



Appeal Decision

Site visit made on 16 July 2019

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th October 2019

Appeal Ref: APP/Z1510/W/19/3228489

Land adjacent to the Old Barn, The Street, Cressing CM77 8DQ

- 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 appeal is made by Mr J Lang (Stanfield Developments Ltd) against the decision of Braintree District Council.
 - The application Ref 19/00346/FUL, is dated 25 February 2019.
 - The development proposed is the erection of 5no. 2/3 bedroom dwellings with garages and associated ground works (revised scheme following the withdrawal of application 17/01861/FUL).
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for Costs

2. An application for the full award of costs was made by Mr J Lang (Stanfield Developments Ltd) against Braintree District Council. This application is the subject of a separate decision.

Procedural Matters

3. I have been referred to several relevant policies within the Braintree District Publication Draft Local Plan (DLP), which has been submitted for examination. However, it would appear that further evidence is required on Section 1 of the DLP. Furthermore, I do not know if there are any unresolved objections to the relevant policies within it. On the evidence before me, I therefore afford the policies of the DLP only limited weight with regard to paragraph 48 of the National Planning Policy Framework (the Framework) and instead give precedence to the policies within the Council's adopted development plan. This comprises the Braintree District Local Plan Review (LPR) and the Braintree District Council Local Development Framework Core Strategy (CS).
4. I also note that a draft Cressing Neighbourhood Plan (NP) has been submitted to the Council and a consultation on this Plan has been carried out. However, it would appear that the NP remains unexamined and a referendum has not taken place. Consequently, it attracts only limited weight at this point in time.

Main Issues

5. Although the Council failed to determine the current proposal within the prescribed period, its statement of case clarifies that if it were still able to

determine the planning application, it would have refused it for four reasons. Having considered these reasons, I consider that the main issues are:

- whether or not the appeal site is a suitable location for residential development, with particular regard to access to services and facilities and whether or not it would place reliance on private vehicles;
- whether or not the proposal would preserve or enhance the character or appearance of the Cressing Conservation Area and the setting of listed buildings within it;
- the effect of the proposal on biodiversity; and
- the effect of the proposed parking layout on users of the local highway network in terms of safety and its effect on the living conditions of future occupants, with particular regard to noise and disturbance and unneighbourly parking.

Reasons

Suitable Location

6. The appeal site is located on the western side of The Street. It is positioned adjacent to, but outside of, the village envelope of Cressing as denoted in the Council's development plan. For the purposes of planning policy, it is therefore in the countryside.
7. To protect the countryside surrounding developments, saved Policy RLP2 of the LPR states that development will be confined to areas within development boundaries and villages envelopes. This strategy is supported by saved Policy RLP90 of the LPR and Policy CS7 of the CS. Amongst other things, these seek to ensure that developments are in accessible locations, reduce the need to travel and promote sustainable transport modes. This approach is consistent with the Framework's aims of promoting sustainable development in rural areas by requiring housing to be located where it will enhance or maintain the vitality of rural communities. That said, I consider that saved Policy RLP2 of the LPR is a restrictive policy that does not afford the same degree of flexibility as the Framework. This policy is therefore not fully consistent with it.
8. From the evidence before me, Cressing is one of the smaller villages in the District. It does not have the necessary range of services to meet all the day-to-day needs of future residents and appears to have only limited public transport options. There are a greater range of services and facilities at larger surrounding settlements such as Tye Green which has a station. However, the appeal site is divorced from such settlements and walking to them would be potentially dangerous, given that it would involve some roads which are narrow and unlit, and especially so during hours of darkness and in inclement weather. For the same reasons, cycling would not be a particularly attractive alternative.
9. On this basis, I have no doubt that future residents of the proposed dwellings would not only be some distance from the day-to-day services they need but they would also rely heavily on a private vehicle to get around. It is therefore not a location where new dwellings would normally be considered acceptable which is a significant factor weighing against the scheme.

10. The appellant has drawn my attention to a number of schemes¹ for residential developments in the wider surrounding area. However, these appear to be much greater in scale compared to the appeal proposal. In addition, one of them (Appletree Farm) is considered by the Council to be a 'problem neighbour' and is allocated for residential development in the DLP. Consequently, they are not directly comparable to the appeal proposal, which I have assessed on its own individual planning merits. There may also be other consents for housing developments in the area. Nevertheless, in the absence of details about their locations or how they were assessed, they carry little weight in my assessment of the appeal scheme.
11. For the reasons given, I conclude that the appeal site would not be a suitable location for residential development as it is positioned outside of the village envelope and would not afford suitable access to services and facilities. It would also place reliance on travel by private vehicles. The proposal would therefore conflict with saved Policies RLP2 and RLP90 of the LPR and Policy CS7 of the CS. However, conflict with saved Policy RLP2 carries only limited weight against the proposal. Nevertheless, the scheme would also conflict with the Framework as it would not contribute to giving people a real choice about how they travel or help towards the achievement of a low carbon future. I have been referred to Policies CS5 and CS9 of the CS. However, these mainly deal with character and appearance and are not relevant to this main issue.

