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## Appeal Decision

Site visit made on 13 March 2017

**by Graham Chamberlain BA MSc MRTPI**

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

**Decision date: 17<sup>th</sup> March 2017**

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**Appeal Ref: APP/Z1510/W/16/3165001**  
**The Tythings, Halstead, Essex CO9 1EP**

- 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 Greenfields Community Housing against the decision of Braintree District Council.
  - The application Ref 16/01015/FUL, dated 9 June 2016, was refused by notice dated 19 October 2016.
  - The development proposed is 7no 1 bed flats and 6no 2 bed flats.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in this appeal are:
  - The effect of the proposed development on the character and appearance of the area;
  - Whether the proposed development would provide adequate living conditions for future occupants with particular reference to privacy;
  - The effect of the proposed development on highway safety, with particular reference to parking; and
  - Whether, in a planning balance, any adverse impacts of the proposal would significantly and demonstrably outweigh any benefits.

### Reasons

#### *The effect on the character and appearance of the area*

3. The appeal site encompasses an informal parcel of open space and garaging between Abels Road and The Tythings. The parcel of land is generally given over to lawn although there is some tree planting in the northern section around two garage blocks, which would be demolished as part of the appeal scheme. The open space forming the appeal site is viewed as part of a larger area of greenery that includes wide grass verges to the immediate east, south and west. The combination of the appeal site and the nearby grass verges soften the surrounding built form and affords the part of the housing estate within which the appeal site is located a spacious and verdant layout.
  4. The terraced and semi-detached properties to the east, south and west of the appeal site are broadly arranged to overlook and enclose it. In this respect, the
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appeal site is a feature within the street scene and estate that acts as a visual focus. The Council suggests this was a deliberate and planned feature of the original composition of the estate and I have no reason to disagree. Especially so as this is a feature that is replicated elsewhere, such as the wide grass verges and open spaces along White Horse Avenue. As such, the appeal site is an important feature in the estate that contributes positively to the character and appearance of the area, even though it is not one of the most important open spaces identified on the proposals map as part of the Braintree Local Plan Review 2005 (LP).

5. The appeal scheme would involve the erection of a block of flats in a broadly central position within the appeal site. This would dominate the appeal site and thus significantly and harmfully erode the positive contribution its undeveloped character makes to the street scene as an area of visual relief within the housing estate. The insertion of a block of flats would also undermine the spatial composition of the area around the appeal site, as the existing houses would no longer be facing onto and framing the appeal site as an open space. In this respect, the proposed flats would appear as an incongruous insertion.
6. The flats would be set back from the road behind small grassed areas and landscaping but the setback would not replicate the extent of the grass verges found to the immediate east, west and south of the appeal site. This would undermine the sense of space, which is a defining characteristic of this part of the housing estate as well as the grain of development. Moreover, the erection of a 1.8m high chain link fence around part of the site would be a tall, discordant and notable feature that would be lacking in quality and would further erode the sense of space currently evident at the appeal site.
7. The properties in the immediate vicinity of the appeal site are a repetition of the same house type, which affords a visual composition and harmony. The flats to the immediate north of the appeal site are seen as an interloper into this context due to their scale and form. The proposed flats would be wider and thus more imposing in the street scene than the existing flats to the immediate north and the nearby houses. As such, the proposed flats would jar with the scale of the surrounding buildings. The fall of the land, and thus the comparative ridge height of the proposed flats to the surrounding properties, would not mitigate for the harmful impact of the appeal scheme's overall massing or for the loss of the appeal site as an open space that contributes positively to visual amenity.
8. I therefore conclude that the appeal scheme would significantly harm the character and appearance of the area. The proposal is therefore contrary to Policy CS9 of the Core Strategy 2011 and saved Policies RLP3, RLP9, RLP10 and RLP90 of the LP, which seek to protect the character of the existing street scene by relating new development to the layout of surrounding development, the characteristics of the site and local distinctiveness. I have also been provided with a copy of saved Policy RLP4, which is listed on the decision notice and states that the development of open areas which are visually important will not be permitted. These policies are consistent with Paragraphs 17 and 58 of the National Planning Policy Framework.

