

Appeal Decision

Site visit made on 3 January 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 30 January 2017

Appeal Ref: APP/Z1510/W/16/3159441

Land adjacent Boulders, Nether Hill, Gestingthorpe, Essex CO9 3BD

- 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 Mr Roger Spencer against the decision of Braintree District Council.
 - The application Ref 16/00382/FUL, dated 1 March 2016, was refused by notice dated 25 April 2016.
 - The development proposed is the erection of a dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a dwelling at Land adjacent Boulders, Nether Hill, Gestingthorpe, Essex CO9 3BD, in accordance with the terms of the application, Ref: 16/00382/FUL, dated 1 March 2016, subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Mr Roger Spencer against Braintree District Council. This application will be the subject of a separate Decision.

Main Issues

3. The main issues in this appeal are:
 - The effectiveness of local settlement policy and its implications for the proposal; and
 - Whether the appeal site would constitute a suitable location for housing with particular reference to the proposals effect on the vitality of the rural community and whether it would be isolated.

Reasons

The effectiveness of local settlement policy

4. Saved Policy RLP2 of the Braintree District Local Plan Review 2005 (LP) directs new development to sites within the Town Development Boundaries and Village Envelopes as a means of protecting the countryside and focusing new development within settlements. This policy also states that outside these areas, countryside policies will apply. Policy CS5 of the Braintree District Council Core Strategy 2011 (CS) states that development in the countryside will be strictly controlled.
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5. It is common ground between the appellant and Council that the appeal site is located outside of Gestingthorpe and is in the countryside. The proposal would thus, in a modest way, urbanise the countryside. In this respect the appeal scheme would be contrary to the above policies and would undermine the broad strategy for housing and the protection of the countryside contained in the Development Plan.
6. Saved Policy RLP 16 of the LP permits some housing outside of village envelopes as an exception to the broad strategy of restraining most development in the countryside. This is when it involves the erection of a single dwelling in a gap between existing properties in a discernable nucleus of development. Being on the outer most edge of a row of houses, the appeal site is not located within a gap and therefore the exception is not engaged.
7. Saved Policy RLP2 of the LP and Policy CS5 of the CS are broadly but not entirely consistent with the National Planning Policy Framework (the Framework), which is less restrictive as it seeks to encourage development that supports the vitality of rural areas whilst recognising the intrinsic character and beauty of the countryside and promotes travel choice.
8. Nevertheless, these Policies relate to the supply of housing as they aim to generally restrict new homes outside of the defined settlement boundaries. This is significant as it is common ground between the Council and appellant that the Council cannot currently demonstrate a five year housing land supply as required by Paragraph 47 of the Framework. As a consequence, the policies relating to the supply of housing in the development plan are currently out of date and carry little weight.
9. I therefore conclude that the effectiveness of rural settlement policy in the district is already undermined by reason of an undersupply of housing. The implications for the appeal scheme being that in such circumstances, Paragraph 14 of the Framework directs that when relevant policies are out of date 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. I have determined this appeal accordingly.

Whether the appeal site would constitute a suitable location for housing

10. Paragraph 55 of the Framework specifically addresses the provision of housing in rural areas. It states that housing should be located where it will enhance and maintain the vitality of rural communities by avoiding isolated homes unless there are special circumstances. The Framework does not define or limit the meaning of 'isolated' and there is no up to date local interpretation. Nevertheless, in my experience, there are two main aspects to be assessed when considering 'isolation', these being the site's physical relationship with a settlement and its functional connectivity to services. Additionally, Paragraph 17 of the Framework requires the intrinsic character and beauty of the countryside to be recognised.
11. The appeal site encompasses a small parcel of land on the edge of Gestingthorpe. The appeal site has a frontage onto Nether Hill and is at the end of a row of houses. The site is currently occupied by a single storey building but is otherwise overgrown and apparently unused. The site is also in a prominent and elevated position in views from the north towards the village.

12. The northern boundary of the site is delineated by a hedge and this is a physical feature that distinguishes the built development of Gestingthorpe from the arable fields beyond. As such, the erection of a house within the appeal site, in the way now proposed, would not appear as an incongruous intrusion into the countryside. The urbanising impact of the appeal scheme would also be tempered a little by the presence of a small building within the site, which to an extent gives the site the character of previously developed land. Therefore, the appeal scheme would appear as a consolidation of the built form of the village. As such, the appeal scheme would not appear as being physically isolated from the discernable settlement of Gestingthorpe.
13. The number of services within walking distance of the site is limited but includes a public house, playing field, village hall and church. The site is also within a reasonably short and comfortable walk of an existing bus stop even though the route is unlit. From this bus stop the future occupants of the proposed dwelling would be able to access facilities and services in surrounding towns. The future residents of the appeal scheme would have a similar level of accessibility to services and facilities as other residents in Gestingthorpe, which is a defined settlement within which the principle of some limited housing is supported by the development plan. As a consequence, and in this context, the site is not functionally isolated from services and facilities.
14. In this respect my findings are consistent with a previous Inspector, who found that the appeal site is in a sustainable location¹. It is an established principle of the planning system that like applications should generally be considered in a like manner. There is no substantive evidence before me to suggest that there have been any significant changes in local and national planning policy, or within or around the appeal site, which dictates that I should not give the previous Inspector's findings significant weight.
15. As the site is visually and physically related to the settlement of Gestingthorpe with some functional links to everyday services and facilities the appeal scheme would not be 'isolated' even though it would be outside the settlement boundary. I therefore conclude that the appeal scheme would not have any adverse implications for the vitality of the rural community or the intrinsic character and beauty of the countryside. I therefore conclude that the appeal scheme would adhere with the aims of Paragraphs 17 and 55 of the Framework.

