



Appeal Decision

Hearing held on 22 August 2023

Site visit made on 22 August 2023

by **I A Dyer BSc (Eng) FCIHT**

an Inspector appointed by the Secretary of State

Decision date: 17th January 2024

Appeal Ref: APP/C1570/W/23/3316732

Land south of Braintree Road, Braintree, Essex, CM6 3AT

- 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 Ferns Aggregates against the decision of Uttlesford District Council.
 - The application Ref UTT/22/1404/OP, dated 24 May 2022, was refused by notice dated 29 November 2022.
 - The development proposed is outline planning consent (all matters reserved except for access) for the construction of 20 no. dwellings alongside associated parking, access and landscaping works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is for outline permission with all matters reserved except access. I have considered the proposal on this basis and, other than the access, taken the drawings to simply be an illustration of how the proposal could ultimately be configured.
3. Subsequent to the Hearing, on 9 October 2023, the Council have produced an updated 5-year land supply statement and housing trajectory. This is a material consideration in my deliberations as it has implications for the planning balance, including weight to be placed on matters. I have asked the parties for their comments on this matter and taken their responses into account.
4. After the Hearing, on 19 December 2023, the Government issued a new version of the National Planning Policy Framework (the Framework) and released the 2022 Housing Delivery Test Results. The parties have had the opportunity to make comments on the revisions to the Framework as part of the appeal process and I have taken their responses into account.

Main Issues

5. The parties have agreed and submitted a legal Agreement under Section 106 of the Town and Country Planning Act 1990 which seeks to provide affordable housing and a contribution towards off-site highway works to be carried out by others. On the basis of this, there is common ground between the Council and the appellant that the provision of affordable housing and highway safety need not be considered as main issues. I have adopted this approach, given my overall conclusion.

6. Thus, the main issues in the appeal are: -

- The effect of the proposal on the character and appearance of the site and surrounding area; and: -
- The effect of the proposal on the significance of Nutshell Walnut Tree Cottages and Ford Cottages, which each form a Grade II Listed Building (the LBs).

Reasons

Character and appearance

7. There is no dispute between the parties that the site lies outside of the development boundaries of Great Dunmow as identified in the Great Dunmow Neighbourhood Plan (2016) (the NP) and therefore lies in the countryside for planning purposes.
8. Policy S7 of the Uttlesford Local Plan (2005) (the LP) therefore applies. This policy seeks to protect the countryside for its own sake and planning permission will only be given for development that needs to take place there or is appropriate to a rural area. The policy precludes development unless its appearance protects or enhances the particular character of the part of the countryside within which it is set or there are special reasons why the development in the form proposed needs to be there.
9. Whilst, in seeking to protect the countryside for its own sake, the policy is more restrictive than the approach taken within the Framework, its aim to protect or enhance the appearance of the countryside is more in keeping with the aims of the Framework which seek to recognise the intrinsic value and beauty of the countryside and so significant weight should be attached to this part of the policy.
10. Policy DS1 of the NP seeks to direct future housing growth in line with allocations set out within the NP, whilst protecting the rural setting of Great Dunmow and containing the spread of the town whilst promoting infill within existing built-up areas.
11. No argument has been put forward that there are special reasons for the development to be in the proposed location.
12. The appellants prepared a Landscape Visual Appraisal and a Landscape Masterplan to assist in considering the effects of the site. The site is not designated as being within an area of particular landscape value. Nonetheless that does not mean that it is without value as countryside.
13. The appeal site is an open field on the slope of the valley of the River Chelmer. Being an undeveloped field largely enclosed by mature hedges, the site is characterised by its attractive verdant appearance and open rurality. Accordingly, the site has a strong visual relationship to the wider open countryside and is clearly and distinctly different from the residential development lying opposite to the site across Braintree Road.
14. Whilst there is some development on the south side of Braintree Road, this is sparse.

