



Appeal Decision

Site visit made on 29 August 2023

by **S J Warder MA BSc(Hons) DipUD MRTPI**

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

Decision date: 18 September 2023

Appeal Ref: APP/C1570/W/22/3305483

Highwood Farm, Stortford Road, Great Dunmow CM6 1SJ

- 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 Millen Homes Ltd (Mr G Duncan) against the decision of Uttlesford District Council.
 - The application Ref UTT/22/0391/OP, dated 8 February 2022, was refused by notice dated 27 May 2022.
 - The development proposed is residential development comprising 14 no. self-build dwellings together with access from and improvements to Buttleys Lane.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters except access reserved for further approval. The application includes site and plot layout plans and a biodiversity enhancement plan which I have treated as indicative. The application also includes an Access Arrangement plan showing proposals for off-site highways works. I consider this plan under the third main issue below.
3. The third reason for refusal in the Council's decision notice refers to the failure to provide the necessary mechanism to secure 'appropriate infrastructure'. It is apparent from the Council's evidence that this is a reference to off-site highways works. I consider this under the third main issue below.
4. The Council's evidence contends that the proposal does not make satisfactory provision for affordable housing. This matter does not feature in the reasons for refusal in the decision notice. However, it was considered in pre-application advice and the officer report on the application. The provision of affordable housing is also covered by a development plan policy. The matter was the subject of extensive submissions by both parties, and I have, therefore, included it as a main issue.

Main Issues

5. The main issues are:
 - the effect of the proposal on the settings of Highwood Farmhouse and the barn listed buildings;
 - whether the proposal make satisfactory provision for affordable housing;

- whether the proposal could be provided with safe and suitable access to the highway; and
- whether satisfactory control over the self-build dwellings would be secured.

Reasons

Setting of the Listed Buildings

6. Highwood Farmhouse sits in the north-east corner of the appeal site. It is a two storey house, probably dating from the late fifteenth century and Grade II listed. Access is from a drive which runs along the eastern boundary of the appeal site. There is little to visually or physically separate the farmhouse from the remainder of the appeal site. The original agricultural use of the site, together with the surrounding land, indicates an agrarian relationship. Therefore, the appeal site continues to contribute positively to the setting of the farmhouse and to its historic significance.
7. The barn at Highwood Farm (also known as Brady's Barn) is clad in timber boarding with a pantile roof, dates from the seventeenth century and is Grade II listed. It sits between Highwood Farmhouse and Buttleys Lane, outside of the application site boundary. The barn has been converted into an independent dwelling with a separate and strongly defined curtilage and direct access from Buttleys Lane. As such, its visual and physical relationship with the appeal site has been largely lost. The former functional relationship, stemming from the original agricultural use of the appeal site, has been severely reduced. Consequently, the appeal site currently makes a minor contribution to the setting of the barn and to the interpretation of its historic significance.
8. I note that planning permission was refused for the development of five dwellings on land immediately to the south of Brady's Barn for reasons including harm to the setting of the listed buildings (Application ref UTT/22/2358/FUL). On the other hand, land to the north of Stortford Road is being developed for some 790 dwellings. Outline planning permission for 60 houses has been granted on the land immediately to the north of the appeal site (Appeal ref APP/C1570/W/21/327615). Permission has also been granted for a new school and associated infrastructure on land to the east of Buttleys Lane opposite the listed buildings. Although these sites are less closely related to Highwood Farmhouse than the appeal site, the scale of developments proposed would serve to diminish the wider agrarian setting of the listed building. The appeal site would, therefore, be the last remaining element of that former setting.
9. Given its closeness, the development of the site would result in a further loss of the setting. As well as physical encroachment, the proposal would lead to a loss of tranquillity and, potentially, light spill at what is currently a fairly secluded property. The indicative site layout and enhancement plans show the area immediately around the farmhouse would be kept free of development and that space would be available to create a reasonably substantial planted buffer between the land retained around the farmhouse and the adjoining proposed dwellings. These matters could be secured by condition.
10. Nevertheless, the proposed development would result in the urbanisation of the largest part of the remaining agrarian setting of the farmhouse. The retained open area around the farmhouse would have more of the character of a

domestic curtilage than an agricultural landscape. The detachment of the farmhouse from its agrarian setting would, therefore, result in a marked loss of its historic significance.