*Whether the proposed development would provide adequate living conditions*

9. The appeal scheme would incorporate a shared garden to the north and west of the proposed block of flats. The space to the north, which would include the communal patio, would be reasonably private in views from other flats in the proposed development. The area would also be enclosed by chain link fencing

thereby meeting the requirements of the Essex Design Guide (EDG) that above-eye-level screening is provided.

10. It would not be possible for future occupants of the flats to use the gardens and be in complete privacy as they are communal. Such an arrangement is not uncommon in flatted schemes as the higher density of development limits opportunities for truly private space. Nevertheless, due to the size and orientation of the shared garden it would be possible for future occupants to find a quiet corner which would afford them some privacy from the street and neighbouring occupants of the proposed flats.
11. However, the northern section would be entirely overlooked from the upper floor windows of the flats to the immediate north of the appeal site. This would diminish the sense of privacy future occupants would have when in the northern section of the shared garden, which has the communal patio and is more likely to be the principal sitting out area. This effect would be contrary to guidance set out in the EDG, which states that private sitting out areas should be incorporated as part of the garden design of flatted schemes and that particular attention must be paid to problems arising from any overlooking from upper floor flats. There is nothing to suggest I should not afford the EDG weight in my assessment.
12. However, as the gardens would be communal the adverse impact from the overlooking from adjoining upper floor flats would not be as great as if the proposed properties were designed as individual units. Therefore the adverse impact would be no more than limited. I therefore conclude that the proposal would have some limited adverse impacts on the sense of privacy future occupants of the flats would have. This would result in some limited conflict with Paragraph 17 of the Framework, which seeks to secure a good standard of amenity for all future occupants of land and buildings.

*The effect of the proposed development on highway safety*

13. The appeal scheme would provide 25 parking spaces. This figure contains a new parking court broadly in the position of the existing garages, three new parking spaces along Abels Road and the inclusion of the existing parking area currently on the western side of the appeal site<sup>1</sup>. The Council have suggested that when applying the local parking standards, which are minimum standards, there is a requirement for 23 parking spaces. Having considered the parking standards appended to the Council's statement, I consider this to be an accurate calculation. There is nothing before me to suggest I should not give the parking standards weight. Consequently, on first inspection the appeal scheme is able to provide sufficient parking to meet the needs of future occupants, with two spaces left for existing residents.
14. However, the two proposed parking spaces north of the cycle shelter would be difficult to get in and out and could result in users of these spaces having to reverse long distances<sup>2</sup>. I therefore share the Council's concerns over the usability and safety of these spaces. As such, I consider the number of usable spaces to be 23, which would not leave off street parking provision for existing residents. As a consequence, the appeal scheme would displace vehicles onto the public highway.
15. This could result in on street parking pressure as well as inconsiderate parking on pavements and within the grass verges, especially along the Tythings, which has a

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<sup>1</sup> Which provides around seven parking spaces for existing residents of the area

<sup>2</sup> I have not been presented with vehicle tracking to demonstrate otherwise

narrow carriageway. In the absence of substantive evidence to suggest there is reasonable capacity within the highway to accommodate the on street parking pressures that would arise as a result of the development, the proposal would be detrimental to highway safety. A point reinforced by the letters of interested parties that suggest there is already parking stress and an objection from the Highway Authority.

16. The appellant has suggested, through a Parking Displacement Strategy, that all but two of the existing garages are unused. The strategy states that re-provision can be made for those garages in use. However, I share the Highway Authority's concerns that the strategy does not clearly explain why the use of the garages is, in the main, 'void'<sup>3</sup>. The displacement strategy also fails to deal with what would happen to those cars currently parked in the existing parking bay<sup>4</sup> and whether existing residents would be able to continue to park there. If this is the case, the appeal scheme would provide insufficient parking to meet the needs of the future occupants<sup>5</sup>. Consequently, the impact of the proposed parking arrangements on existing off street parking provision has not been robustly explained or justified.
17. It may be possible to provide additional parking within the appeal site or on land within the appellant's control. However, the cumulative impact of doing this on the character and appearance of the area would need careful consideration and therefore this is not a matter that can be addressed through a suitably worded planning condition had the proposal been acceptable in all other respects. The site is located within walking distance of some services and facilities but this in itself does not justify a parking provision below that set out in the parking standards, which are minimum standards that can only be set aside when there is good links to sustainable transport. Such a link has not been demonstrated and the appeal site is on the periphery of the town, which could encourage driving and thus parking. Consequently, I am satisfied the Council have applied the parking standard reasonably.
18. From the evidence before me I conclude that the proposal would adversely affect highway safety through a displacement of vehicles onto the street. This would be contrary to saved Policy RLP56 of the LP, which requires off street parking in accordance with the adopted parking standards. There is nothing before me to suggest saved Policy RLP56 is not consistent with Paragraph 39 of the Framework and therefore I afford it significant weight.

