



Appeal Decision

Hearing Held on 22 January 2018

Site visit made on 23 January 2018

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2018

Appeal Ref: APP/Z1510/W/17/3179372

Broomhills Industrial Estate, Pods Brook Road, Braintree, CM7 2RG

- 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 Plutus Estates (Braintree) Limited against the decision of Braintree District Council.
 - The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The application Ref 17/00018/FUL, was dated 14 February 2017.
 - The development proposed is demolition of all existing buildings on site and the erection of 107 residential dwellings comprising 67 houses, four maisonettes and 36 flats with associated informal open space, landscaping, apartment amenity space, car parking and other infrastructure.
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Decision

1. The appeal is dismissed and planning permission for demolition of all existing buildings on site and the erection of 107 residential dwellings comprising 67 houses, four maisonettes and 36 flats with associated informal open space, landscaping, apartment amenity space, car parking and other infrastructure is refused.

Procedural Matters

2. I have been provided with policies from the Braintree Local Plan Publication Draft June 2017. This plan has not been examined and found sound. For this reason I am unable to accord any significant weight to the policies.
3. The site address on the appeal form differs from the application form. It was agreed at the hearing that the site address should be taken from the appeal form. Accordingly I have used this address.
4. There is a discrepancy between the numbering of the house in Graynes Close shown on the submitted plans and the numbering on the ground. For the avoidance of doubt it was agreed at the hearing that the properties would be referred to by the numbers on the ground. I have taken the same approach in my decision.
5. The appellants submitted an amendment to one of the initial plans 63A which is section D-D. For the benefit of third parties the change was explained at the hearing. Specifically that the initial plan showed the level change incorrectly. Therefore I am satisfied that no party would be prejudiced by my taking it into account.

Background and Main Issues

6. The Council has adopted its Community Infrastructure Levy (CIL) and I have been provided with a statement of compliance. In addition the appellants have provided a signed and dated unilateral undertaking to secure, outdoor sport, play equipment, primary education and healthcare contributions along with a review mechanism for affordable housing.
7. As set out above, this appeal is against the failure of the Council to determine the planning application and there is not, therefore, a formal decision of the Council. The parties provided a signed statement of common ground (SOCG). Accordingly the main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on TPO trees, in particular those that would be in Plots 1-7 and the removal of the Ash (T1 in the submitted assessment) on the Rayne Road frontage;
 - Whether the scheme would provide acceptable living conditions for future occupiers, with particular regard to privacy, outlook and the provision of garden space;
 - The effect of the scheme on the living conditions of neighbouring occupiers in Graynes Close and Rayne Road, with particular regard to outlook;
 - The effect of the proposal on ecology;
 - Whether the scheme would make acceptable provision for affordable housing, with particular regard to the submitted 'viability review mechanism' and whether it would be appropriate in this case.

Reasons

8. The National Planning Policy Framework (The Framework) sets out a presumption in favour of sustainable development. Paragraph 14 indicates that, for decision-taking, this means, where the development plan is absent, silent or relevant policies are out-of-date, granting permission 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; or specific policies in the Framework indicate development should be restricted.
9. The Council confirmed prior to and at the Hearing that it can no longer demonstrate a five year supply of housing. I have no reason to disagree. Therefore paragraphs 49 and 14 of the Framework are engaged and the relevant policies for the supply of housing should not be considered up to date.
10. There was discussion at the hearing about the mix and density of the scheme and the need to make the best use of a brownfield site. The Council accepted that the number of units in itself is not necessarily an issue but rather how it manifests itself in the layout. The second point made was in relation to the 'study' provision in some of the units. Specifically that the rooms shown as study's could be used as bedrooms. I appreciate that this might be the case for the two bed units. However, for other units the numeric size of the rooms would not meet the DCLG Technical Housing Standards for a bedroom. Therefore, overall, my consideration of the appeal is based on the mix of dwellings submitted to the Council as part of the application.

