
Appeal Decisions

Site visit made on 17 January 2017.

by Mr Keri Williams BA MA MRTPI

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

Decision date: 3 February 2017

Appeal A: Z1510/W/16/3150953

Land east of Lower Green Road, Blackmore End, Wethersfield, Essex

- 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 Granville Developments against the decision of Braintree District Council.
- The application, ref.16/00406/FUL and dated 2 March 2016, was refused by notice dated 13 April 2016.
- The development proposed is the erection of two detached single storey dwellings on the sites of two agricultural buildings with landscaping.

Summary of Decision: The appeal succeeds and planning permission is granted in the terms set out in the Formal Decision.

Appeal B: Z1510/C/16/3150966

Land east of Lower Green Road, Blackmore End, Wethersfield, Essex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr M Firth of Greyread Limited against an enforcement notice issued by Braintree District Council.
- The Council's reference is 16/00021/UBW3.
- The notice was issued on 25 April 2016.
- The breaches of planning control as alleged is the notice are:
 - i) The complete demolition of an existing cattle shed, the partial erection of a detached single storey building and the laying of footings and a concrete base at Plot A, as indicated on the plan attached to the notice; and,
 - ii) The complete demolition of an existing cattle shed and the laying of footings and a concrete base at Plot B, as indicated on the plan attached to the notice.
- The requirements of the notice are to:
 - A. Dismantle all wall and roof sections to the partly constructed single storey building in the location marked "A" and hatched red on the plan attached to the notice and remove all resultant materials from the site.
 - B. Break up the concrete footings and bases which have been laid for the purpose of erecting two detached single storey buildings at the locations marked "A" and "B" and hatched red on the plan attached to the notice. Remove all resultant materials from the site.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds. The enforcement notice is varied and upheld.

Preliminary Matters and Background

1. Both appeals concern the same block of land. It is to the east of Lower Green Road. Wrights Farmhouse is to the north and Lealands Farmhouse to the south. Two pre-fabricated agricultural buildings which formerly occupied the site were demolished in 2015. Drawing 3088.010 shows the proposed site layout. Drawings 3088:011.1 and 3088:013.1 provide floor plans and elevations for Plot 1 and Plot 2 respectively. They were submitted with the application. The planning application was partly retrospective and the development has commenced. There is a partially constructed building on Plot 1. There are footings, a base and a few courses of bricks on Plot 2. Revised drawings 3088:011.1a and 3088:013.1a were also submitted. They were not before the Council when it made its decision and have not been the subject of consultation. They are materially different to the original plans, particularly with regard to window and door openings. In the interest of fairness I have reached my decisions based on the original plans.

Appeal A - The Planning Appeal

Main Issues

2. The main issues are:
 - i) The effect of the development on the character and appearance of the area.
 - ii) The effect on the setting of neighbouring listed buildings.
 - iii) Accessibility to services and facilities.
 - iv) The overall balance and whether the appeal proposal constitutes sustainable development in the countryside.

Relevant Planning Policies

3. Policy CS5 of the Braintree District Council Local Development Framework Core Strategy, 2011 (CS) strictly controls development outside town development boundaries and village envelopes to uses appropriate to the countryside. The policy aims to protect and enhance the character, biodiversity, geodiversity and amenity of the countryside. Policy RLP2 of the Braintree Local Plan Review, 2005 (LP) has a similar effect. The site is not within a village envelope. Policy CS7 deals with accessibility. Amongst other things it says that future development will be provided in accessible locations to meet the need to travel. Policy CS9 promotes the highest standards of design especially where, amongst other things, development affects the setting of historic buildings. LP policy RLP90 also requires a high standard of design and provides related criteria. Policy RLP100 deals with alterations and extensions and changes of use to listed buildings and in their settings. Amongst other things it provides that changes of use will only be permitted if the proposed works or uses do not harm the setting, character, structural stability and fabric of the building.
4. The National Planning Policy Framework (the Framework) is a material consideration. The Framework seeks to deliver a wide choice of high quality homes and to boost significantly the supply of housing. Framework paragraph 49 says that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning

authority cannot demonstrate a five-year supply of deliverable housing sites. Paragraph 14 puts sustainable development at the heart of the Framework. For decision making this means approving development proposals that accord with the development plan without delay. Where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted. Footnote 9 gives examples of such restrictive policies.

