



Appeal Decision

Site visit made on 16 July 2024

by **Anne Jordan BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9th September 2024

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

Land east of St Edmunds Lane & north of Tower View Drive, St Edmunds Lane, Dunmow, Essex, CM6 3AT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Rupert Kirby against the decision of Uttlesford District Council.
 - The application Ref is UTT/20/1744/FUL.
 - The development proposed is 30 self-build and custom dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for Proposed 30 no. self-build and custom dwellings at land east of St Edmunds Lane north of Tower View Drive, Dunmow, CM6 3AT in accordance with the terms of the application, Ref UTT/20/1744/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters and Background

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. This was subsequently revised and updated and dated 12th July 2024. The Council have had the opportunity to comment on the revised agreement and to provide any necessary information in support of the requirements within it.
3. The application is for full permission for what is described as 30 custom and self-build dwellings. The submitted plans show a layout for 30 dwellings, to be accessed via the recently constructed "Phase 1" development off St Edmunds Lane, with associated parking roads and landscaping. The footprint of each dwelling is shown on the layout plan. A further set of plans for each plot show an external design and internal layout for each dwelling. The Design and Access statement sets out how the concept of custom and self-build will apply to the site.
4. The planning application seeks to define the plots and to provide choice of house type. These would be interchangeable and allow purchasers to choose from a range of pre-approved designs. The application also sets out a material schedule and design parameters which are set out within a design code. Self-builders are then able to choose how they wish to proceed, either building or part building the dwelling themselves, or purchasing a built unit from the developer which has been constructed internally and externally to

their specification within these pre-determined parameters. In this further the proposal before me does specify the final design of each dwelling and the individual elevation plans for each plot are indicative only.

5. The Grade II listed the Tower House lies to the west of the site.
6. The land to the south-west of the appeal site was granted full planning permission for 22 custom and self-build homes in June 2020¹. This land is currently being developed and is partially occupied and is referred to as Phase 1. Subsequently, permission has also been granted for 32 custom and self-build homes on land to the south of the appeal site² and this is referred to as "the recent permission".
7. The appellant contends that the Council cannot demonstrate a five-year supply of housing. A draft statement of common ground has been supplied which contends that the housing land supply is 4.5 years but this is not signed by the Council. I have also been supplied with Committee Papers relating to a parallel scheme for the site³ which is currently before the Council. The Committee update from May 2024 does not update the Council's stance from February 2024, that the Council cannot demonstrate a five-year supply of housing land. In the absence of any evidence to the contrary from the Council I must therefore assume that the situation is unchanged, and that the tilted balance set out in the Framework is engaged.

Main Issues

8. Accordingly, the main issues in this appeal are:
 - The effect of the development proposed on the character and appearance of the area;
 - The effect of the development on the setting of the Tower House, a grade II listed building;
 - Whether the proposed contributions to facilitate community infrastructure are justified, necessary and legally compliant.

Reasons

Character and Appearance

9. The appeal site comprises part of a large open agricultural field on the eastern edge of Great Dunmow. The field is edged by mature trees and hedgerows to the north, east and south with the development on St Edmunds Lane along the urban edge to the east. The site would be accessed through the recent development of Chaucer Road and includes an access strip which provides footpath access to the public footpath on higher ground to the north. The southern portion of the field in which the site sits is currently open and undeveloped but has recently been granted permission for residential development.
10. The site lies outside the settlement boundary of Great Dunmow, as set out in the Uttlesford Local Plan 2005 (the ULP) and outside the areas defined as the

¹ Ref UTT/19/1508

² UTT/21/2719/FUL

³ UTT/22/2035/FUL

Town Development Area by the Great Dunmow Neighbourhood Plan 2015-2032, adopted 2016 (the GDNP). The site is therefore within the countryside for the purposes of these policy documents.