11. The Essex Design Guide (EDG) was adopted by the Council as a Supplementary Planning Document. It provides guidance on amenity standards, layout and separation distances for dwellings. There is no dispute that it should be used as a guide for development. The EDG provides guidance to developers and I understand that the appellants consider that the Council directed them to it. It offers solutions for the spatial organisation of development on sites. These principles are based on the amount of buildings and landscaping within a scheme.
12. The appellants have clearly explained to me the design approach taken specifically for schemes where the density would exceed 20 dpha. By contrast the Council consider that the layout represents '*unsatisfactory suburbia*'. I appreciate that the parties' views on the design approach that should be adopted in this case and the resultant density differ. However, whilst I agree with the appellants that the best use should be made of previously developed sites, ultimately any scheme should not result in harm to the locality or the living conditions of neighbouring or future occupants. I understand that the appellants have sought to enclose and define the spaces in the development. However, it is not wholly successful throughout. This manifests itself within the detailed matters which form the main issues. I consider these below with the scheme before me assessed on its individual merits.

Character and appearance

13. The site would have a frontage to Pods Brook Road and one to Rayne Road. Within the Rayne Road frontage a building would be provided that would contain flats. It would be three storey in height. The street scene along Rayne Road varies with bungalows and two storey properties being evident. There is a level change with the appeal site being at a higher point than existing dwellings. I appreciate that further to the north and east beyond the roundabout the character changes with the introduction of commercial uses. Further I understand that the appellants consider that the site is an opportunity for a landmark building. Nevertheless, the three storey building proposed would be substantially greater in height than the adjacent bungalows. As a result it would be unduly prominent within the street scene. This would be compounded by the level changes.
14. The Council raised concerns regarding the size of some of the garages and the knock on impact on parking within the site. However, the officer's report on the scheme confirms that it would comply with the adopted car parking standards in terms of the number of spaces. Across the site the provision is given for one space per dwelling for one bed units and two spaces per dwelling for two or more beds. Visitor parking would also be provided. There are some garages that are below the length set out in the adopted parking standard. The difference is relatively small and could still accommodate a vehicle. In addition the site would be reasonably well located in terms of access to services and other modes of transport. Therefore, overall, the parking layout proposed would be acceptable.
15. There is an open space in close proximity to the site at Clare Road which could be accessed via the footbridge across Pods Brook Road. The unilateral undertaking makes provision for a financial contribution for the improvement of this existing facility. This is not a matter of dispute between the parties. The other element of Core Strategy (CS) policy CS10 is the requirement for informal areas of open space.

16. I appreciate that overall the scheme reduces the amount of hard surface area compared to the existing situation. Furthermore the future residents of the dwellings on the site could utilise the nearby site for play and that it is already equipped. However, the areas within the layout that could be used more informally on a day to day basis would not be integrated across the site. In particular these areas generally appear to be awkwardly shaped and not well located within the overall layout. In particular the proximity of parking to these areas and at the south of the site the location of the substation. This would not make these areas conducive to use on a regular basis. This would not be overcome by the landscaping suggested or the provision of seating.
17. I have found that the parking plan for the development would be acceptable. Nevertheless, there would be harm to the character and appearance of the area resulting from the three storey building on the Rayne Road frontage and the lack of properly integrated informal open space within the layout. It would not be a high quality design and would be in conflict with policies RLP9 and RLP 90 of the Braintree District Local Plan (LP) and the EDG in so far as they require new development to relate well to its surroundings.