5. The Council has re-assessed the housing supply position since its initial assessment of the planning application. It now acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites. It considers the objectively assessed need for the District to be 845 dwellings per annum from 2016. On that basis the Council considers that its forecast supply for the period 2016-21 equates to a 3.52 years supply and for the period 2017-22 it equates to a 3.59 years supply. In addition, the appellant's evidence casts doubt on the deliverability of some sites on which the Council's supply of housing relies.
6. On the most favourable analysis, deliverable housing sites fall significantly below the 5-year supply required by the Framework. The provisions of Framework paragraphs 49 are therefore engaged. It is consistent with caselaw, including that in *Suffolk Coastal District Council v Hopkins Homes Ltd*; *Richborough Estates Partnership LLP v Cheshire East*, *SSCLG [2016] EWCA Civ 168* that the term "relevant policies for the supply of housing" means relevant policies affecting the supply of housing. Policies CS5 and RLP2 both have that effect and must be considered out-of-date so that Framework paragraph 14 is also engaged.
7. Framework paragraph 215 explains that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework itself. While policy CS7 is broadly consistent with the Framework's approach to sustainable transport, Framework paragraph 29 also recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Policies CS9, RLP90 and RLP100 are broadly consistent with the Framework's thrust for good design standards and conserving the significance of designated heritage assets, including listed buildings. This extends to consideration of the effect of development on the settings of listed buildings. The Framework also provides for harm to listed building settings to be balanced against any public benefit arising from the development.

The Effect on the Character and Appearance of the Area

8. Blackmore End is a recognisable village and is characterised by linear development extending along several roads. There is a dispersed pattern of development along Lower Green Road. The Council refers to the change to village character and to the suburbanising effect it considers would result from the development. However, the site has previously been occupied by two agricultural buildings and the two dwellings would reflect the footprint of those buildings. The proposed dwellings would be single storey and would be of a simple form. The site is well screened in views from the road by hedging, although the provision of visibility splays would reduce that to some extent. Much of the appeal site would remain undeveloped and further planting could

be required by condition. A condition could also control extensions and further buildings, so that the site could retain much of its open character. The fenestration and doors shown on the submitted drawing would give the dwellings an inappropriate suburban character. However, there is scope to require revised details of those matters, allowing a more appropriate design to be achieved. Details of materials could also be controlled by condition to reflect local character.

9. I conclude that subject to appropriate conditions the development would not result in material harm to the character and appearance of the surrounding area. The site is not within a settlement boundary and the development would therefore conflict with policies CS5 and RLP2. It would not accord with the development plan's approach of concentrating development in towns and in village envelopes. On the other hand there are a number of dwellings nearby and the development would not result in the new isolated homes in the countryside to which Framework paragraph 55 refers.