11. Policy S7 of the ULP states, among other things, that the countryside will be protected for its own sake, and that planning permission will only be given for development that needs to take place there or is appropriate to a rural area. The Plan dates from 2005 and the settlement boundaries within it were intended at that time to relate to growth over the Plan period, which at that time was up to 2011. For this reason, the settlement boundaries cannot be considered up to date. Neither does the protection of the countryside for its own sake comply with guidance in the National Planning Policy Framework (the Framework).
12. Policy DS1 of the Great Dunmow Neighbourhood Plan (GDNP) defines a town centre area and so seeks to prevent sprawl into the countryside and to protect the rural character of the parish. Insofar as the policy seeks to protect the rural setting of the settlement, this requirement, and the requirement of Policy S7 of the LP and Policy LSC1 of the GDNP to protect or enhance the character of the rural area and to ensure development contributes positively to the quality of the area are consistent with the broad aims of the Framework. In this regard I attribute full weight to these policies.
13. The scheme would lead to a loss of open field on the edge of the settlement. However, as the site lies immediately adjacent to both recently constructed development and a recently approved development site, both of which extend into the open field, the scheme would be well related to the actual urban edge. The detailed scheme would comprise three main "character areas". Area 1 would be made up of "cottage style" dwellings to the south of the site nearest to the access through to Phase 1. Area 2 would have a mixture of cottage and agricultural styled properties and area 3, which sits in front of the woodland to the east, would be designed with the intention of providing more individually designed contemporary dwellings. In this regard the layout of the scheme would assimilate with the existing built form.
14. The scheme would be visible in some glimpsed views from St Edmunds Lane and in views from Braintree Road from the south. In these views the adverse effect of the loss of the green field would be tempered by the proximity of other recent and proposed development and by the extensive landscaping proposed within the development. Furthermore, I noted on site that the edge of the proposed scheme would extend to the edge of the adjoining woodland, which would provide a natural barrier to development to the east. Therefore, whilst the scheme would involve some inevitable loss of openness around Great Dunmow, I am satisfied that the "rounding off" of the settlement would contribute positively to the character of the area and would have only a limited effect on the rural setting of Great Dunmow.
15. On the first matter, I conclude that the development would not harm the character and appearance of the area and that the effects of encroachment into the countryside would be very limited. Consequently, the proposal would not conflict with the aims of Policy S7 of the LP or Policies DS1 and LSC1 of the GDNP insofar as they seek to protect the character of the rural area and secure development that contributes positively to the quality of the area. The proposal would also comply with the Framework which has similar aims.

Heritage Assets

16. Tower House is a Grade II listed building, built in 1822, which lies to the north-west of the appeal site. The building comprises a brick tower windmill with domed cap, without sails. This is attached to a two-storey mill house which has a hipped roof and is finished in render. The building is in use as a residential property. Whilst the building is no longer intact in its original form, the origins of the building are still clearly evident. The significance of the asset lies in its architectural interest due to its unusual form derived from its former use, and the contribution this makes in localised views.
17. The Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on decision makers to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest when considering whether to grant planning permission for development which affects the setting of a listed building. This duty is reflected in the Framework which subsequently goes on to categorise any harm to the significance of a heritage asset as either 'substantial harm to or total loss of significance of an asset' or 'less than substantial harm to the significance of an asset'.
18. Due to its original function the asset will historically have been very closely associated with the surrounding agricultural land. Although there is no longer a functional link to the surrounding farmland, the building retains a physical link to the agricultural hinterland. The wider setting of the asset has been compromised by the close proximity of the settlement including the residential cul-de-sac of Tower View Drive which lies immediately to the south. Nevertheless, the remaining fieldscape contributes positively to the understanding of the asset and as this will be eroded, with the appeal scheme lying within close proximity to the south-east, this will have an adverse impact on the setting of the asset as the perceived historic linkage with the surrounding hinterland would be less evident. The asset would lose some of its fieldscape setting in views from the east which would also be evident at night through lighting changes. This would cause some harm to the significance of the asset which in the terms of the Framework would be classified as less than substantial.
19. The Framework indicates that where less than substantial harm is found, then this should be weighed against the public benefits of the scheme. Whilst I attach considerable importance and weight to the harm identified, this would be outweighed by the benefit arising from providing 30 dwellings in an area with an identified housing need. Accordingly, the proposal would not conflict with guidance in the Framework.
20. The development would conflict with Policy ENV2 of the LP which states that proposals which adversely affect the setting of a listed building will not be permitted. This Policy is not consistent with the Framework, in that it does not require a heritage balance and so I attribute very limited weight to the conflict that would arise.

Community Infrastructure

21. The appellant has submitted an updated UU that sets out that the developer will make financial contributions to education and to public transport, as well as securing the development as custom and self-build housing plots. I am

satisfied that the submitted UU would be capable of taking effect and securing the intended obligations and have assessed them against the requirements of the Community Infrastructure Levy (CIL) Regulations 2010 and guidance in the Framework, which requires me to be assured that the obligations are necessary to make the scheme acceptable in planning terms and are fairly and reasonably related in scale and kind to the development.