### *Planning Balance*

19. The Council are currently unable to demonstrate a five year housing land supply rendering the relevant policies relating to the supply of housing as out of date. In such circumstances Paragraph 14 of the Framework is engaged. This directs that 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.

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<sup>3</sup> The Highway Authority speculates that this could be due to leases being terminated. This is not a point that has been clarified by the appellant.

<sup>4</sup> The seven parking spaces on the concrete pad. The appellant states that there is no legal right for residents to park here but the use appears long standing and I have seen nothing to support the appellant's suggestion.

<sup>5</sup> Paragraph 5.24 of the appellant's Appeal Statement seems to suggest that the allocated bays would be for general public use. This is an indication that existing residents of the Tythings could use the bays and therefore the proposal does not make adequate provision for the combined demand of existing and future residents of the area.

20. Saved Policies RLP3, RLP9, RLP10 and RLP90 of the LP can have the effect of restricting housing development and are thus policies relating to the supply of housing. As such, they are out of date. Nevertheless, I have still afforded them significant weight due to their consistency with the Framework, which places great importance on good design. Moreover, they do not predominately set out the Council's strategy for the scale and location of housing. Instead, their main purpose is more concerned with ensuring housing developments are of an appropriate quality, which is an important aim in achieving sustainable development.
21. I have found that the appeal scheme would significantly harm the character and appearance of the area and this would be contrary to both the LP and the Framework. The proposal would also have an adverse impact on highway safety and a limited adverse effect on the living conditions of future occupants. These impacts would also be contrary to the LP and the Framework. I afford the conflict with national and local policy, and the adverse impacts that would arise from this, substantial weight.
22. The appeal scheme would have a number of benefits. It would deliver additional housing that would help address the Council's current shortfall and 13 homes are proposed, which is not an insignificant amount. The proposal would also assist in delivering additional housing choice and make a more efficient use of land. These are notable benefits that accrue moderate weight.
23. The proposal would make a financial contribution towards open space but this would be to mitigate its impacts. As such, it is not a benefit. Likewise, the proposal would not harm the living conditions of neighbours, but the absence of harm is not a benefit. These factors are neutral matters in the overall balance.
24. The construction of the proposed dwellings would provide some economic benefits to the construction industry but these would be moderate in scale and for a limited time. Given the scale of the development the contribution to the local economy from the spending power of future occupants is unlikely to be significant when considered in the context of existing development in the town. Additionally, there is nothing before me to suggest local services and facilities are struggling due to a lack of patronage. Consequently, I afford any economic benefits moderate weight.
25. All together I afford the benefits of the proposal moderate weight. I therefore conclude that the appeal scheme would have adverse impacts that would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole. Consequently, the proposal would not amount to sustainable development for which the Framework carries a presumption in favour.

### **Other Matters**

26. A planning obligation has been submitted that would make a contribution towards public open space. However, given my findings above it has not been necessary for me to draw a conclusion as to whether the planning obligation would adhere to Regulations 122 and 123 of Community Infrastructure Levy Regulations.
27. The appellant has referred to another appeal decision<sup>6</sup>, but as the author of that decision I can confidently state that the current appeal site is materially different

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<sup>6</sup> APP/Z1510/W/16/3154500

to this other appeal site because it is significantly more prominent in the street scene. As such, the two schemes are not comparable and therefore the current proposal should be considered on its own merits. I have done this and found it to be unacceptable for the reasons already given.

**Conclusion**

28. For the reasons given above, and having regard to all other matters raised including the letters submitted by interested parties, I conclude the appeal should be dismissed.

*Graham Chamberlain*  
INSPECTOR