The Effect on the Setting of Listed Buildings

10. Wright's Farmhouse is a Grade II* listed building to the north of the site. It is timber framed, plastered and roofed with handmade red clay tiles. The building is significant as an example of a farmhouse with 14th century origins, with 16th and 20th century alterations. Lealands Farmhouse is a grade II listed building to the south of the site. It is also timber framed, plastered and roofed with handmade red clay tiles. It is significant as an example of a farmhouse of 16th and 18th century origins, with later alterations. Lealands Barns is a property immediately to the north of the farmhouse, comprising a range of buildings with materials including black timber boarding and tiled roofs.
11. The site adjoins the plot of Wright's Farmhouse and the wider plot of Lealands Farmhouse. From part of Lower Green Lane the site is seen with Wright's Farmhouse, although views are reduced by vegetation. It is also seen in conjunction with Lealands Barns and, to a more limited extent, with Lealands Farmhouse. I consider the appeal site to be within the settings of both listed buildings.
12. Until recently the appeal site contained two agricultural buildings, which formed part of the setting of the listed buildings. The front elevation of Wright's Farmhouse faces the road and its rear elevation faces east. The side elevation of the farmhouse is close to the appeal site's northern boundary. It has no windows. A curtilage building to the front of the farmhouse has a small window at the apex of its gable end, facing the site. The two new dwellings would be well separated from the plot of Wright's Farmhouse and there is scope for extensive planting on the land to the north of Plot 1. To the south the site faces the extensive north elevation of Lealands Barns. It has walls of dark stained timber and one, small first floor window facing the site. Ground between the site and the barns has some shrubs and trees.
13. As I set out above, the proposed houses are single storey and of a simple form, not dissimilar to that of farm buildings. The use of black stained weather boarding would not be out place. The proposed buildings would not dominate the site. The removal of concrete hardstandings would be beneficial. There would be some change in character through residential use and the proposed doors and windows, as shown on drawings 3088:011.1 and 3088:013 would result in a suburban appearance. However, subject to the conditions to which I

refer above, addressing revised window and door details, materials, landscaping and control of extensions, alterations and further curtilage buildings, I conclude that there would not be material harm to the settings of the listed buildings. The development would not conflict with policies CS9, RLP90 and RLP100 in that respect.

Accessibility

14. Blackmore End has a very limited range of services and facilities. There is, for example, no local shop, the nearest being about 2 miles away. In its emerging Local Plan the Council identifies 5 Service Villages. They do not include Blackmore End, the nearest being Sible Hedingham which is about 4 miles away. It is likely that those occupying the dwellings would rely heavily on the private car to access everyday services, community facilities and employment. While this weighs against the development, it is consistent with the Framework that sustainable transport opportunities are likely to be more limited in rural areas.

Other matters

15. I have taken into account another appeal decision (APP/Z1510/W/16/3148072) and a draft local plan allocation at Wethersfield, to which the main parties refer. However, that appeal decision and the allocation rely on the particular circumstances of the sites in question and the related planning issues. These matters add little to my reasoning in this appeal.

The Overall Balance and Sustainable Development

16. Accessibility to services, facilities and employment from the site other than by car would be poor. On the other hand, the development would make a modest contribution to meeting housing need. In addition, subject to appropriate conditions, there would not be material harm to the character and appearance of the surrounding area or to the setting of listed buildings. A minor economic benefit would arise from developing the site and the economic activity of those occupying the dwellings. There would be conflict with policies CS5 and RLP2 but those policies are out-of-date and are worthy of limited weight. Applying the test set out in Framework paragraph 14, I find that there are not adverse impacts of granting permission which would significantly and demonstrably outweigh the benefits, when assessed against Framework policies as a whole. Nor are there specific policies in the Framework which indicate that the development should be restricted. The proposal would amount to sustainable development. Permission should be granted in accordance with the Framework's presumption in favour of sustainable development.

Conditions

17. To protect the character and appearance of the area and the setting of listed buildings conditions should address compliance with plans, materials, details of doors and windows, removal of certain permitted development rights, landscaping, hardstanding and enclosures. To safeguard highway safety, a further condition should address visibility splays. The development has begun so that a commencement condition is not required and conditions should be in the retrospective form where appropriate. The Council's Environmental Health consultation also resulted in several suggested conditions. There is no substantive evidence to suggest a likely risk of contamination on the site, or

that the burning of waste or piling are likely to be required. Conditions on those matters are unnecessary. To protect the amenity of nearby residents a condition limiting hours of work is required.