15. The proposed development would have a strong urbanising effect on the site, which would be out of keeping with its current open, verdant, countryside character. It would introduce substantial built form to the south of Braintree Road and this would be visible from a public right of way passing the boundary of the site between Braintree Road and the B1256 (the PROW), and from the B1256 when approaching from the east.
16. For parts of its length the B1256 forms a strong visual demarcation between the town and countryside as it runs around Great Dunmow. That is not the case here as the road runs across the valley and both sides are more open and the land rural in character.
17. In the absence of significant development to the immediate south of Braintree Road, the proposal would result in the spread of denser urban form out into the rural area surrounding the settlement. Given the more open nature of land to either side of the B1256 in the immediate area the proposal would not form a logical infill of built form to round off the development. Braintree Road forms the butt end of existing urbanisation and forms a logical edge to the town in this vicinity.
18. The existing hedges which encompass the site would assist in breaking up the built form of the development, but the proposed dwellings would nevertheless be visible and prominent through the gaps in this vegetation, most noticeably from the area around the junction of Braintree Road with the B1256 where there is a substantial gap in the hedge and from the PROW.
19. The proposal would provide a new point of access, creating a significant opening in the existing hedgerow which bounds Braintree Road. This new access point would introduce a highly visible break in the vegetation, which would further increase the visibility of the proposal. The proposed footway on the site frontage would further urbanise the existing rural setting.
20. It has been drawn to my attention that one of the adjacent dwellings, known as Lilac Cottage, is a recent addition to the local landscape. Whilst I have limited information in regard to the planning history of that development, it occupies a smaller site in a corner adjacent to the existing Nutshell Walnut Tree Cottages. As such the development differs significantly in scale and layout. I have, in any case, determined the appeal scheme on its own merits.
21. My attention has also been drawn to a recent appeal decision for a development of 22 custom and self-build dwellings¹ on land east of St Edmunds Lane and the granting of planning permission for a development of self-build and custom build dwellings² on land north of Braintree Road. Whilst these developments lie outside the development boundary of Great Dunmow, they both lie to the north of Braintree Road and are adjacent to more densely developed land than the appeal site.
22. Whilst landscaping is a reserved matter, the proposal includes a landscaping masterplan, and the appellant considers that this would assist to help screen the development from wider views. It is proposed that the hedge could be reinforced to fill existing gaps and manage the hedgerows to enhance health and vigour. Whilst such planting could be provided by planning condition, I am not satisfied that such measures would, of themselves, be adequate to mitigate

¹ PINS Ref: APP/C1570/A/14/2223280

² Council Ref: UTT/21/2719/FUL

the harm identified, as new planting would take time to establish itself, would likely be deciduous and there is no substantive evidence before me that sufficient screening would be achieved to address the matter successfully. In any event, landscaping primarily softens visual impacts but will seldom mitigate the impact on landscape character as the land would still undergo a transformation from a field to housing.

23. The landscaping scheme indicates significant amounts of soft landscaping around the access and internal road. However, the appearance, nature and activity associated with the access would, nonetheless, remain clearly visible, as would the dwellings themselves and so this would not satisfactorily address the harm I have identified.
24. Apart from concerns raised regarding the loss of trees and hedgerow to form the access, particular concerns have been raised regarding the potential for the proposal to adversely affect a large walnut tree standing in the plot of Walnut Tree Cottage. This tree is of remarkable size for its species and forms a striking and dominant feature in the landscape, being highly visible in the neighbourhood. The tree makes a significant positive contribution to the treed verdancy of the area and may provide habitat for wildlife.
25. The tree is subject to the protection of a Tree Preservation Order (TPO) and there is evidence to suggest that the tree is a Veteran Tree. The tree lies outside of the site and, whilst its canopy overhangs the site, its root system is likely to extend into the site.
26. However, notwithstanding that layout is a matter to be determined at a later date, the illustrative plan provided by the appellants demonstrate that the proposal could be laid out to avoid interfering with the tree. Construction works in the vicinity of the tree could be controlled through the imposition of a suitably worded planning condition.
27. In the longer term it may be that future occupiers may seek to reduce the canopy of the tree. However, any such pressure should not be difficult to resist, given the protection afforded by the TPO.
28. Bringing these matters together, whilst existing planting and topography would restrict views into the site, the introduction of 20 dwellings in this location would still be noticeable and this impact cannot be adequately mitigated. The introduction of development here, including hardstanding, parking and associated residential paraphernalia would be visible and at odds with the rural character of the site.
29. Consequently, I find that the proposal would significantly harm the character and appearance of the site and surrounding area. The proposal would, therefore, conflict with Policy S7 of the LP, and Policy DS1 of the NP.

Heritage assets

30. Nutshell Walnut Tree Cottages are a pair of semi-detached timber-framed and plastered cottages fronting onto Braintree Road. They stand in private gardens enclosed by mature planting and this limits visibility of the cottages from the wider area. The LB is thus experienced mainly from the public realm of Braintree Road as it approaches and passes the LB.

