



Appeal Decision

Site visit made on 30 July 2024

by **S J Lee BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2024

Appeal Ref: APP/C1570/W/24/3338206

Land to the West of Thaxted Road, Debden CB11 3LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Ford Homes Ltd against Uttlesford District Council.
 - The application Ref is UTT/23/0878/DFO.
 - The development proposed is details following outline application UTT/20/0264/OP for the erection of 25 no. private and affordable dwellings – details of access, layout, scale, landscaping and appearance.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Outline planning permission, with all matters reserved, exists for 25 dwellings on this site. The principle of development has therefore already been established and is not in question in this appeal. The proposal seeks reserved matters approval for access, layout, scale, landscaping and appearance.
3. The appeal was made following the Council's failure to reach a decision in accordance with the prescribed timescales. The Council has identified its putative reasons for refusal as primarily relating to the effect on the character and appearance of the area. Within this, it also identifies a potential conflict between the proposed public open space and sustainable drainage scheme, as illustrated on the submitted plans. While this may have implications for the appearance of the development, I consider the heart of that issue is whether the development would provide a satisfactory drainage solution and/or adequate provision of open space. The parties' evidence addresses such issues and thus I have considered the appeal on this basis.
4. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. The main parties have had the opportunity to comment on the revised Framework in respect of the appeal, and I have taken it into account where relevant to my decision.

Main Issues

5. The main issues are the effect of the development on (i) drainage and public open space provision, and (ii) the character and appearance of the area.

Reasons

Drainage and Public Open Space

6. The appellant has acknowledged that there is an inconsistency between plans which illustrate the location of public open space and those identifying attenuation ponds. There appears to be no dispute between the parties that an attenuation pond and public open space may not be compatible uses, particularly in relation to health and safety issues and whether such open space could be considered usable. I consider such concerns to be well founded. If permission were to be granted based on the submitted plans, then it is not clear whether the development would be capable of meeting the necessary requirements of policy, or expectations of the outline permission and associated S106 agreement, in terms of either drainage or open space provision.
7. To address this, the appellant has submitted a revised plan with the appeal identifying an alternative drainage solution which would use underground tanks. An appeal should not normally be used to evolve a scheme¹ and it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and by interested parties. Given this plan was submitted with the appellant's 'final comments', there has been no opportunity for any party to comment on this. Accepting this plan could therefore prejudice the interests of the Council and interested parties. I also consider any potential changes to the drainage mechanism and/or open space provision to be such a substantial change to the proposal that it would not be appropriate to consider the plans as part of the appeal. For the avoidance of doubt, I have considered only those plans that were before the Council.
8. In this context, there is no certainty that the Council or Local Lead Flood Authority (LLFA) would consider this alternative solution acceptable. The appellant has further suggested that this issue could be resolved by a planning condition requiring approval of the scheme prior to development taking place. In this instance, I do not consider this to be a suitable or satisfactory approach. Notwithstanding my comments about seeking to resolve this issue through the appeal process, a condition should only be imposed where there is reasonable certainty that it can be discharged. There is no such certainty here.
9. If an alternative solution were not acceptable to the Council, then the proposed open space could not be delivered as set out on the submitted plans. There is nothing before me which quantifies what the reduction in usable open space would mean in terms of any shortfall in provision.
10. In my view, this lack of clarity, and associated level of uncertainty, is not something that should be addressed by condition. Accordingly, there is insufficient comfort that a satisfactory drainage scheme can be provided while still providing adequate levels of usable public open space. There is therefore conflict with Uttlesford Local Plan (ULP) (2005) Policy GEN6, which states that permission will not be granted where development does not make provision for drainage or other infrastructure made necessary by the proposed development.

¹ Procedural Guide – Planning Appeals – England – paragraph 16.1

11. In coming to this conclusion, I have noted the comments of the Inspector into a previous appeal on this site regarding the need for open space. Nevertheless, that was in a different context. In this case, outline permission has been granted with an expectation of public open space being provided.