Appeal B – The Enforcement Appeal on Ground (g)

18. The appellant considers that the 3 month period for compliance would be insufficient to arrange, manage and carry out the safe and responsible demolition of the building on Plot 1 and the concreted footings and bases on both plots. A period of 6 months is suggested. Having regard to this and to my conclusions on the main issues in Appeal A, I find the 3 month period to be unreasonably short and that it should be extended to 6 months. Subject to that variation the notice should be upheld. I also draw attention to the effect of section 180 of the Act as amended. It is that where planning permission is granted for any development carried out before the grant of that permission, an enforcement notice shall cease to have effect so far as it is inconsistent with that permission.

Overall Conclusions

19. Having regard to the above and to all other matters raised Appeal A should succeed and planning permission should be granted subject to the conditions set out in the Formal Decision. Appeal B should also succeed. The enforcement notice should be varied and upheld.

Formal Decisions

Appeal A: Z1510/W/16/3150953

20. I allow the appeal and grant planning permission for the erection of two detached single storey dwellings on the sites of two agricultural buildings with landscaping on land east of Lower Green Road, Blackmore End, Wethersfield, Essex in accordance with the terms of the application ref.16/00406/FUL and dated 2 March 2016 and the plans submitted therewith subject to the following conditions:
- 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending or re-enacting that Order) no enlargement of the dwellinghouses/provision of any building within the curtilages of the dwellinghouses/alteration of the dwellinghouses, as permitted by Classes A, B, C and E of Part 1 of Schedule 2 of that Order shall be carried out.
 - 2) The development shall be carried out in accordance with drawings 3088:010, 3088:011.1 and 3088:013.1 other than in respect of the materials, doors and windows shown on drawings 3088:011.1 and 3088:013.1.
 - 3) The development hereby permitted shall be demolished and all materials brought onto the land for the purposes of that development shall be removed from the land within 3 months of the date of failure to meet any of the requirements set out in (i) to (iv) below:
 - i) Within 3 months of the date of this decision, or such other period as the Local Planning Authority may agree in writing, a scheme shall be submitted in writing to the Local Planning Authority for its written approval. The scheme shall include details of the following: the

- windows and doors on each elevation of the buildings and the materials to be use on the external finishes, of which samples shall be provided (notwithstanding the details of doors, windows and materials shown on drawings 3088:011.1 and 3088:013.1) and a timetable for the implementation of each element of the scheme.
- ii) Within 11 months of the date of this decision, the scheme referred to above shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted by, the Secretary of State.
 - iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been finally approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable and the approved scheme shall thereafter apply.
- 4) The enclosures as indicated on drawing 3088:010 shall be erected prior to first use/occupation of the dwellinghouses hereby approved and shall be permanently maintained as such.
 - 5) Prior to the occupation of the development hereby approved a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The scheme shall incorporate a detailed specification including plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing, extent, colour and material for all hard surface areas and the method of laying.
 - 6) All areas of hardstanding shall be constructed using porous materials laid on a permeable base unless otherwise agreed in writing by the local planning authority.
 - 7) All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in accordance with a timetable submitted to and agreed in writing by the local planning authority.
 - 8) All hard surface areas shall be provided before first occupation of the buildings or upon the completion of the development, whichever is earlier.
 - 9) 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.
 - 10) Prior to the occupation of the development, visibility splays with dimensions of 2.4 metres by 43 metres as measured from and along the nearside edge of the carriageway shall be provided on both sides of the access. The area within each splay shall be kept clear of any obstruction exceeding 600mm in height at all times.

- 11) No site clearance, demolition or construction work shall take place on the site, including starting of machinery and delivery of materials, outside the following hours:

Monday to Friday – 08:00 to 18:00 hours.

Saturday – 08:00 to 13:00 hours.

Sunday – no working.

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21. I direct that the notice be varied at paragraph 5 by the replacement of the words "3 months" with the words "6 months". I allow the appeal and uphold the notice subject to the above variation.

K Williams

INSPECTOR