



Appeal Decision

Site visit made on 28 October 2019

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2019

Appeal Ref: APP/Z1510/W/19/3228506

Land west of Kelvedon Station, Station Road, Kelvedon CO5 9NX

- 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 under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Phillip Wright of CALA Homes (North Home Counties) Ltd against Braintree District Council.
 - The application Ref 18/01674/VAR is dated 14 September 2018.
 - The application sought planning permission for outline planning permission with some matters reserved – Proposal for up to 250 new dwellings with all matters reserved except the means of access from the public highway which is proposed via an improved access off Coggeshall Road, including the demolition of two properties (Kings Villas) to facilitate the access without complying with a condition attached to planning permission Ref 17/00418/OUT, dated 5 October 2017.
 - The condition in dispute is No 2 which states that: The submission of the reserved matters application/s pursuant to this outline planning permission shall together provide for no more than 250 dwellings, car parking, public open space, landscaping, surface water attenuation and associated infrastructure and demonstrate compliance with the approved plans listed above.
 - The reasons given for the conditions is: For the avoidance of doubt as to the scope of the permission and to ensure that the site is not over-developed, in the interests of protecting the character and appearance of the area, in addition to the living conditions of the occupants of existing neighbouring dwellings and future occupiers of the proposed development.
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Decision

1. The appeal is dismissed and planning permission to vary condition 2 of planning permission Ref 17/00418/OUT, dated 5 October 2017, is refused.

Procedural Matters

2. The appellant has provided a revised Parameter Plan (Ref: 7969/SK06 Revision J) as part of his final comments to inform the appeal process. However, I have no substantive evidence before me that would indicate that this plan has been considered by the Council or commented upon by interested parties. I have been provided with a list of original drawings submitted to the local planning authority in relation to application Ref 18/01674/VAR. These are Application Boundary Plan 7969/SK1000 Rev A; Revised Parameter Plan 7969/SK06 Rev D; and, Proposed Illustrative Site Layout 7969/SK07 Rev K. For the purposes of clarity, I have consider the appeal on the basis of the plans

listed by the applicant that were submitted to support the planning application and I have not taken 7969/SK06 Revision J into account in reaching my decision as, if I were to do so, the interests of parties who might wish to comment could be prejudiced.

3. The application, the subject of this appeal, was supported by an indicative detailed site layout plan (Proposed Illustrative Site Layout 7969/SK07 Rev K), as noted above. However, layout is one of those matters reserved for future consideration. I have therefore considered this plan as illustrative only.
4. I have also been referred to supporting drawings in appendices to the final submission that show detailed cross sections of the east and west SUDs basins, with related land gradients and landscaping. However, those sectional details deal with two SUDs basins, whereas Revised Parameters Plan 7969/SK06 Rev D, that was the subject of the Section 73 planning application, illustrates only one SUDs basin. Again, I have no substantive evidence before me that would indicate that these cross-sectional details have been considered by the Council or commented upon by interested parties. I have, therefore, not taken them into account as part of my considerations pertaining to this appeal.
5. A completed Section 106A Supplemental Agreement has been submitted in support of the appeal.

Background and Main Issue

6. Outline planning permission is in place for the development of up to 250 dwellings at the appeal site. The Section 73 planning application sought to vary condition 2 attached to outline planning permission Ref 17/00418/OUT in order to amend approved Parameter Plan Ref: 3-100 in respect of the developable area of the site, public open space, drainage and building height limits.
7. The main issue is the effect that removing condition 2 would have on the character and appearance of the area.

