



Appeal Decision

Site visit made on 2 July 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 August 2019

Appeal Ref: APP/Z1510/W/19/3223769

Land to the north of Braintree Road, Cressing Tye Green

- 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 Stephanie Joslin against the decision of Braintree District Council.
 - The application Ref 18/01498/FUL, dated 17 August 2018, was refused by notice dated 25 January 2019.
 - The development proposed is creation of 6 new homes and associated access, car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for 6 new homes and associated car parking and landscaping at Land to the north of Braintree Road, Cressing Tye Green, in accordance with the terms of application, Ref 18/01498/FUL, dated 17 August 2018, subject to the conditions in the attached schedule.

Procedural Matters

2. I have taken the address from the application form, notwithstanding the address on the decision notice.
3. During the course of the appeal a decision was issued by the Secretary of State regarding appeal reference APP/Z1510/W/18/3197293. The parties have had the opportunity to comment on this as part of the appeal. I have taken it into account in reaching my decision and am satisfied that this has not prejudiced either party.
4. The development plan consists of the Braintree District Local Plan Review (2005) and the Core Strategy (2011). It is on the basis of these adopted policies that I have based my decision. The Publication Draft Local Plan has been submitted for examination but remains unadopted. I therefore afford the emerging policies limited weight.

Main Issues

5. The main issue is whether the site is a suitable location for the proposed development having regard to the effect of the proposal on the character and appearance of the area and local and national policy.

Reasons

6. The appeal site comprises a substantial gap between No 8 Leyfield and Derrygowna and is located along a section of Braintree Road which is generally

characterised by residential development of varying style and type which faces the highway. The site had been mostly cleared of vegetation prior to my site visit and features such as hedging and trees on the site's boundary had largely been removed. Whilst the majority of development in the village is located to the south of Braintree Road, the appeal site occurs along a section where urban features are prevalent, and where development is found on both sides of the road.

7. Saved Policy RLP2 of the Braintree District Local Plan Review (LPR)(2005) and Policy CS5 of the Braintree District Council Local Development Framework Core Strategy (Core Strategy)(2011) both seek to direct new development to Town Development Boundaries and Village Envelopes to protect the countryside. The appeal site is located outside the village envelope and for the purposes of applying planning policy is located in countryside.
8. The proposed dwellings would comprise two storey semi-detached and detached dwellings, set back from the road but facing towards it. Garages would be located behind the building line for plots 2 to 6 and to the side of plot 1. The semi-detached dwellings would have a similar roof design to Nos 7 and 8 Leyfield and the detached dwellings would be designed with cross gabled roofs. Landscaping is proposed.
9. Although the proposed dwellings would be located outside the village envelope, the dwellings would be located between built development along Braintree Road. Furthermore, views of the dwellings from open countryside would be significantly restricted by existing mature vegetation to the rear of the site. I acknowledge that development to the north of Braintree Road is intermittent, however, there is a clear sense that the site forms part of the settlement. The proposed dwellings would therefore not encroach into open countryside beyond and there would be no significant harm to the character and appearance of the countryside. Although the appeal site is located in countryside, due to its edge of settlement location, the facilities of Cressing would be easily accessible by foot.
10. I acknowledge that there would be conflict with Policy RLP2 of the LPR and Policy CS5 of the Core Strategy which seeks to direct new development to within development boundaries. However, for the reasons given above, I consider the policy conflict would be minor.
11. Policy CS9 of the Core Strategy seeks to ensure that development respects and responds to the local context, amongst other things. The Council has drawn my attention to an appeal at the site which was dismissed, reference APP/Z1510/W/18/3209721, for the creation of 6 new homes and associated roads, car parking and landscaping.
12. The appeal scheme considered by my colleague was significantly different to the appeal scheme before me, with a number of the proposed dwellings located behind dwellings fronting Braintree road. This would have failed to respect the prevailing pattern of development along Braintree Road which would have been to the detriment of the character and appearance of the local area. The appeal scheme, by contrast, generally respects the building pattern along Braintree Road and would therefore comply with Policy CS9 in this regard.
13. The Council has also drawn my attention to an appeal decision issued in 1990 on the site where the effect of the proposal on the character and appearance o

the area was considered. However, I do not have substantive details of this case before me and must consider the appeal on its own merits.

14. Historic maps indicate that the pattern of development within the settlement has already been significantly changed. Whilst the appeal scheme would introduce further development to the north of Braintree Road, the rural character of this part of the settlement has already been diminished by existing development. The appellant has proposed landscaping which would help the proposed dwellings assimilate into the street scene along Braintree Road, whilst additional planting to the rear, would further reinforce the rural setting of the village. It would be possible to secure landscaping via condition. As such, there would be no significant harm to the character and appearance of the area from the appeal scheme.
15. The Council asserts that it can demonstrate a 5 year supply of housing. However, the appellant has drawn my attention to decision reference APP/Z1510/W/18/3197293 which considered whether the Council was able to demonstrate a 5 year supply of housing. The Secretary of State concluded that the Council is able to demonstrate 4.15 years supply. In light of this decision and on the basis of the evidence before me, it has not been demonstrated that the Council can demonstrate a 5 year supply of housing.
16. In such circumstances, the National Planning Policy Framework (the 'Framework')(2019) states that where the policies which are most important for determining the application are out of date, that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
17. The appeal scheme would provide 6 additional dwellings which would make a moderate contribution to the local housing supply and would deliver social benefits. For the reasons given above, I have concluded that there would be no significant adverse impacts arising from the appeal scheme. Even if I were to conclude that the Council is able to demonstrate a 5-year supply of housing, the benefits of the proposal would outweigh any harm arising from the Policy conflict.