Conservation Area and Listed Buildings

12. The front section of the appeal site lies within the Cressing Conservation Area (CA). In addition, immediately to the north of the site is a complex of buildings at a former farmstead known as Rook Hall which includes a Grade II listed farmhouse and a Grade II listed barn. These are also within the CA.
13. I have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA as well as listed buildings and their settings. In the development plan the LPR and CS heritage policies are no longer consistent with more up-to-date policy for heritage assets in the Framework. This includes provision to assess whether there is harm to the heritage significance of the designated or undesignated asset and then to weigh that harm with any benefits of the development. In this case I therefore attach greater weight to the Framework policies.
14. In considering the significance of the CA, this appears to be derived from the historic mix of buildings associated with the earlier form of the rural village, with the green at Rook Hall at its centre. Rook Hall has now been subdivided and its buildings appear to have been converted for residential use. However, one can still appreciate these buildings in their original historic context as a farmstead. They therefore contribute positively to the character, appearance and significance of the CA.
15. The appeal site comprises a large, roughly rectangular, piece of land adjacent to Rook Hall. It would appear that it was previously used as part of pig farming activity when this farmstead was operational. There are established trees and other vegetation along the site's boundaries and immediately to the south and west are large agricultural fields. Such fields surround this small village. Overall, the immediate area has a distinctly rural character. Although

¹ 17/01671/REM, 16/02144/OUT and 18/00920/FUL

somewhat overgrown, the site's predominately undeveloped, verdant, nature contributes positively to this character. It therefore also contributes positively to the rural setting in which listed buildings at Rook Hall are experienced and the character and appearance of the CA as a whole.

16. This proposal seeks permission to construct five new dwellinghouses towards the front of the appeal site. The majority of the parking areas for these properties would be to their rear and beyond this there would be an area set aside for wildlife.
17. The proposal would retain a sufficient gap between the collection of buildings to the south on the eastern side of Church Lane. Nonetheless, it would introduce a significant number of urbanising features to the appeal site. This would include residential buildings, hard surfaces and gardens with their associated domestic paraphernalia. In my view, the urbanisation of the site would be considerably greater than that which has resulted from residential conversions at Rook Hall. Not only would this erode the openness of the appeal site, but it would also be detrimental to its rural character. This would in turn be harmful to the rural setting of adjacent listed buildings and the significance and character of the CA. The domestic appearance of the rear elevations of dwellings at Plots 2 and 3, which would be perforated by a considerable amount of fenestration, would draw the eye to this harmful urbanising impact.
18. The proposed dwellings would also be considerable in scale and would be positioned within close proximity of one another. In my view, they would therefore inappropriately compete with one another for primacy. In addition, whilst I understand the design approach taken for Plot 1, its hipped roof constructed of slate tiles would be at odds with the steep, pitched, clay tiled roofs which are prevalent at Rook Hall and the wider CA. In my opinion, its single storey elements of varying proportions, together with its differing fenestration pattern, would also give this property an unbalanced appearance. Taking the above into account, I find that the proposal would not resemble an evolving and coherent farmstead. Neither would it appear as an appropriate extension to the adjacent historic farmstead. This would reinforce the harm to the historic environment.
19. Turning to its effect on landscaping, the proposal would also be likely to result in the loss of established trees and other vegetation, particularly towards the front of the site. This would harm the site's verdant feel, to the further detriment of the streetscene and the significance of adjacent listed buildings in relation to their rural setting. The Council did not require the submission of an Arboricultural Impact Assessment (AII) to validate the proposal. However, in the absence of this, I cannot be certain that the loss of such trees would be justified as a result of their quality or condition. Given that this information is required to inform my assessment, I do not consider that it would be reasonable to secure an AII through an appropriately worded condition, with regard to the tests at paragraph 55 of the Framework. A Tree Protection Plan and Method Statement could be secured conditionally. However, this would not diminish the harm identified above.
20. Taking everything together, I do not consider that the proposal would function well or add to the quality of the area, as advocated by the Framework. On the contrary, it would represent a conspicuous encroachment of built residential form that would fail to integrate effectively with its rural and historic

surroundings. The proposal's harmful impact would be apparent from the public domain and the existing use of the site to store building materials is not a reason to set aside this harm.

21. For the reasons given, I conclude that the character or appearance of the CA as a whole and the settings of listed buildings within it would not be preserved or enhanced. The significance of these heritage assets would also be eroded. The proposal would therefore conflict with saved Policies RLP90, RLP95 and RLP100 of the LPR and Policy CS9 of the CS. Amongst other things, these seek to ensure that developments are of a high standard of design and respect, respond and relate to their local context, including conservation areas and the setting of listed buildings. I have also been referred to saved Policies RLP3, RLP17 and RLP56 of the LPR. However, amongst other things, these concern developments within town boundaries and village envelopes, extensions to dwellings and vehicle parking standards. They are therefore not relevant to this main issue.
22. I consider that the harm to the historic environment would be less than substantial within the meaning of the Framework. Any such harm nevertheless merits great weight in accordance with paragraph 193 of the Framework and falls to be weighed in the balance with the public benefits of the development. I will return to this in my overall planning balance.

