



Appeal Decision

Site visit made on 19 September 2023

by **Benjamin Clarke BA (Hons.) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 October 2023

Appeal Ref: APP/J1915/W/23/3315467

Area 4, Land south of Hare Street Road, Buntingford SG9 9HX

- 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 Wheatley Homes against the decision of East Hertfordshire District Council.
- The application Ref 3/22/0798/FUL, dated 8 April 2022, was refused by notice dated 16 December 2022.
- The development proposed is a residential development comprising 10 bungalows, associated car parking provision and ancillary works.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The planning application was refused permission for several reasons. One of these pertained to the effects of the development upon highway safety. As part of the appeal proceedings, the appellant submitted additional information in respect of this matter. Following consideration of this information, the Council has confirmed that it satisfactorily addresses the concerns previously raised. I have no reason to disagree and have therefore preceded on this basis.

Main Issues

3. The main issues relevant to this appeal are:
 - the effect of the development upon the character and appearance of the surrounding area;
 - the effects of the development upon biodiversity; and
 - whether the effects of the developments are such that a legal agreement to secure affordable housing, education, leisure and community facilities would be required.

Reasons

Character and appearance

4. The appeal site consists of an undeveloped area on the periphery of a relatively recent residential development. Although the appeal site is on the edge of the settlement, a notable feature of the site's environs is the presence of open countryside. In result, the appeal site forms a transitional space between the built form of the settlement and the countryside beyond. In addition, the

appeal site is adjacent to a footpath that runs into the nearby countryside. To the rear of the appeal site is a belt of trees.

5. The proposed development would result in a significant increase in the overall level of built form, even though the proposal would involve the provision of bungalows. This would comprise the proposed dwellings, in addition to features such as boundary treatments and areas of hard standing. This means that the development would have a predominantly engineered appearance, irrespective of the inclusion of front gardens within the development.
6. These factors result in a scheme that would conflict with the general open character on the periphery of a larger residential development.
7. Furthermore, the proposal would be viewed alongside the relatively recent residential development. Therefore, the cumulative effect would be the creation of a more urban form of development due to the reduction in the overall level of open spaces surrounding dwellings. In consequence, the development would conflict with the existing more open character.
8. In addition, a notable feature of the existing residential development is the presence of spacious elements at key points in the development. This enables views through the residential development to the belt of trees to the rear of the proposed dwellings. These views allow for the existing residential area to harmonise with the wider rural area.
9. By reason of the quantum of the development within the appeal scheme and the siting of the proposed dwellings, such views would be severed. This means that the proposed development would result in an increased urbanising effect, which would conflict with the predominantly rural landscape of the wider surrounding area.
10. I have given consideration as to whether it would be possible to impose conditions regarding the materials from which the proposed dwellings are constructed from and the provision of landscaping.
11. Such conditions would ensure that the dwellings would have an appearance consistent with the neighbouring development and would provide some softening of the overall level of built form. However, the effectiveness of these would be reduced by reason of the loss of open space. In result, this suggestion does not overcome my previous concerns.
12. These matters are of particular concern due to the prominence of the appeal site. In addition to views from the neighbouring dwellings, the increased built form would also be perceptible from the footpath that runs near to the appeal site. There would also be some views, albeit to a lesser degree, from the nearby Hare Street Road. This means that the proposed development would be experienced by a great number of people. In result, the incongruous form of development would be strident.
13. Although there would some changes to the views from the existing development, these are unlikely to be significant and would not result in an erosion of the existing development's character.
14. I have had regard to the presence of the tree belt near to the appeal site. This means that the proposed development would not be substantially viewable from the countryside beyond the appeal site. Therefore, the gently undulating

plateau that is a feature of this area would be retained. Although this reduces the effects arising from the development, it does not mitigate the previously identified harm.

15. The Council has raised some concerns regarding the lack of surveillance in the development. However, the parking and garden spaces of the proposed dwellings would have a layout like the character and appearance of the nearby existing dwellings. In addition, these spaces would benefit from surveillance from the proposed dwellings, as well as views from the street. However, this matter does not mitigate my previous findings.
16. My attention has been drawn to another development in Hare Street. I do not have the full information regarding the planning circumstances of this, which means that I can only give it a limited amount of weight. Nonetheless, I note that this development is not adjacent to a footpath and has a different layout. Therefore, there would be several differences between the existing and proposed development. In result, the presence of the existing development does not allow me to disregard my previous concerns.
17. I therefore conclude that the proposed development would have an adverse effect upon the character and appearance of the surrounding area. The development, in this regard, would conflict with the requirements of Policies DES2, DES3 and DES4 of the East Hertfordshire District Plan (2018) (the Local Plan. Amongst other matters, these seek to ensure that developments demonstrate how they conserve the character of the district's landscape; retain, protect and enhance existing landscape features; and be of a high standard of design and layout.

Biodiversity

18. The proposed development would be sited on an existing undeveloped piece of land. In considering this appeal, I have been directed towards adopted development plan policies that seek to ensure that developments deliver a net improvement in biodiversity.
19. I understand that, over the course of the planning application process, there was some disagreement regarding the baseline position. However, at the Final comments stage, the appellant submitted additional information which included a further assessment of the level of biodiversity.
20. However, this information has not been the subject of formal consultation with either the Council or any other relevant consultees. therefore, if I were to proceed to a decision with reference to this additional document it would cause prejudice to other parties. Therefore, I have not been able to give this weight in my assessment.
21. In result, I cannot be certain as the amount of biodiversity improvements that would be required in order to mitigate the effects of the proposed development. This is of particular concern given that the proposed development is near to open countryside and is currently undeveloped in nature.
22. In result, there is a likelihood that the appeal site could be used as a habitat for some species, in addition to potentially offering an environment for foraging. In addition, there is some potential for the appeal site to serve as an appropriate environment for plants to grow. Given this, the lack of certainty regarding the

level of biodiversity improvements that would be required is particularly concerning.