TPO Trees

18. The site contains a number of trees. The area of dispute between the parties relates to the relationship of the trees that would be within Plots 1-7 and the new dwellings and the removal of Ash (T1) on the Rayne Road frontage. These trees are protected by Tree Preservation Orders (TPOs)
19. These existing trees form a buffer between the industrial buildings and the existing residential development to the north and west. The group TPO is visible from within the site and from existing dwellings nearby. It provides a backdrop to the built form on the site and forms an important component in contributing to the attractive suburban character of the wider area. The Ash tree is located on the Rayne Road frontage. The tree is prominent and visible when travelling along Rayne Road. For these reasons this single tree and the group have a high amenity value and contribute to the character and appearance of the area.
20. The trees within Plots 1-7 are shown on the Tree Constraints Plan (TCP) as a mix of Norway Maple, English Oak and Wild Cherry and would be retained. This plan also indicates that the Root Protection Areas (RPAs) would not overlap with the built footprint of the new dwellings. They would be located within the garden areas of these dwellings.
21. The appellants submitted that these trees are already close to the built form of the industrial buildings, that the canopies are high and that the garden areas have been increased in the plots with trees within them. However, location within the garden areas of dwellings is distinct from the relationship to an industrial building. The canopy areas of these trees would extend over a substantial proportion of the garden areas of plots 1-5 and 7 in particular and to a lesser degree plot 6. The trees are located to the south and west of the rear aspects of these dwellings. The dwelling layouts for these plots show kitchen and dining areas with openings facing out onto the garden areas. The plans indicate that these are not dual aspect. As such there would be a reliance on this aspect for daylight and sunlight. Therefore future occupation of the dwellings would be likely over time to lead to pressure for the thinning,

reduction or even removal of these trees. This would diminish or remove the contribution they make to the character and appearance of the area.

22. The scheme would require the removal of tree T1 Ash. For the reasons outlined above this tree is of significant amenity value. Furthermore it is identified in the TCP as being of a '*moderate quality with an estimated remaining life expectancy of at least 20 years*'. Therefore its removal would be of detriment to the character of the area. I appreciate that a robust landscaping scheme is proposed and that this contains additional and replacement planting of acceptable tree species. Nonetheless this does not alter or outweigh the harm identified from the removal of this tree.
23. I therefore conclude that the proposed scheme would have a harmful effect on TPO trees, in particular those that would be in Plots 1-7 and the removal of Ash (T1 in the submitted assessment) on the Rayne Road frontage. It would therefore be in conflict with LP policy RLP81 which amongst other things encourages landowners to retain native trees, hedges and woodlands. It would also be in conflict with the Framework in so far as it requires the planning system to contribute to and engage the natural and local environment.

Living conditions for future occupiers

24. Plots 69-77 would face a shared parking area. The block beyond would be some distance away and I understand that the area would be hard and soft landscaped. Furthermore these units all benefit from regular shaped private rear garden areas. Therefore, overall, I do not consider that the layout would lead to harm to the living conditions of future occupiers of these dwellings.
25. Plots 52 to 67 form a block of flats. There is an area on the plans which is shown as 'apartment amenity space'. This area is physically separate from the block. To use it a future resident would have to walk across or along a shared roadway and past parking spaces. The plans show that its shape would be irregular and it would in close proximity to the rear boundary of other dwellings in the scheme. These dwellings would have rear elevations facing toward this area. The other two sides would be bounded by parking and the highway edge. Overall this area would not be easily accessible or private. In addition the use of parking and garaged areas directly adjacent and associated vehicle movements would harm the quality of this area.
26. The second group of flats (plots 78-90) would front onto an area that is also shown on the plans as 'apartment amenity space'. It would be directly accessible from the front doors of the building. The soft landscape proposals show that part of the area close to the building would be laid out with seats. However, the remaining area would have an irregular shape and access pathways would intersect it. Furthermore, the south boundary would be adjacent to the access road for the site. Overall, even taking additional landscaping into account, I am not satisfied that this area would be private or pleasant to use.
27. I acknowledge that across the site the amount of private garden space would meet numeric requirements. However, the spaces also need to be of an acceptable and usable standard. For the reasons set out above, overall, the areas proposed for the flat blocks would be of a poor quality and would not meet the aim and purpose of the EDG which seeks to provide usable garden

areas that would be pleasant to use. Consequently the resulting layout would not create a satisfactory environment for future occupiers.