22. The UU would ensure the development is delivered as custom and self-build homes, which the Council agree there is a need for in the district. The scheme is therefore exempt from making an affordable housing contribution under the provisions of paragraph 65 of the Framework.
23. The Council had requested contributions towards primary school and early learning provision, secondary school provision and library provision. More recent submissions from the Education Authority states that early years provision is no longer necessary, as there is sufficient provision in the area. Based on the evidence put to me I am satisfied that the primary school, secondary school and library provision contributions are reasonable and necessary to meet an identified local need that would arise as a result of the development and that the sums sought are related in scale and kind to the development. I am unable to take the early years contribution into account in the determination of the appeal.
24. The Highways Authority states that the sum is required as a contribution towards the introduction of a new service linking Church End (St Edmunds Lane) within Great Dunmow to the Town Centre, Tesco's superstore and Helena Romanes Secondary School and Leisure Centre. The contribution would be pooled with contributions from other developments and seeks to support the bus service for a period of 5 years. On the evidence put to me I am satisfied that the contribution is necessary and that the sums sought are reasonably related in scale and kind to the development.
25. Policies GEN6 of the LP and the objectives of the GDNP require development to meet the need for, among other things, school, library and public transport provision which arise because of the proposed development. 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 obligation meets the requirements of the policies and consequently, on the third matter, I conclude that the contributions sought for primary and secondary education, libraries and the public transport contribution are justified, necessary and therefore legally compliant.

Other Matters

26. Some local residents have expressed concerns in relation to the impact of additional traffic from the proposal. The highways authority have advised that they are satisfied the proposal would not lead to material harm in this regard, provided measures are put in place to help slow traffic and to encourage the use of public transport. In particular this would amount to works to provide a bus stop close to the site and installation of vehicle activated signage. Whilst I acknowledge that cars from the development will lead to some additional traffic on local roads, I have no evidence that the number of cars from the development would lead to a significant increase or be harmful to highway

safety and subject to the provision of the bus stop required by the Local Highways Authority, I am satisfied the scheme would be acceptable in this regard.

27. I also note the concerns expressed in relation to pressure on local services. I have no firm evidence that the relatively limited extent of development would have a significant effect on GP services or local shops. Furthermore, in relation to education, I note the comments of some residents regarding the effect on local schools, and am satisfied that the contribution to education secured through the planning obligation will address this matter.
28. In relation to local ecology, taking account of the submitted ecological surveys I am satisfied that the scheme would not have an unacceptable impact on local wildlife. Finally, I note the concerns of the adjoining landowner in relation to the impact future occupiers may have on their land through increased use of the public footpath. Whilst I have some sympathy for the neighbour and the effects of inconsiderate behaviour, as use of the footpath is a legitimate activity it does not weigh against the proposal.

Conditions

29. In addition to conditions relating to the time limit for implementation and the approved plans a further condition is necessary to ensure that an acceptable design for each of the individual units is agreed and approved prior to development. A further condition is necessary to ensure the landscaping of the site is carried out in accordance with the approved plans.
30. In the interests of highway safety, a condition requiring the necessary Vehicle Activated Signage aimed at slowing vehicle speeds along St Edmunds Lane is necessary. Furthermore, for the same reason, a condition requiring the necessary infrastructure to provide a bus stop in the vicinity of the site and a Residential Travel Plan are necessary in order to facilitate sustainable transport. I have amended the proposed condition in relation to the provision of a travel plan in the interests of clarity. Conditions are also necessary to ensure adequate vehicle parking, including cycle parking.
31. To help protect the living conditions of local residents during construction a condition securing a construction management plan is necessary. To ensure that the site is appropriately drained and does not give rise to flooding elsewhere conditions requiring the implementation and maintenance of an appropriate sustainable drainage strategy for the site is necessary.
32. In order to ensure that the proposed dwellings secure an appropriate level of accessibility, and in line with policy GEN2 of the LP, a condition is necessary seeking an appropriate proportion of accessibility and adaptable dwellings.
33. In order to protect the ecology of the site, and to ensure wildlife is not harmed during construction or through inappropriate lighting post development, conditions are necessary to secure ecological mitigation & enhancement measures, a bat friendly lighting plan and a biodiversity construction plan. In order to ensure that potential archaeological remains are appropriately managed conditions are necessary to secure and implement a programme of archaeological investigation. Notwithstanding that the site is not considered to be contaminated as a precaution a condition is necessary to ensure unexpected contamination, if encountered, is remediated.

Conclusion

34. The proposal would not give rise to harm to the character and appearance of the area or to heritage assets. The requirement for contributions towards highways infrastructure has not been demonstrated. The proposal can therefore be considered to comply with the development plan, taken as a whole and there are no material factors which direct me to determine the proposal otherwise than in accordance with the development plan.
35. Accordingly, for the reasons given above and having regard to all other matters raised the appeal is allowed.