23. I have given consideration as to whether it would be possible to impose a condition to secure improvements to biodiversity either on, or off, site. However, without certainty regarding the level of biodiversity provision that should be made, it is not possible to draft a condition with sufficient precision to meet the statutory test of reasonableness for the imposition of a planning condition.
24. Therefore, I do not believe that a planning condition could be imposed to ensure that the development delivers the necessary improvements in biodiversity either through on-site, or off-site, provision. In result, the possibility of imposing a planning condition does not allow me to disregard my previous concerns.
25. I therefore conclude that the proposed development would not deliver the necessary improvements to biodiversity. The development, in this regard, would conflict with Policies DES2 and NE4 of the Local Plan. Amongst other matters, these seek to ensure that enhancement opportunities are appropriately addressed; and biodiversity is enhanced.

Whether a legal agreement is required

26. The proposed development seeks planning permission for the erection of 10 dwellings. In considering this appeal, I have been directed towards adopted development plan policies, which seek to ensure that developments of this scale include provision of affordable housing, in addition to financial contributions for the provision of community, leisure and education facilities. These aims are consistent with the requirements of the National Planning Policy Framework (the Framework).
27. However, from the outset, the proposed development was designed to meet the requirements of potential older residents. The submitted Unilateral Undertaking (UU) includes a clause that would ensure that the development is occupied by such residents only. This clause is necessary to ensure that the development conforms with the terms of the planning application. In addition, I am also mindful that the Framework is clear that the planning process should deliver a mixture of housing in order to meet the needs of all members of the community.
28. Considering this, the proposed development would not be occupied by younger residents. In consequence, the proposed development need not make a financial provision for matters pertaining to education and youth facilities provision.
29. This is because it is a requirement that any such financial contribution mitigate the effects arising from the proposed development only. It therefore follows that if the proposed development were not to be occupied by residents that would result in an increased demand for the provision of education and youth facilities, it would not be necessary and reasonable to secure mitigation for these areas.
30. I understand that the County Council has raised some concerns regarding the way these contributions are structured in the submitted UU. However, given that I have found that, subject to other requirements of the UU, such financial

contributions are not required. For this reason, and given that I am dismissing the appeal for other reasons, I do not need to give this matter further consideration.

31. The UU also secures the provision of affordable housing and obligations relating to the provision of library facilities, open space and recycling collections. This ensures that the effects of the development in respect of these matters would be mitigated. Furthermore, the proposed development would provide a mixture of tenures, which would ensure that it accords with the requirements of the Framework in respect of delivering a range of house types to meet the needs of all groups of society.
32. I therefore conclude that the effects of the development would give rise to the need for a legal agreement and that such agreement has been submitted. The development, in this regard, would comply with the requirements of Local Plan Policies HOU3; CFLR7; CFLR10; DEL1; and DEL2; and the Affordable Housing Supplementary Document (2020). Amongst other matters, these seek to ensure that new developments make a provision of affordable housing; make provision of adequate and appropriately located community facilities; promote healthy communities; facilitate the timely provision of infrastructure; and have planning obligations that make the development acceptable in planning terms.

Other Matters

33. The Council cannot currently demonstrate a five-year housing land supply. In consequence, the provisions of Paragraph 11(d) of the Framework are engaged.
34. Amongst other matters, this states 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. This is often referred to as the 'tilted balance'.
35. In this case, the development would include the provision of additional dwellings. Whilst the scale, in terms of dwellings to be provided, of the development is relatively small; I am mindful that the development would provide an appropriate amount of affordable housing.
36. In addition, it is apparent that there is a need in the locality for smaller dwellings and for bungalows. This would contribute to the delivery of such housing within the area. In consequence, I give this benefit a moderate amount of weight.
37. The proposed development would generate some economic benefits. These would comprise benefits arising from the construction process, in addition to support local services and facilities by the future occupiers of the development. However, given the scale of the development, these benefits are unlikely to be large in scale. Furthermore, in some instances, they are likely to be time limited in duration. This means that they can only be given a limited amount of weight.
38. The proposed development would result in the provision of additional public open space. However, there is no convincing evidence before me that suggests that there is a shortage of such facilities in the surrounding area. In result, it can only be attributed a limited amount of weight.

39. In result, the proposed development would generate a limited to moderate benefits, which can be ascribed a moderate amount of weight. However, due to the significant harm that would arise from the granting of permission, in terms of the effects on biodiversity and the character and appearance of the surrounding area, I find that the adverse effects of granting planning permission significantly and demonstrably outweigh the benefits.
40. I understand that the appellant made some amendments to the scheme prior to the determination of the planning application. Although a matter of note, it does not overcome my previous findings.

Conclusion

41. Although some of the effects of the development have been mitigated through the submission of the UU, the development would have significant adverse effects on biodiversity provision and the character and appearance of the surrounding area. Accordingly, the scheme would conflict with the development plan taken as a whole. There are no material considerations, including the Framework, which indicate the decision should be made other than in accordance with the development plan. Therefore, for the preceding reasons, I conclude that the appeal should be dismissed.

Benjamin Clarke

INSPECTOR