



Appeal Decision

Site visit made on 16 July 2019

by M Heron BA (Hons) MA MRTPI BA (Hons) MA MRTPI

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

Decision date: 20th September 2019

Appeal Ref: APP/Z1510/W/19/3222599

Land adjacent to Colne House, Station Road, Earls Colne CO6 2LT

- 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 consent, agreement or approval to details required by condition of a planning permission.
 - The appeal is made by Mr Phillip Wright (CALA Homes (North Home Counties) Ltd) against Braintree District Council.
 - The application Ref 18/02004/REM, is dated 26 October 2018.
 - The development proposed is described as 'reserved matters (appearance, landscaping, layout & scale) planning application pursuant to outline planning permission ref: 17/00140/VAR for the construction of 56 dwellings with associated open space, landscaping, new access road, and highway improvements.'
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Decision

1. The appeal is allowed and planning permission is granted for the reserved matters (appearance, landscaping, layout & scale) pursuant to outline planning permission ref: 17/00140/VAR for the construction of 56 dwellings with associated open space, landscaping, new access road, and highway improvements at land adjacent to Colne House, Station Road, Earls Colne CO6 2LT in accordance with the terms of the application, Ref 18/02004/REM, dated 26 October 2018, subject to the conditions set out in the attached schedule.

Application for Costs

2. An application for the full award of costs was made by Mr Phillip Wright (CALA Homes (North Home Counties) Ltd) against Braintree District Council. This application is the subject of a separate decision.

Preliminary Matters

Background

3. Outline planning permission for the erection of 56 dwellings with associated open space, landscaping, new access road and highway improvements was originally granted in 2016 under application Ref. 15/00934/OUT. This permission was then varied through application Ref. 17/00140/VAR to amend the list of approved plans to ensure that the red line application boundary and access detail shown were consistent across such approved plans. The application for reserved matters which is the subject of this appeal relates to this varied application. The description on the application form was therefore: 'application for variation of condition 25 of approved application 15/000834/OUT – to amend the list of approved plans.' However, this does not

adequately reflect the appeal that is before me. I have therefore used the description of development given on the appeal form in my formal decision.

4. Application Ref 18/02004/REM appears to have followed the submission of another, largely identical, reserved matters application¹ (henceforth referred to as 'the duplicate application') made pursuant to the same varied outline permission. Planning permission for this duplicate application was granted by the Council on 20 May 2019.

Revised Plans

5. The appellant submitted additional and revised plans with the appeal. These show an amended design for two apartment blocks to match those approved through the duplicate application. They also provide further clarity on matters such as landscaping, floor levels and boundary treatments. The Council has had the opportunity to comment on these revised plans and it does not object to their inclusion in my assessment. I therefore do not consider that any party would be prejudiced by my acceptance of them, and I have determined the appeal based on these revised plans.

Outstanding Matters

6. When this appeal was lodged it is evident that there was a dispute between the parties about whether or not the mix of houses (i.e. the number of houses of different sizes) could be determined as part of the reserved matters. However, it is apparent from evidence submitted with the appeal that matters to be determined in respect of this appeal relating to scale and appearance cannot be considered to be synonymous with housing mix.
7. Furthermore, the parties agree that there is no planning condition or legal obligation attached to the varied outline permission which could manage the mix of market houses. Evidence that refers to other appeal decisions and legal opinions provided by the appellant confirms that in order to manage housing mix it would have been necessary for the Council to impose a specific condition on the outline planning permission. The mix of housing to be provided on the site is therefore not a matter that I need to address in the context of this appeal.
8. The second matter that remained to be resolved between the parties related to the design of the two apartment blocks. Whilst this would have been a matter to be addressed in this decision, the Council has now confirmed that the revised plans are acceptable. It has therefore withdrawn its objection to the design of these buildings.
9. Taking all of the above into account, there are now no areas of dispute between the two main parties. The Council has therefore withdrawn its objection to the current scheme and has invited me to allow the appeal. I will therefore move on to consider conditions the Council has suggested should be attached to the permission after taking account of other relevant representations and considerations.

¹ 18/00371/REM

Other Consideration – Historic Environment

10. The evidence before me shows that a small part of the site falls within the Earls Colne Conservation Area (CA) and that there are several nearby listed buildings. I have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of this CA and the setting of nearby listed buildings.
11. Consistent with the Council's assessment of the duplicate application, I consider that the proposal would result in some minor harm to the CA. This would be predominately as a result of the introduction of the modern urban form of some of the house types which would be somewhat incongruous with the adjacent historic environment. This harm would be less than substantial within the meaning of the National Planning Policy Framework (the Framework). However, consistent with the Council's assessment of the duplicate application, I find that the economic and social public benefits associated with the provision of 56 houses would outweigh this less than substantial harm. Consequently, I am satisfied that the proposal would be acceptable in this regard.