11. Overall, I consider that the proposed development would cause less than substantial harm to the setting of Highwood Farmhouse. The harm to the setting of the listed barn would be negligible. Nevertheless, I am required to give considerable weight and importance to the desirability of preserving the settings of listed buildings¹. The proposal would also conflict with Policy ENV2 of the Uttlesford Local Plan 2005 (LP) which presumes against proposals that adversely affect the settings of listed buildings and paragraph 199 of the National Planning Policy Framework (the Framework) to the extent that it has similar aims.
12. Paragraph 202 of the Framework advises that less than substantial harm to heritage assets or their settings should be weighed against the public benefits of the proposal. I do this in the planning balance below.

Affordable Housing Provision

13. Policy H9 of the LP requires the Council to seek to negotiate 40% of the total provision of housing on sites of 0.5 hectares or more as affordable housing. This is subject to the up-to-date Housing Needs survey, market and site considerations. Framework paragraph 65 includes an exception to the requirement to provide 10% home ownership affordable housing on self-build sites.
14. The Council's Developers Contributions Supplementary Planning Document advises that it will seek a split of 70% affordable rent, 25% First Homes and 5% shared ownership. The Council's evidence indicates that there are a total of 191 applicants in need of affordable rented housing in Great Dunmow. On this basis, the Council considers that the proposal should provide four units of affordable housing and recognises that paragraph 63 of the Framework allows for a financial contribution in lieu where it can be robustly justified.
15. A planning application has been submitted for development with the same description as the appeal proposal on the same site (Application ref UTT/22/3013/O). The applicant submitted a Financial Viability Assessment² (FVA) which concluded that it was not viable to provide affordable housing in connection with that proposal. In response, the Council commissioned its own FVA³. The applicant submitted a rebuttal to the Council's FVA⁴ in August 2023 and the Council submitted a response to that rebuttal⁵. On the basis that they deal with the same form of development, all of these documents have been submitted in evidence for this appeal.
16. The appellant's FVAs are based on a requested commuted sum equating to four affordable rent units. Although the appellant's and Council's FVAs use different modelling software, there is no substantive dispute over the methodology used. It broadly follows the guidance in the Planning Practice Guidance on Viability. Rather, the matters in dispute concern the inputs into the modelling. Through

¹ Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Framework paragraph 199

² Development Consultancy March 2023

³ Altair June 2023

⁴ Development Consultancy August 2023

⁵ Altair August 2023

the iterations of the FVAs, the points of dispute have been narrowed down to the gross development value of the proposed development and the cost of finance.

17. In its August 2023 response Altair (for the Council) uses a broader range of comparable self-build sites (comparables) to establish the value of the proposed plots. It excludes a previously considered site at Great Hallingbury which Development Consultancy (for the appellant) considered was not comparable. The Altair response also includes a site at Laindon which, like the appeal site, is fairly close to a busy Class A road. It maintains that a value of £325,000 per proposed plot is appropriate. Development Consultancy puts the value of each plot at £276,000.
18. Altair also relates these plot values, and the values of the comparables, to average house prices in the respective outward (post) code areas. It is striking that the uplift using the Development Consultancy plot value is 116%, whereas the average uplift is 53%. The Altair plot value gives an uplift of 66% which is far closer to the average and more in line with many of the comparables. Taking these considerations into account, I find that the Altair plot value, and therefore its gross development value for the proposal, to be more realistic.
19. The Development Consultancy rebuttal (August 2023) refers to the rise in the Bank of England (BoE) interest rate since its initial FVA. It, therefore, considers that the interest rate for financing the proposed development should be increased from 7% to 11%. Development Consultancy says that this reflects borrowing rates for development finance. However, it does not offer substantive evidence to support an increase of 4% which is significantly greater than the BoE rate rise. The Altair response acknowledges the BoE rate rise, but considers the finance rate should be increased proportionately to 8.25%. On the basis of the available evidence, that seems reasonable. Development Consultancy also contends that rising interest rates will make self-build buyers more wary of borrowing and supports its plot valuation. However, there is nothing to suggest that the comparables used in the FVAs are out of date.
20. Overall therefore, I consider that the Altair viability assessment is more persuasive and that the proposed development could support a financial contribution towards affordable housing of the order set out in its August 2023 response. The appeal submissions do not include a mechanism for securing this contribution. Consequently, the proposal would conflict with LP Policy H9 and Framework paragraphs 62 and 63 which have similar aims.