Other Matters

16. The Council are concerned that the appeal scheme would set an undesirable precedent. However, from what I observed I share the view of the appellant that it is unlikely the specific circumstances of this appeal, and the appeal site, will present themselves elsewhere and thus no generalised precedent would be set by this decision. In any event, I have considered the appeal scheme on its own merits.

Conditions

17. I have had regard to the advice in the Planning Practice Guide and the list of suggested conditions submitted by the Council. In addition to the 3 year commencement period I consider it necessary in the interests of safeguarding

¹ APP/Z1510/W/15/3008391

the character and appearance of the area to attach conditions requiring the development to be implemented in accordance with the submitted drawings. It is also necessary to attach a landscaping condition to establish the precise details of the landscaping shown on the drawings and that it is delivered and thereafter protected. For the same reason it is necessary for the finishing materials to be approved, although it is unnecessary for approval prior to the commencement of development.

18. In the interests of safeguarding the living conditions of neighbours, it is necessary, exceptionally, to remove some permitted development rights to prevent overlooking. In the interests of highway safety it is necessary to require that surface treatments are bound, to prevent surface water discharge to the highway and for the provision of adequate visibility splays and parking. I have amended the Council's suggested condition in relation to visibility splays as I have seen no evidence to suggest the splay given in the condition is necessary.

Conclusion

19. The proposal is residential development in the countryside with the inherent urbanisation this entails. The proposal therefore runs contrary to the broad aims of the development plan. An application should be determined in accordance with the development plan unless material considerations indicate otherwise. In this instance the lack of a five year housing land supply is a significant material consideration that renders the relevant policies in the development plan relating to the supply of housing as out of date and thus of little weight. The appeal scheme's inherent urbanising effect would be very limited given the site's spatial relationship with Gestingthorpe and that it is well related to some facilities and public transport. As such, the proposed siting of the dwelling outside of the village boundary is not the determinative matter.
20. Weighed against the above drawbacks, I would hesitate in calling them adverse impacts in this instance, is that the proposal would adhere to Paragraph 55 of the Framework, in that it would not constitute an isolated dwelling in the countryside. Additionally, the proposal would, in a modest way, support the rural economy through construction jobs and the circulation of funds as well as through the local spend of future occupants. The proposal would also boost housing supply and enable a situation whereby future occupants could support local facilities, thereby assisting the vitality of the local community. As a single dwelling is proposed the benefits are only limited.
21. Nevertheless, I do not consider the appeal scheme would have adverse impacts that would significantly and demonstrably outweigh its benefits. I therefore find the proposal to be sustainable development for which the Framework carries a presumption in favour. Therefore, whilst the proposal would conflict with the development plan I have identified material considerations, namely the proposal's adherence with the Framework, which would outweigh this conflict. Accordingly, for the reasons given above, I conclude the appeal should be allowed.

Graham Chamberlain
INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall commence not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans.
 - 104/1 Rev B Floor Plan, 104/2 Rev A Floor Plan, 104/3 Rev A Block Plan, 104/4 Rev A Elevations, 104/5 Rev A Elevations, 104/6 Location Plan, 104/7 Site Plan.
- 3) The dwelling hereby permitted shall be provided with a minimum of two off road parking spaces to dimensions of 2.9m and 5.5m.

Notwithstanding that shown on drawing No. 104/2 Rev A, the fencing to the north western side of the property shall be repositioned to allow for a car parking space no less than 2.9m x 5.5m in dimension to be accommodated within the site.
- 4) Notwithstanding the provisions of Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), including any order revoking or re-enacting that order, no window, door or other means of opening shall be inserted above first floor level of the south eastern side elevation of the dwelling hereby permitted.
- 5) Prior to the first occupation of the development hereby approved, details of a parallel band visibility splay at the site access shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented and occupied in accordance with the approved details. The area within the approved visibility splay shall be kept clear of any obstruction exceeding 600mm in height at all times.
- 6) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary of the site.
- 7) There shall be no discharge of surface water to the highway.
- 8) Prior to the commencement of the above ground construction, a scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in the first planting and seeding seasons (Oct – March) after the commencement of the development or such other time as previously agreed in writing by the Local Planning Authority. Any trees or plants which die, are removed, or become seriously damaged, or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives written consent to any variation
- 9) Prior to the commencement of the above ground construction, samples of the materials to be used in the external finishes of the new dwelling hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.