31. Whilst there is dispute between the parties regarding the date of construction of Nutshell Walnut Tree Cottages, there is general agreement that the significance of the LB derives from its architectural and historic interest in regard to its design and architectural features, which have an evidential value for understanding the design, construction and craftsmanship of vernacular cottages in the period.
32. There is further agreement between the parties that the rural setting of the building permits understanding of its historic context and that this would be eroded by the proposed development. I find no reason to disagree with these conclusions.
33. The open agrarian setting forming the historic rural context of the building includes the application site. Whilst this assists in revealing its historic context, it makes only a limited contribution to the way in which the LB is experienced. In any event the surrounding planting provides a more immediate backdrop to the LB and limits the experience of the wider rural landscape within which it sits.
34. Ford Cottages is a terrace of 4 brick and timber-framed cottages fronting onto Braintree Road. As with Nutshell Walnut Tree Cottages, they stand in private gardens enclosed by mature planting and this limits visibility of the cottages from the wider area. The public experience of the LB is thus mainly from Braintree Road as it passes the terrace.
35. Again, there is general agreement that the significance of Ford Cottages derives from its architectural and historic interest in regard to its design and architectural features, which have an evidential value for understanding the design, construction and craftsmanship of vernacular cottages in the period.
36. There is further agreement between the parties that the rural setting of the building permits understanding of its historic context and that this would be eroded by the proposed development. I find no reason to disagree with these conclusions. However, the separation from the agrarian hinterland by Braintree Road reduces the appreciation of the linkage of Ford Cottages to the site in regard to its agricultural past.
37. Bringing these matters together, I conclude that the proposal would result in harm to the setting of both LBs. In the case of Nutshell Walnut Tree Cottages this harm would be moderate, whilst for Ford Cottages it would be low. The proposal would not comply with the expectations of the Planning (Listed Buildings and Conservation Areas) Act 1990. It would be contrary to Policy ENV2 of the LP in as much as this states that development proposals that adversely affect the setting of a listed building will not be permitted.
38. I thus find that the proposal would lead to less than substantial harm under the Framework, paragraph 208, to be weighed against the public benefits of the proposed development in the planning balance below.

Planning Agreement

39. The parties have provided a 106 Agreement which seeks to secure contributions to improving the B1256 junction and the provision of affordable housing.

40. There is no dispute between the parties as to whether the contributions set out within the draft Section 106 satisfy the three tests for planning obligations of necessity, to make the development acceptable in planning terms; direct relationship to the development; and fair and reasonable relation in terms of scale and kind to the development. I have therefore taken these obligations into account in my decision.

Other Matters

41. The nearest significant facilities within a suitable distance to be accessible on foot or bicycle, are in Dunmow High Street, roughly half a mile from the site along Braintree Road. There is a continuous footway link to the High Street on the opposite side of the road from the site and the route is lit and relatively straight, with good visibility along it. Notwithstanding that some vehicles travel in excess of the speed limit on Braintree Road, it would appear walkable and cyclable by a competent person and, together with the bus routes accessed at stops near the site, these provide realistic alternatives to the private car for trips accessing the facilities and services in the town centre. The proposal would improve pedestrian linkage through provision of an uncontrolled crossing point of Braintree Road and a footpath link to the bus stop for trips towards the town. The proposal, therefore, makes adequate provision for access to more sustainable modes of transport which may reduce reliance on the private car.
42. My attention has been drawn to a number of other developments³ in the area of Great Dunmow that have been granted planning permission. These do not inform the immediate context of the site and I do not have full knowledge of factors that may have influenced the Inspector or Council's view of the planning balance. I have, in any case, determined this appeal on its own merits.

Heritage and Planning Balance

43. In considering whether to grant planning permission for development which affects a listed building or its setting, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, in order to comply with s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
44. The statutory duty in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. As a consequence of its design the appeal scheme would have a harmful impact on the setting of the LB, insofar as it would neither preserve nor enhance the setting of the LB, and its significance, by reducing its linkage to its rural vernacular architecture. The proposal would not lead to the loss or alteration of the features of special architectural or historic interest which the LB possesses. As such, whilst material, I find that the harm would be less than substantial. Paragraph 208 of the Framework directs that where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal.
45. The development would provide public benefits in terms of providing 20 dwellings, including 8 affordable units, secured through the 106 Agreement, in a location with access to local facilities and services by sustainable modes of transport.

³ PINS Ref: APP/C1570/A/14/2223280, APP/C1570/W/21/3282098 and Council Refs: UTT/17/3623/DFO and UTT/20/1744/FUL