Reasons

8. The appellant has advised that in order to add interest to the make-up of the developable area and to improve the scope for a clear hierarchy of street scenes, it would be beneficial to increase the building heights proposed across various sections of the site. The approved Parameter Plan Ref: 3-100 sets out a building height limited of 8m across the vast majority of the developable area with a building height limit of 11m to the south-west extent of the site where apartment development is envisaged. Parameter Plan Ref: 3-100 illustrates the two different areas within the developable area to which these height limits would apply.
9. The Planning Statement that supports the planning application indicates that the variation of condition 2 seeks to extend the building height limit of the vast majority of the developable area from 8m to 11m. For the area envisaged for apartment development the proposal seeks to extend the height limit from 11m to 14.5m to allow for predominantly 3-storey apartment development to take place.
10. The Council explains that the outline planning application was supported by a suite of documents, which included a Landscape and Visual Impact Assessment

(LVIA), that demonstrated a solid understanding by the applicant of the character of the village. These led to the applicant producing a parameter plan that included building heights. I acknowledge that the revised parameter plan is intended to indicate a maximum height limit to allow for taller elements of development to be interspersed, rather than an overall increase in all building heights.

11. Policy RLP9 of the Braintree District Local Plan Review 2005 (the Local Plan) requires new residential buildings to be in character with the site and relate to its surroundings. Policy RLP10 of the Local Plan requires that the density and massing of new development relate to the characteristics of the area and the layout and density of surrounding development. Policy RLP90 of the Local Plan seeks to secure good design for all development. Amongst other matters, this policy seeks the scale, density, height and massing of buildings to reflect or enhance local distinctiveness. It also requires the layout, height, mass and overall elevational design of buildings and development to harmonise with the character and appearance of the surrounding area, which includes their form, scale and impact on the skyline in the locality. Whilst these policies pre-date the National Planning Policy Framework (the Framework), I consider these policies to be consistent with Section 12 of the Framework that requires development to be sympathetic to local character, amongst other matters.
12. I have also been directed to the Council's Landscape Character Assessment and a Landscape Capacity Analysis both of which cover the appeal site. These indicate the *'proposed development would form a natural extension to the housing at Newington and would provide a more coherent edge to Kelvedon'*. The analysis advocates that development should reflect the vernacular features in Kelvedon to provide greater visual connections with the main settlement. It also says that the scale and form of development should reflect the settlement patterns of the village.
13. The application that is now the subject of this appeal has been accompanied by a LVIA and supporting landscape impact letters from ACD Environmental Ltd. The Council has also commissioned its own specialist advice to assess the visual impact of the proposed changes in building heights. I have had regard to these visual impact assessments, as well as my own observations at my site visit, which includes the immediate environs surrounding the appeal site, as well as that of the settlement of Kelvedon.
14. The appeal site relates to arable agricultural land at the north-western end of Kelvedon. I saw that the gradient of the land falls away in a generally south-easterly direction. I also saw that the settlement of Kelvedon, along with the existing residential development along Station Road and Observer Way, is predominately 2-storey, with the exception of King Meadow Court, at the east of the appeal site, that is 3-storey. In views from the west any taller elements above 8m would be particularly prominent, especially if situated near to the development perimeter or centrally within the site where the land contours of the site are at their highest. Such elements of the development would be out of keeping with the prevailing heights of development in the area and this would contribute to the visual conspicuousness of the development at the edge of the settlement, as well as in the skyline, and would conflict with the local character of the development at Kelvedon.