Other Representations

12. Neighbours raise concerns about open space provision, flood risk and living conditions. I consider these in turn below.
13. The proposal would afford two distinct parcels of dedicated public open space. The indicative layout shows that this would be accessible from within the site, as well as from existing pedestrian links. I also have no substantive evidence to show that the quantum of this open space would be unacceptable. Moreover, the proposal would not alter the mechanism for the ownership, management and maintenance of open space secured under the S106 agreement associated with the outline permission. Overall, the Council does not object to the layout in terms of the provision of open space and I see no reason to conclude otherwise.
14. In terms of flood risk, I note that the Lead Local Flood Authority (LLFA) originally issued a holding objection to application Ref 18/02004/REM. However, the Council appears to be considering various drainage aspects under a separate application² to discharge relevant conditions on the original outline permission. In addition, the evidence before me shows that the LLFA did not object to the surface water drainage scheme approved under the duplicate application. Neither did it object to this proposal during the appeal process. I am therefore satisfied that drainage experts have assessed this proposal and see no reason to set aside their technical assessment. Consequently, I consider that the proposal would be acceptable in terms of flood risk.
15. Turning to living conditions at neighbouring properties, the proposed layout appears to comply with the design guidance of the Council. In addition, although the access road to Plots Nos. 46 and 47 may have been moved northwards, there is still a considerable distance between this and existing neighbouring properties to the east. Consequently, the proposal is unlikely to result in significant levels of noise and disturbance to the living conditions at these properties. Overall, the Council has raised no objection to the impacts of

² 18/00372/DAC

the appeal proposal on the living conditions at neighbouring properties. I have no substantive evidence before me which leads me to a different conclusion on this matter.

Conditions

16. The Council has requested that the same conditions imposed on the duplicate permission are carried forward to this decision. The appellant appears to be content with this approach and I have considered them having regard to the tests set out in paragraph 55 of the National planning Policy Framework. I have amended the wording where necessary in the interests of clarity, simplicity and enforceability.
17. As well as a condition specifying the approved plans, I have added a condition identifying which reserved matters have been approved for the sake of clarity and certainty. I have imposed conditions requiring landscaping to be appropriately implemented, managing the position and colour of aërials and satellite dishes and ensuring that meter cupboards are not installed on the principle elevations of buildings. I have also combined two conditions from the duplicate application's decision notice (conditions three and five) into one condition which will ensure that relevant service intakes and soil and waste plumbing are not visible. These conditions are all necessary in the interests of the character and appearance of the area, including that of the CA.
18. Conditions requiring the bicycle parking facilities to be provided prior to first occupation of the development and ensuring visitor car parking spaces are provided prior to the occupation of the 50th dwelling are required. This is in the interests of highway safety and to secure sufficient parking to ensure the development functions effectively in the future. This includes ensuring that garages at several plots remain available for parking vehicles.
19. Furthermore, exceptional circumstances for a condition removing permitted development rights for the enlargement of, or additional windows, doors, rooflights or dormer windows on the eastern elevations of Plots 46 and 47 exist in the interests of the privacy of the occupants of neighbouring properties.
20. I have not imposed conditions requesting details of floor levels, boundary treatments, landscaping along the eastern site boundary and external doors at Plots 19-26. This is because sufficient details are shown on the drawings specified in the plans condition. Similarly, the approved drawings provide adequate details about the materials to be used for the external surfaces of the development. A separate condition relating to materials is therefore not necessary.

Conclusion

21. For the reasons set out above, I will allow the appeal, subject to the conditions set out in the attached schedule.

M Heron

INSPECTOR

Schedule of Conditions

- 1) The following reserved matters pursuant to the planning permission Ref 17/00140/VAR are hereby approved: appearance, landscaping, layout and scale.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 668.001 Rev 04, 668.200 Rev 52, 668.201 Rev 17, 668.202 Rev 18, 668.203 Rev 09, 668.204 Rev 09, 668.205 Rev 09, 668.206 Rev 07, 668.207 Rev 06, 668.208 Rev 06, 668. 209 Rev 06, 668.210 Rev 07, 668.211 Rev 07, 668.212 Rev 07, 668.213 Rev 03, 668.214 Rev 05, 668.215 Rev 05, 668.216 Rev 05, 668.217 Rev 15, 668.218 Rev 12, 668.219 Rev 21, 668.220 Rev 13, 668.221 Rev 04, 668.222 Rev 03, 668.223 Rev 06, 668.226 Rev 11, 668.227 Rev 06, 668.229 Rev 03, 668.230 Rev 06, 668.231 Rev 03, 668.236 Rev 05, 668.238 Rev 00, 668.239 Rev 00, 668.240 Rev 00, 668.241 Rev 00, 668.242 Rev 00, 668.243 Rev 00, 668.244 Rev 00, 668.246 Rev 00, CALA21645-13 (Sheets 1-5) and CALA21645-14 (Sheets 1-4).
- 3) All service intakes, with the exception of gas, as well as soil and waste plumbing shall be run internally and shall not be visible on the external elevations of any building hereby permitted.
- 4) All buildings containing flats shall be equipped with a communal TV and radio aerial and satellite dish in positions to be submitted to and approved in writing by the local planning authority. On all buildings, satellite dishes shall be of dark coloured mesh unless fixed to a light coloured, rendered wall, in which case a white dish shall be used. Satellite dishes shall not be fixed to the street elevations of buildings or to roofs.
- 5) Meter cupboards shall not be installed on the principle elevation of any dwelling hereby permitted.
- 6) Prior to the first occupation of the development hereby approved, the bicycle parking facilities shall be constructed in accordance with the approved plans and shall be retained thereafter for the lifetime of the development.
- 7) The garages at Plots 6, 43, 44 and 49 hereby permitted shall be kept available at all times for the parking of motor vehicles by the occupants of the dwellings and their visitors and for no other purpose.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no enlargement of, or additional windows, doors, rooflights or dormer windows shall be constructed on the eastern elevation of Plots 46 and 47.
- 9) Prior to the first occupation of the 50th dwelling of the development hereby approved, the visitor car parking spaces shall be provided in accordance with the approved plans and shall be kept available at all times for public parking.
- 10) 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.

End of Schedule of Conditions