46. At the time of the appeal, it was common ground between the two parties that the Council could only demonstrate a 4.89-year supply of housing land and, for the purposes of this assessment, I have used that figure.
47. The Council have calculated their annual housing need as being 684 dwellings and thus the proposal would contribute roughly 3% of that requirement, a modest contribution to the overall need. Irrespective of the Council's housing provision, the government has stated its aim of substantially increasing housing provision, including affordable housing. Paragraph 70 of the Framework recognises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. There is no dispute that there is a need for affordable housing within the district. Further, the latest Housing Delivery Test results indicate a poor performance locally in the rate of delivery of new housing.
48. The weight in favour of the proposal is, however, moderated by the quantum of housing when considered against overall need.
49. There would be likely moderate benefits to the local economy in terms of short-term employment in the construction industry and longer-term support of a local business. However, such benefits would be proportionate to the scale of the development.
50. The proposal would make a financial contribution towards a highway safety scheme at a location with an existing history of personal injury accidents. Whilst this is necessary to mitigate the increase in traffic passing through this junction that would result from the proposal, there would be an overall benefit to the safety of the wider travelling public. However, the contribution would not wholly finance the improvement and there is no certainty on the delivery programme for the improvement.
51. The proposal would also provide improved pedestrian linkage from existing dwellings to bus stops and the wider area. Taken together, these benefits carry significant weight in favour of the proposal.
52. Approximately 30% of the site would be open space and the proposal would make a nett overall benefit towards Biodiversity Net Gain. Whilst these benefits are mainly resultant from the site containing areas of floodplain, these nonetheless provide support for the proposal and are supported by the aims of Parts 12 and 15 of the Framework, in as much as these seek to promote health and wellbeing and protect and enhance biodiversity. Together these benefits carry moderate weight in favour of the proposal.
53. The dwellings would be built to modern standards, incorporating such features as better insulation, when compared to much of the older housing stock, solar panels and electric vehicle charging points. However, such items as electric vehicle charging points are now a requirement of the building regulations. Nonetheless there is a public benefit resultant from the provision of more energy-efficient homes but, by virtue of the scale of the development, and given the need to comply with modern building standards, this benefit, in this instance, only carries limited weight.
54. The benefits of the proposal would be of significant weight overall. The proposal would result in a moderate level of harm to the significance of one designated heritage asset and a low level of harm to another. However, the

harm must be considered in the context of the special attention I must pay to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Heritage assets are, by their nature, a limited, irreplaceable resource. I afford considerable importance and weight to this statutory duty. This does not amount to a direction to refuse proposals that harm, and thus fail to preserve, designated heritage assets, but it provides a strong presumption in favour of preservation.

55. Thus, although finely balanced, I find that the material harm that would arise from the proposal would be slightly outweighed by its public benefits.
56. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise.
57. The appellants still dispute the Council's ability to demonstrate a 5-year supply of housing land, and cite a recent appeal decision⁴ and planning committee decision⁵. I note that the appeal decision predates the review of the Council's housing supply position, whilst the date on the Council's Committee Report post-dates it. For Uttlesford District Council the 2022 Housing Delivery Test Results trigger the presumption in favour of sustainable development contained within paragraph 11 d) of the Framework. Further, the Local Plan cannot be tested against a fully up-to-date Development Plan.
58. I have found conflict with the Development Plan, when read as a whole. Notwithstanding the age of the development plan, these policies, which are the most relevant to the determination of this appeal, may nonetheless still carry weight in proportion to their degree of consistency with the aims of the Framework. Policy S7 of the LP and DS1 of the NP recognise and seek to protect the intrinsic character and beauty of the countryside. They are thus broadly in accord with the aims of Part 15 of the Framework in seeking to conserve and enhance the natural environment and thus I have afforded them significant weight in my deliberations.
59. Policy ENV2 seeks, amongst other things, to protect the setting, and alterations to the special characteristics of listed buildings and, although not requiring the justification against public benefits set out in the Framework, accords broadly with the aims of Part 15 of the Framework and I afford the policy significant weight.
60. I have found above that the public benefits only just outweigh the harm in the heritage balance. The government, in Paragraph 180 of the Framework, sets out its aim to enhance the natural and local environment, recognising the intrinsic character and beauty of the countryside. The proposal would result in significant harm to the character and appearance of the site and the surrounding area. Given that there are no public benefits in addition to those considered above that would provide further support for the proposal, the only additional weight to be added to the planning balance, above that in the heritage balance carried out above, weighs significantly against the granting of planning permission for the proposal.
61. Taking the above into account, including all other material considerations, I conclude that the adverse impact of granting planning permission would

⁴ APP/C1570/W/22/3312794

⁵ UTT/22/1261/FU

significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework as a whole.

Conclusion

62. The proposed development would be contrary to the Development Plan and the Framework, when read as a whole, and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal fails.

I A Dyer

INSPECTOR

Richborough

APPEARANCES

FOR THE APPELLANT: -

Mr Mark Westmoreland Smith instructed by Ferns Aggregates	Francis Taylor Building
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Mrs Danielle Lawrence MRICS Associate Director	DHA Planning
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Mr Matthew Woodhead BA (Hons), BTP, MDUD Director	DHA Planning
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Edward Hawkins BSc Econ (Hons) MSc ACIfA IHBC	RPS Group
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FOR THE COUNCIL: -

Mr Tom Gabriel Senior Planning Officer	Uttlesford District Council
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Thomas Muston Conservation Officer	Uttlesford District Council
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Ms Femi Nwanze	Uttlesford District Council
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INTERESTED PERSONS: -

Cllr Patrick Lavelle Chair of Planning Committee	Great Dunmow Town Council
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Louise Howles	Local resident
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Andrew Wood	Local resident
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