Other Matters

18. Frogs Cottage and Tudor House, which are both Grade II listed buildings, are located along Braintree Road. Although the properties would be located along the same section of Braintree Road, they would be separated by existing development. I concur with the Council that the appeal scheme would not harm the setting of the listed buildings.
19. Concern has been raised by interested parties regarding the effect of the appeal scheme on the highway, particularly given development on Mill Lane. Significantly, the Council has not objected to the appeal scheme on highways grounds and following my inspection of the site I agree that a satisfactory access could be achieved.
20. Concern has been raised regarding the effect of the proposal on wildlife and the removal of trees. Assessments submitted in support of the appeal demonstrate that, subject to mitigation which could reasonably be secured via condition,

there would be no significant negative impacts from the proposed development upon protected species.

21. It is asserted that the site is green belt, however, the Council has confirmed that the site lies outside the Green Belt and I have therefore considered the appeal on this basis.
22. I note concerns regarding the capacity of facilities to cope with additional dwellings. However, I have no substantive evidence that local infrastructure and amenities could not accommodate the modest demands generated by the appeal scheme.
23. Concern has been raised that allowing this scheme would set a precedent for future development of the area. However, no other specific sites with the same attributes as that of the appeal site have been brought to my attention. Furthermore, I must consider the appeal on its own merits.

Conditions

24. I have considered the conditions put forward by the Council and other parties against the advice in the Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency and clarity and omitted others. In the interests of certainty and proper planning I have included conditions relating to commencement, plans and materials.
25. In the interests of preserving the character and appearance of the area and because vegetation clearance has been carried out, I have included conditions to secure information regarding tree retention and protection, landscaping and refuse storage. I have included conditions to ensure that the development would not have an adverse effect on badgers, nesting birds and bats.
26. In the interests of highway safety, I have included conditions regarding visibility splays and the surface treatment of the vehicular access. In the interests of protecting the residential amenity of the area I have included a condition to control hours of construction.
27. The Council has suggested conditions regarding land contamination. However, I have been provided with no substantive details that the site may be subject to contamination and, given that precautionary measures would be required by other legislation, I do not consider the condition to be necessary in this instance.

Conclusion

28. For the reasons given above, and having regard to all matters raised, the appeal is allowed subject to the conditions set out in the schedule below.

M Savage

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Except where otherwise required by condition attached to this decision, the development hereby permitted shall be carried out in accordance with the following approved plans: 1469/02 Revision P1, 1469/P2/01 Revision P1, 1469/P2/02 Revision P1, 1469/P2/03 Revision P1, 1469/P2/05, 1460/P2/06, 1469/P2/07 Revision P1, 1469/P2/08, 1469/P2/09.
- 3) No development hereby permitted above slab floor level shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) The development hereby permitted shall not commence until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include: indications of all existing trees and hedgerows on the land and identify those to be retained; planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees and the appropriate working methods in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved landscape scheme.
- 7) The site shall be constructed using precautionary construction techniques sensitive to badgers including putting a ramp in any trenches to ensure any badgers can escape safely and store chemicals securely overnight.
- 8) Site clearance shall be undertaken outside the bird nesting season (March to August inclusive) or immediately after an ecologist has confirmed the absence of nesting birds.
- 9) Prior to the erection of any external lighting a lighting plan shall be submitted to and approved in writing by the local planning authority. The scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's Bats and Lighting in the UK guidance.

The external lighting shall be erected in accordance with the approved details and thereafter retained for the lifetime of the development.

- 10) The makes, models and locations of bat and bird boxes shall be submitted to and approved in writing by the Local Planning Authority and shall include at least:
- i. A total of 1 woodcrete bat box suitable for nursery or summer roosting for small crevice dwelling bat species.
 - ii. A total of 1 woodcrete artificial nesting box suitable for bird species such as house sparrow, robin, blackbird or tit species.

Prior to first occupation of the dwellings the boxes shall be erected in accordance with the approved details and thereafter retained.

- 11) No development hereby permitted above slab floor level shall take place until details of the location and design of refuse storage areas and collection points have been submitted to and approved in writing by the local planning authority. The details shall be implemented as approved prior to the first occupation of the respective dwellings and maintained thereafter.
- 12) Prior to the first occupation of the development the access on to Braintree Road, at its centre line shall be provided with a clear to ground visibility splay with dimensions of 78 metres by 2.4 metres by 78 metres as measured from and along the nearside edge of the carriageway. The visibility splays shall be retained free of obstruction thereafter.
- 13) No construction work shall take outside of the following times:
Weekdays: 08:00-18:00
Saturdays: 08:00-13:00
Sundays and Bank Holidays: No working.
- 14) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

End of Schedule