Highway Safety

21. Access to the site is via Buttleys Lane, a single track road which meets Stortford Road at a recently improved T junction some 190m to the north. The road currently serves a small number of other residential properties and terminates a short distance to the south of the site access. It is also part of the National Cycle Network and links to the Flitch Trail and other public rights of way. Therefore, although the road is fairly lightly trafficked, it provides access for a significant number of non-motorised road users. Additional movements generated by the proposed development would have the potential to result in conflicts and risk to highway safety.
22. This matter was the subject of extensive discussion between the appellant and Essex County Council, as the local highway authority. Those discussions

- culminated in the submission of revised access arrangement proposals (drawing no. 816.0001.001 Rev G). Among other things, this drawing seeks to respond to issues arising from a Stage 1 Road Safety Audit (RSA) of an earlier version of the proposed access arrangements.
23. The revised scheme would widen the existing carriageway to create a passing place opposite Brady's Barn. A segregated footway would be provided for the length of the east side of the carriageway from Stortford Road to the appeal site access. The footway would be generally 2m wide, although it would be narrower where the available highway land narrows. On this basis, the appellant advised that the access proposals could be achieved without the need for third party land. The works would be delivered using an agreement under Section 278 of the Highways Act 1980.
24. On review of the revised proposals, Essex County Council indicated that it is content that a scheme of highway improvements could be implemented which would overcome its original highway safety concerns including conflict with non-motorised road users. There is nothing to suggest that the local planning authority disagrees with this conclusion.
25. According to figures in the RSA brief the appeal proposal would increase the number of car movements on Buttleys Lane by approximately 15 to 20 trips per day, from a base of some 20 vehicles a day each way. The road would, therefore, continued to be lightly trafficked and, moreover, vehicle speeds would be low (85th percentile speed of less than 20mph, based on RSA brief figures).
26. Given this context, I consider that the proposed access arrangements would ensure that Buttleys Lane would provide safe and suitable access for both projected motorised and non-motorised movements. There is no substantive evidence to show that the necessary works could not be accommodated within highway land. As such, the required works could be secured by condition. This would overcome the concern expressed in the third reason for refusal that the proposal would not secure the provision of 'appropriate infrastructure'.
27. Therefore, the proposal would accord with LP Policy GEN1. It requires access to the main road network to be capable of carrying the traffic generated by the development safely and that the development must not compromise road safety taking account of the needs of cyclists, pedestrians, horse riders and people whose mobility is impaired. It would also accord with the County Council's Development Management Policies insofar as they have similar aims. Accordingly, the proposal would comply with LP Policy GEN6 which requires proposals to make provision for infrastructure made necessary by the development.

Control over the Self-build Dwellings

28. The Self-build and Custom Housebuilding (Register) Regulations 2016 require Councils to keep a register of individuals and associations of individuals who are seeking to acquire serviced plots in order to build their own home. The Housing and Planning Act 2016 adds that Councils must give planning permissions for enough serviced plots of land to meet the demand for self-build and custom housebuilding in their area arising in each base period, subject to exemptions.