Character and appearance

12. The development would clearly urbanise what is currently an open field on the edge of the existing settlement. However, this would have been expected when outline permission was granted. It should come as no surprise that the character and appearance of what is considered a prominent location at the entrance to the village would change significantly. Similarly, in granting permission for this scale of development, there would have been certain expectations relating to the density and layout of development that would come forward. The inevitable change in character precipitated by the granting of outline permission is not sufficient reason to withhold planning permission.
13. The development has been criticised for the use of 'triple tandem parking' in 8 of the plots. This would be the result of use of a garage and then two off-street tandem parking spaces on the driveways of each house. This could result in some potential inconvenience for residents that may lead to them to choose to park their cars on-street. This could have some negative impacts on the appearance of the area. This potential is reflected in the Council's emerging Design Code, which states that on-plot triple tandem parking would be refused. This is not formal policy and would be guidance when approved. I have received nothing from either party as to the current status of this document or its likely date of approval. As such, I have not given the document substantial weight. Importantly, this would only affect a relatively small proportion of the development and thus potential harm would be minimal. It is also highly unlikely that there would be overspill of vehicles outside the estate onto Thaxted Road and thus the self-contained nature of the estate would help to mitigate and minimise any harm to the character of the wider area. I also see no reason why this should inevitably lead to any issues with highway safety. Accordingly, this matter does not result in the proposal being unacceptable as a whole.
14. The proposed flats would appear as a 2.5 storey building. This, combined with its location at the higher part of the site, would give the building a degree of prominence within the development. However, the height would not be excessive, and the design of the flats would complement that of the other dwellings. The building would be seen in the context of the remainder of the estate and would not appear unduly dominant in this context. The enclosed and self-contained nature of the estate would also ensure any impacts would be localised in nature and not have a significant impact on the wider character or appearance of the area. Existing dwellings in the vicinity of the site are also of a wide range of styles and ages and thus there is no sense of an homogenous character. In this context, neither the flats nor other dwellings would appear incongruous.
15. Parts of the site may not benefit from active frontages to the road. However, this would again only affect a small proportion of the site and would not rise to the level of unacceptable harm. Adequate mitigation could also be provided through appropriate landscaping and boundary treatments. These could be secured by condition in the event of permission being granted. In the main, the

dwelling would be of an acceptable design, containing sufficient architectural detailing and articulation to break up their overall masses and provide some visual interest.

16. The submitted plans illustrate there would be substantial potential for new or improved landscaping within and around the edge of the site. Again, in the event of permission being granted, conditions could be imposed to provide further details and approval of any landscaping scheme. Nevertheless, I see no reason why the development would necessarily lead to unacceptable harm in this respect.
17. When taken as a whole, I am satisfied that the layout and design of the dwellings would be acceptable and would not result in unacceptable harm to the character and appearance of the area. Accordingly, there would be no conflict with ULP policies S7 and GEN2 which seek, amongst other things, to ensure development protects or enhances the character of the countryside, and is compatible with the scale, form, layout and appearance of the surrounding area. There would also be no conflict with the Framework, in particular paragraph 135 which seeks to ensure development functions well, is visually attractive and sympathetic to local character.

Other Matters

18. The Council cannot demonstrate a 5-year supply of deliverable housing land as required by the Framework. In such circumstances, paragraph 11d of the Framework is triggered.
19. The development would deliver 25 new dwellings to the housing land supply. These would make a valuable contribution toward meeting any shortfall. Moreover, the S106 agreement secures 10 affordable dwellings, which provide additional social benefits. The development would provide long-term economic support for local services and facilities, as well as in the short term through provision of construction jobs. Provision of additional landscaping and biodiversity mitigation may also provide scope for biodiversity improvements. The collective benefits of the development would therefore be significant. Although these would have presumably been taken into account when outline permission was granted, the development would bring these to fruition.
20. However, my concerns in relation to the conflict between open space provision and flood risk are significant and cannot appropriately be resolved through the appeal process or by condition. The failure to provide adequate drainage and/or provision of open space would be a significant matter and thus the adverse impacts of granting permission in these circumstances would significantly and demonstrably outweigh the benefits. Accordingly, the presumption in favour of sustainable development does not apply in this case.
21. The appellant has raised concerns about how the application was dealt with by the Council. These are matters between the parties and fall outside the scope of the appeal. Similarly, the fact the Council is currently under 'special measures' has no bearing on my decision, which has been based on the merits of the proposal. In coming to my conclusion, I have also had regard to the submissions of support for the development. However, these do not alter my overall decision.

Conclusion

22. The development would conflict with the development plan. There are no material considerations which would outweigh this conflict. The appeal is therefore dismissed.

S J Lee INSPECTOR

Richborough