28. I therefore conclude that the scheme would not provide acceptable living conditions for future occupiers, with particular regard to privacy, outlook and the provision of garden space. It would therefore be in conflict with LP policies RLP90 and EDG which seek a high standard of layout and design and the Framework, which requires new development to secure a good standard of amenity for existing and future occupants of land and buildings.

Living conditions of neighbouring occupiers

29. At the hearing the appellants provided site section drawings showing the relationship that would result between the appeal scheme and the dwellings in Graynes Close. It was agreed that the numbering of the Graynes Close properties on these plans did not correspond with the numbering on the ground. As such section 01 shows No 2 and section 02 depicts No 4.
30. There is a level change between the site and Graynes Close. There would also be boundary treatment that would serve to lessen the impact of the new dwellings. Nevertheless the new dwellings on plots 17, 19 and 21 would be in close proximity to the common boundary. The roof form of these dwellings would be visible from the first floor and garden areas of the dwellings in Graynes Close. In the case of No 4 this would be along almost the entire boundary of its garden, which is shallow itself.
31. I therefore consider that these dwellings would be prominent from Graynes when viewed from the house and gardens. Consequently the outlook from these dwellings and in particular No 4 would be obstructed and the effect would be overbearing. It would result in substantial harm to outlook.
32. I understand that the EDG allows for the separation between dwellings to be reduced where '*...the backs of houses are at more than 30 degrees to one another...*' In particular this refers to the location of windows at upper storeys and the position of intervening boundary treatments above eye level. Whilst for these reasons the layout would not lead to overlooking this does not alter the harm I have identified to the outlook from neighbouring properties in Graynes Close.
33. The dwellings on Rayne Road adjacent to the proposed flat block are bungalows. The rear elevation of the block of flats would face the shared boundary. The three storey element would be set away and would contain windows that could reasonably be obscure glazed. In addition the depth of the building would not project significantly beyond the rear of the bungalows. Therefore I do not consider that there would be harm to the living conditions of the occupiers of these dwellings.
34. Whilst I have found that there would not be harm to the occupiers of dwellings in Rayne Road this does not alter my findings on the effect on the occupiers of Graynes Close. I therefore conclude that the scheme would have a harmful effect on the living conditions of neighbouring occupiers in Graynes Close Road, with particular regard to outlook. It would be in conflict with LP policy RLP90 and the Framework which requires new development to secure a good standard of amenity for existing and future occupants of land and buildings.

Ecology

35. There was no dispute at the hearing that the site in its current state has a low ecological value. I appreciate that the Council is concerned about the disturbance from development and its impact on wildlife. However, the appellants have provided an ecology report and bat survey which demonstrated that there would not be an adverse impact on wildlife on the site or existing features or habitats. With respect solely to the matter of ecology it has also been demonstrated that the planting scheme would be acceptable, bird and bat boxes would be provided and that an appropriate lighting strategy could be put in place.
36. In this regard the scheme as submitted would not conflict with LP policies RLP80 and 84 in so far as they seek to ensure that new development would not have an adverse impact on protected species or existing landscape features. Therefore it would not have a harmful effect on ecology.

Affordable housing review mechanism

37. Paragraph 173 of the Framework makes viability an important consideration, noting that development should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. Planning Practice Guidance (PPG) advises that where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible.
38. I have been provided with the viability assessment undertaken on behalf of the appellants. This has been reviewed by consultants appointed by the Council. CS policy CS2 and the Council's Affordable Housing SPD refer to the provision of affordable housing. There is no policy justification for the use of a review mechanism. Furthermore the RICS guidance is clear that re appraisals are generally suited to phased schemes.
39. The SOCG indicated that the remaining area of dispute between parties is whether viability review should take place before development commences or when 50% of the dwellings have been built. I have carefully considered the justifications made by both parties. The Council is suggesting the review due to its concerns regarding the actual build costs and market values associated with the scheme. In particular the Council's review of viability identified the sensitivity of the scheme to changes in build costs.
40. The development would be a single phase scheme. I have been provided with evidence from the appellants that the breakeven point of the scheme would be about 72% of the way through compared to the break at about 50% suggested by the Council. Overall, had I been minded to allow the scheme, I accept that in principle due to the issue raised regarding build costs a review would be reasonable. However, given the absence of the policy basis for such an approach, I agree with the appellant that for a single phase scheme it would be reasonable to undertake this between 6 and 3 months prior to commencement once the contract has been tendered in order to provide certainty.