29. The Council does not have a development plan policy for self-build or custom housing and the appellant's evidence is that the number of permissions granted for this form of housing has fallen significantly short of the Register numbers in the period 2106-2020. The Council does not dispute this evidence and there is nothing to suggest that the shortfall has been addressed in the period since 2020. Moreover, the Council's Self-Build and Custom Housebuilding Progress Report (December 2021) indicates that Great Dunmow is a locational preference for self-build. The government's guidance on Self-Build and Custom Housebuilding is clear that there must be some form of control if proposed plots are to qualify as this form of housing.
30. The appellant's submissions include a signed and dated (4 April 2023) unilateral undertaking (UU) intended to provide control over the initial and onward sale of the proposed plots. It includes a marketing approach which would ensure that the plots are first offered to people or groups on the Council's Right to Build Register, followed by a Qualifying Person and then to other self or custom builders. The Council's appeal statement confirms that it was content with the draft of the UU and I am satisfied that it would secure its intended aims.
31. The UU would therefore meet the tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and Framework paragraph 57 in that it is necessary to make the development acceptable in planning terms, directly related and fairly and reasonably related in scale and kind to the development.

Other Matters

32. I have had regard to the other concerns expressed locally, but they have not led me to a different overall conclusion.

Planning Balance and Conclusion

33. At the time that the application was reported to committee, the Council considered that it had a 3.52 year supply of housing land. Its appeal statement puts the figure at 4.89 years and is supported by a 5-year Land Supply Statement and Housing Trajectory published in December 2022. The appellant does not dispute the updated figure and I have no reason to doubt it. Nevertheless, it is below the 5 year supply required by the Framework and paragraph 11(d) is engaged. That means the policies most important for determining the appeal are out of date and that the permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies taken as a whole.
34. The proposal would provide 14 self-build plots. The government encourages this form of housing provision and the available evidence indicates that there is an unmet need in the area. While the scale of provision is modest in relation to the housing needs of the district as a whole, there is a shortfall in housing land supply. However, the shortfall is not large and appears to be reducing. Overall therefore, I give moderate weight to the benefit of providing the additional self-build housing.
35. The proposal would also provide short term economic benefits through the construction activity and offer the potential for biodiversity enhancements.

36. The appellant argues that the proposal would be sustainably located having regard to its proximity to other highways and community infrastructure including the school proposed on the east side of Buttleys Lane. I also recognise that the site is close to a number of public rights of way. As such, there is nothing to suggest that the appeal site location would not enable future occupiers to make sustainable travel choices. However, Framework paragraph 110 requires this of development proposals in any case and it has not been shown that the appeal site is particularly accessible to a wide range of local services and facilities. Consequently, I give the locational benefits of the proposal limited weight.
37. The appellant also points to the proposed highways improvements to Buttleys Lane. Although I have found that these improvements would allow safe and suitable access for all users, their effect would be to address the impact of the additional traffic generated by the proposal rather than to provide any additional benefits. As such, the improvements provide little positive support for the proposal.
38. The proposal would not make provision for affordable housing for which there is a significant unmet need. The appellant disputes the viability of providing affordable housing as part of the appeal proposal, but does not challenge the underlying need. I have found that the proposal could viably make a meaningful financial contribution. The provision of affordable housing is a requirement of LP Policy H9 and is supported by the Framework (paragraphs 62 and 63). Therefore, the failure to provide affordable housing counts significantly against the proposal and, notwithstanding that the most important development plan policies are out of date, I afford considerable weight to the conflict with LP Policy H9.
39. The proposal would cause less than substantial harm to the setting of Highwood Farmhouse listed building. As required by Framework paragraph 199 I give great weight and importance to this harm. Again, I attach considerable weight to the conflict with LP Policy ENV2. The provision of 14 self-build plots would provide a moderate public benefit. Other public benefits are limited. Collectively, the public benefits do not outweigh the identified harm to the setting of the listed building.
40. In terms of the 'tilted balance' under Framework paragraph 11(d), I find that the adverse impacts of granting permission through the harm to the setting of the listed building and the failure to provide affordable housing would significantly and demonstrably outweigh the moderate benefits of the proposal when assessed against the policies in the Framework as a whole.
41. As such, the outcome of the Framework paragraph 11(d) exercise is that the appeal should not be determined otherwise than in accordance with the development plan. The proposal conflicts with LP Policies H9 and ENV2 as well as a number of the Framework aims. Accordingly, the proposal does not benefit from the presumption in favour of sustainable development and the appeal should be dismissed.

S J Warder

INSPECTOR