safeguarding
ECC Highways Authority
National Highways
Affinity Water
ECC Development and Flood Risk
ECC Ecology
UDC Landscape