Biodiversity

23. The Council raises concern in terms of the impact of the proposal upon protected species. Although it does not identify which particular species would be affected, saved Policy RLP80 of the LPR specifically requires new developments to include an assessment of their impact on wildlife. This has not been provided. Consequently, as required by the development plan, I cannot ascertain the potential effect of the proposal in this regard, or conclude as to the merits of any potentially essential avoidance, compensation or mitigation.
24. As such, I conclude that the proposal would conflict with saved Policy RLP80 of the LPR. I also cannot be satisfied that it would not have a harmful impact upon biodiversity, including protected species, and cannot be certain that it would not conflict with the aims of saved Policy RLP84 of the LPR and Policy CS8 of the CS. Amongst other things, these seek to ensure that developments protect and do not adversely impact upon habitats and protected species.

Parking Layout

25. The submitted plans show that parking for Plot 1 would be in the form of a carport integrated into the design of this property. Parking spaces for Plots 2-5 would be beyond the rear of the proposed dwellings.
26. The Council do not object to the proposed quantum of spaces and I see no reason to come to a different conclusion on this matter. In addition, I consider that the spaces to the rear of the development would be a sufficient distance away from proposed dwellings so as to not result in significant levels of noise and disturbance, including light disturbance from headlights, to future occupants. Furthermore, I have no substantive evidence before me to show that the proposed parking spaces would not be utilised. I am therefore not persuaded that their layout would encourage obstructive parking along Church Lane or result in inconsiderate parking within the development itself.

27. For these reasons, I conclude that the proposed parking layout would not adversely affect users of the local highway network in terms of safety. Neither would it unacceptably harm the living conditions of future occupants of the proposed development in terms of noise and disturbance and unneighbourly parking. The proposal would therefore accord with Policy CS9 of the CS and saved Policies RLP56 and RLP90 of the LPR. Amongst other things, these seek to ensure developments create safe environments, provide suitable off-street parking and do not result in an unacceptable impact upon the amenity of residential properties.
28. I have also been referred to saved Policies RLP3, RLP17, RLP95 and RLP100 of the LPR. However, amongst other things, these deal with development in town development boundaries and village envelopes, extensions to dwellings, the preservation and enhancement of conservation areas and listed buildings and their settings. They are therefore not relevant to this main issue.

Other Matters

European Designated Sites

29. It would appear that the proposal could have an impact upon a European designated site. Natural England has provided revised advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations. In this case, the Council concluded that the proposal would be unlikely to harm European Sites even without any mitigation.
30. However, the Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage². As the competent decision making authority, if I had been minded to allow the appeal it would have therefore been necessary for me to go back to the parties to seek further information in order to complete an AA for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Previously Developed Land

31. The appellant considers that the appeal site represents previously developed land (PDL). However, from my site visit it appeared to be largely undeveloped. The Council also states that it accommodates buildings which have blended into the landscape. Such buildings are also likely to have been linked to the former adjacent agricultural operation. Consequently, I am not persuaded that the proposal meets the Framework's definition of PDL as set out in Annex 2.

Housing for Local Community

32. I note that the appellant is willing to market 40% of the proposed dwellings to local residents for a period of six months at 20% discount of market housing value. However, notwithstanding that the Council consider that it is unlikely that those in housing need would be able to take advantage of this, there is no policy requirement for this type of marketing. Neither is there a requirement

² People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

for this proposal to provide affordable housing. Consequently, this carries only limited weight in my assessment of this scheme.

Planning Balance

33. The Government is seeking to significantly boost the supply of housing. The proposal for five dwellings would make a modest contribution to the Council's housing stock, with associated social and economic public benefits. There may also be some environmental benefits as a result of the area to the rear of the site which would be set aside for wildlife. These factors weigh in the scheme's favour.
34. In addition, I have found that the proposal's parking layout would not detrimentally impact upon the living conditions of future occupants or highway safety. I am also satisfied that the scheme would meet some other requirements of the development plan. For example, through the provision of a safe access and the construction of energy efficient buildings. These are therefore neutral factors in the overall balance.
35. However, I have found that the appeal site would not be a suitable location for residential development as it would not provide future occupants with access to services and facilities or reduce the reliance on private transport. Neither would it comply with the Framework's aim of locating housing in rural areas where it would enhance or maintain the vitality of rural communities. There is also no assessment of the proposal's impact upon wildlife as required by the development plan. These factors weigh significantly against the proposal, considerably reducing the associated public benefits of the scheme.
36. Moreover, I have found that the proposal would result in harm to identified designated heritage assets, which I consider would outweigh any public benefits associated with this scheme. Having regard to paragraph 11(d)(i) of the Framework, there is therefore a clear reason to dismiss the appeal, even if the Council is unable to demonstrate a five year supply of deliverable housing land. This harm would also disengage the so called 'tilted balance' under such circumstances.
37. I therefore conclude that the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits associated with the provision of five dwellings. This is so even if there were no objections from the Parish Council and the site represented PDL. The proposal conflicts with the development plan when read as a whole and there are no material considerations, including the advice of the Framework, which outweigh this conflict.

Conclusion

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

M Heron

INSPECTOR