Anne Jordan

INSPECTOR

Richborough

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 565.123A, 565.102B and the Design Code July 2020.
3. Prior to the commencement of the construction of the dwelling on each plot, full details of the house type, extension and/or garage options and layout within the plot and the materials to be used in the construction for that plot, in accordance with the Design Code July 2020 shall be submitted to and approved in writing by the local planning authority. Subsequently, the dwelling for that plot shall be constructed strictly in accordance with the approved details.
4. All hard and soft landscape works shall be carried out in accordance with the approved details as shown on the Landscape Strategy drawing 565.123 A prepared by Pelham Structures. The works shall be carried out before any part of the development is occupied or in accordance with a programme agreed with the local planning authority.
5. Prior to first occupation of the development, highway improvements in the vicinity of the site on St Edmunds Lane shall be provided. These shall include but not be limited to:
 - i. formalisation of the bus stop / improvements to the passenger transport infrastructure at the 'informal' bus stop located on the east of St Edmunds Lane along the site frontage, including raised kerbs, hardstanding, flags, timetables, pedestrian crossing points, a length of footway from the site access to the bus stops, and any other related infrastructure as deemed necessary by the Highway Authority.
 - ii. Provision of a Vehicle Activated Sign (VAS).

The infrastructure shall be provided entirely at the expense of the developer including any required safety audits, traffic regulation orders and other requirements for technical approval.
6. Prior to occupation of the proposed development, the Developer shall submit for approval to the local planning authority details of a measures to encourage the use of public transport, in the form of a Residential Travel Information Pack. These measures shall subsequently be implemented to the satisfaction of the Local Planning Authority in accordance with an agreed timetable.
7. No dwelling shall be occupied until the associated parking and/or turning head indicated on the approved plans has been provided. The vehicle parking and turning heads shall be retained in this form at all times.
8. Cycle parking shall be provided in accordance with the EPOA Parking Standards. The approved facility shall be secure, convenient, covered and provided prior to occupation and retained at all times.
9. No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The approved Plan shall be adhered to

throughout the construction period and shall provide for the following all clear of the highway:

- i. Safe access into the site;
- ii. The parking of vehicles of site operatives and visitors;
- iii. Loading and unloading of plant and materials;
- iv. Storage of plant and materials used in constructing the development;
- v. Wheel and underbody washing facilities

10.No works except demolition shall takes place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:

- Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753.
- If infiltration is to be found unviable then discharge rates should be limited to 4.3l/s for all storm events up to and including the 1 in 100-year rate plus 40% allowance for climate change.
- Provide sufficient storage to ensure no off-site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.
- Demonstrate that all storage features can half empty within 24 hours for the 1:100 plus 40% climate change critical storm event.
- Final modelling and calculations for all areas of the drainage system.
- The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

11.No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.

12.Prior to occupation a maintenance plan detailing maintenance arrangement, including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed in writing by the Local Planning Authority. Should any part be

maintainable by a maintenance company, details of long-term funding arrangements should be provided.

The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

13. All of the dwellings approved by this permission shall be built to Category 2: Accessible and adaptable dwellings M4(2) of the Building Regulations 2010 Approved Document M, Volume 1 2015 edition.
14. All ecological mitigation & enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecology Report (A R Arbon, February 2020), Bat Survey (Essex Mammal Surveys, October 2019), Landscape and Enhancements Plan (Pelham Structures Limited, December 2019), as already submitted with the planning application and agreed in principle with the local planning authority prior to determination. This includes, but is not limited to, biodiversity enhancements including integrated bat boxes, Sparrow Terrace, bird boxes, native planting and Hedgehog nesting boxes.
15. Prior to occupation, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed, so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.
16. Prior to commencement, a biodiversity management plan shall be submitted to and approved in writing by the local planning authority. The BMP shall include the following.
 - a) Risk assessment of potentially damaging construction activities.
 - b) Identification of "biodiversity protection zones".
 - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
 - d) The location and timing of sensitive works to avoid harm to biodiversity features.
 - e) The times during construction when specialist ecologists need to be present on site to oversee works.
 - f) Responsible persons and lines of communication.
 - g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
 - h) Use of protective fences, exclusion barriers and warning signs.The approved BMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

- 17.No development or preliminary groundworks of any kind shall take place until a programme of archaeological investigation has been secured in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.
- 18.No development or preliminary groundworks of any kind shall take place until the completion of the programme of archaeological investigation identified in the WSI defined in condition 17 above.
- 19.The applicant shall submit to the local planning authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork, unless otherwise agreed in advance with the Planning Authority). This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.
- 20.If during any site investigation, excavation, engineering or construction works evidence of land contamination is identified, the applicant shall notify the Local Planning Authority without delay. Any land contamination identified, shall be remediated to the satisfaction of the Local Planning Authority.