15. Further to the above, increasing the height of the apartment development at the south east of the appeal site to create 3-storey buildings would also contribute to increasing the visual dominance of the development in views from the surrounding area. Whilst I acknowledge the existing development at King Meadow Court is 3-storey, that development is an exception to the character of development at Kelvedon.
16. I appreciate that this site is subject to a reserved matters application. However, I am of the opinion that the consequence of increasing the building heights of elements of the developable area would create a development that would appear very different to that within the settlement of Kelvedon. As such, it would appear as a visually uncomfortable anomaly at the edge of the settlement, rather than a development that would assimilate with it.
17. I have seen sight of a storey/ridge height plan (7969/SK31 Rev B). The storey height plan illustrates that the majority of the dwellings within the developable area that has been limited to 8m in height could alternatively comprise a mix of 9m, 10m and 11m high development and the apartment development could host 13m to 14m high buildings instead of 11m high buildings. Although I acknowledged that this plan has been presented as a 'worst-case scenario' this nonetheless serves to compound my above concerns.
18. I acknowledge that the proposal may bring about improved off-street resident and visitor car parking, private garden amenity space, street hierarchy formation, townscape and overall architectural character, however these matters would be for further consideration as part of a reserved matters submission.
19. For those reasons set out above, I find that the proposed variation would create a development that would be harmful to the character and appearance of the area. The proposal would conflict with Policies RLP9, RLP10 and RLP90 of the Local Plan, which I have found to be in line with the Framework, that seek to achieve well-designed places that are sympathetic to local character, the surrounding built environment and that maintain a strong sense of place. I acknowledge that the Framework encourages outstanding or innovative design, however, I have not been directed to any elements of the proposed development that might be considered to meet such criteria.
20. With regard to the extent of developable area and public open space the Council comment that the submitted revised parameter plan shows the play area covering a smaller area than that shown on the approved plan. However, the Council advise that with appropriate design this reduced area could be acceptable. I have no substantive evidence before me that would lead me to a different view on this matter.
21. The approved parameter plan shows two SUDs detention basins at the northern part of the site. The size of the SUDs detention basins as shown on Revised Parameter Plan 7969/SK06 Rev D has been significantly reduced from that shown on Parameter Plan Ref: 3-100. From the information provided I understand this reduced area to show the areas of the SUDs permanently/frequently underwater and not those parts of the detention basins that will only flood intermittently. Whilst I acknowledge that SUDs infrastructure can be designed and laid out in a way that it becomes a feature of Public Open Space, it appears to me that the open space would be intended to act as part of the SUDs. Therefore, during such time as the SUDs is in use

the open space would not be usable. I am not clear to what extent of the open space that this would relate but it could represent a significant reduction in the amount of useable open space.

22. In regard to the Council's adopted standards for provision of Public Open Space the appellant advises that there would be an over provision at this site when assessed against the standards. The Council confirms this to be so. Notwithstanding this, the Council advises that the approved parameter plan did not just provide recreational open space, but that it also formed part of a suitable design response to the edge of village location and relationship with existing adjoining properties.
23. With regard to the parameter plan submitted in support of the planning application, the appellant wishes to make clear that the total amount of Public Open Space proposed on the site would not be reduced as a result of this Section 73 proposal. However, from the information submitted I have insufficient evidence before me to enable me to form a view on the actual amount of open space that would be provided as I am unclear to the extent of the SUDs and other landscape requirements that are necessary to make the development acceptable.

Other Matters

24. There is a dispute between parties as to whether or not the Council has a 5-year supply of deliverable housing sites in place. Notwithstanding this, the proposal before me relates to a variation of Condition 2 of outline planning permission 17/00418/OUT that approved Parameter Plan 3-100. It is clear to me from the details submitted in support of the appeal that the proposal seeks to amend the approved development area, public open space, drainage and building height limitations. The proposal before me has not sought to change the outline planning permission in respect of housing numbers.
25. I note that this application was subject to pre-application discussion with the Council and that some frustration has been expressed by the appellant to the Council's handling of this case, and in relation to that of reserved matters. These are matters to be addressed between the parties and those concerns expressed have not had any bearing on the decision I have reached in this appeal.

Conclusion

26. In this case I consider the effect of increasing the height of the development would be harmful to the character and appearance of the area and would conflict with the Council's reason for imposing such a limitation by condition. This, therefore, brings the proposed development into conflict with the development plan when taken as a whole. I therefore consider that condition 2 as imposed upon outline planning permission Ref 17/00418/OUT, dated 5 October 2017, to be reasonable and necessary and, therefore, the appeal should be dismissed.

Nicola Davies

INSPECTOR