41. The unilateral undertaking makes provision for other contributions which are not matters in dispute. The appeal is being dismissed for other substantive issues. As such I have not considered the other obligations in details as the proposal is unacceptable for other reasons.

Other matters

42. The appellants have referred me to other schemes¹ that the Council has approved where it is considered that standards have been applied flexibly. I do not have the detail of these cases. I also appreciate the need to avoid the inflexible application of numeric standard. Nevertheless I have assessed the scheme before me on its individual merits.

Planning Balance

43. The Framework indicates in paragraphs 6, 7 and 8 that the purpose of planning system is to contribute to the achievement of sustainable development. Sustainable development has three roles economic, social and environmental which cannot be undertaken in isolation.
44. As noted in paragraph 9 the policies of the LP, in so far as they related to the supply of housing land, cannot be considered up to date. This includes those setting the overall strategy for housing development. Therefore in line with paragraph 49 and 14 of the Framework planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
45. There would be economic benefits of housing on a brownfield site both during construction and occupation and from use of local services. There would also be social benefits from the upgrade and upkeep of the Clare Road play area as well as other community benefits secured through the planning obligation, including the provision of a car club. There is no dispute that the development would be reasonably well located in terms of access to services and that there would not be a harmful effect on ecology, removal of the industrial use, associated hardstanding and vehicle movements. These benefits weigh in favour of the scheme.
46. I have found that there would be harm to the character and appearance of the area and to the protected trees if the development were to go ahead. There would also be harm to the living conditions of neighbouring occupiers and future occupiers. LP policies RLP 9, 90, 80 & 84 seek to secure developments with a high standard of design and layout. In this regard they are not out of date and relevant to the consideration of character and appearance, ecology and living conditions. As such I have attached substantial weight to the significant and demonstrable harm that the development of 107 dwellings would cause to the character and appearance of the area, protected trees and living conditions and the conflict with the development plan in this regard.
47. Therefore in this case the adverse impacts of granting permission that I have identified would significantly and demonstrably outweigh the benefits of the provision of dwellings in this case. The Framework is a material consideration. However, in the circumstances of this appeal the totality of the other material considerations do not justify making a decision other than in accordance with the development plan.

¹ LPA Refs 16/00605/FUL; 15/01366/OUT; 15/01312/FUL; 13/00416/FUL

Conclusion

48. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

D J Board

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Reuben Taylor QC	Landmark Chambers
Kate Inglis	Iceni Projects
Tim Wolfe Murray	Clague Architects
Naomi Foot	Greengage
Mitch Cooke	Greengage
David Van der Lande	Iceni Projects

FOR THE LOCAL PLANNING AUTHORITY:

Clive Tokley	Town Planning Consultant
Lee Smith Evans	Consultant Urban Designer
Shaun Taylor	Braintree District Council Landscape Services Team Supervisor

INTERESTED PERSONS:

Pankaj Rajani
Shanlesh Patel
Pamela Hutchin
Samuel O Agoro
Steve Crutchley
Jessica Cabbell Manners
Roy Bensley
Kieran McGrath

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Policy CS4
- 2 Information referring to the DCLG Technical Housing Standards
- 3 Site cross sections 01 and 02
- 4 Page 18 Essex Design Guide
- 5 Page 79 Essex Design Guide
- 6 Unilateral Undertaking
- 7 Statement of Compliance with Community Infrastructure Levy Regulations

DOCUMENTS SUBMITTED AFTER THE HEARING

- 1 Signed Unilateral Undertaking