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## Appeal Decision

Site visit made on 14 October 2019

**by M Chalk BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 December 2019**

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**Appeal Ref: APP/Z1510/W/19/3233787**

**Cobbs Fenn site, Cobbs Fenn, Sible Headingham, CO9 3RX**

- 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 Mr & Mrs Kim & Tanya Harding against the decision of Braintree District Council.
  - The application Ref 19/00770/FUL, dated 27 April 2019, was refused by notice dated 28 June 2019.
  - The development proposed is described as *"full planning application for the completion of part built two new buildings at Cobbs Fenn into three houses, including addition of conservatory to "Annexe"."*
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - Whether the proposed development would be in an appropriate location, having regard to the aims and objectives of local and national planning policies, and;
  - The effect of the proposed development on highway safety and accessibility of the Public Right of Way (PRoW).

### Reasons

3. The appeal site is a plot of land of substantial size, part of a cluster of residential properties located outside the village of Sible Headingham. There is an extant permission for the use of the two buildings that are the subject of this appeal as a single dwellinghouse and annexe<sup>1</sup>. This permission is a consideration in the determination of this appeal.

### *Location of Proposed Development*

4. The site is accessed via a narrow country lane and is around a mile from the village. My attention has been drawn to previous appeal decisions at the site<sup>2</sup>, which concluded that the site is not well located for residential development due to difficulty in accessing services in Sible Headingham via sustainable transport measures.

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<sup>1</sup> Planning Inspectorate ref: APP/Z1510/W/17/3187037, decision date 1 March 2018

<sup>2</sup> Planning Inspectorate refs: APP/Z1510/W/18/3208448, decision date 1 March 2019 and APP/Z1510/W/18/3217618, 3217686, 3217695, 3217697 and 3217706, decision date 28 June 2019

5. While each decision must be taken on its own merits, the similar nature of the proposed developments and the recency of the decisions means that I give significant weight to the previous Inspectors' findings. I have not been presented with any evidence to suggest that the facts of the appeal site and its access to services have changed significantly since those earlier decisions. The site remains near the end of a narrow country lane, unlit and unlikely to be attractive to pedestrians and cyclists due to the lack of a pavement or wide verges for much of its length. The PRoW that runs across the appeal site offers a shorter route into the town, but this appears unsuitable for regular use by those of limited mobility, such as the elderly or very young children.
6. The appellants have however drawn my attention to a judgment by the Court of Appeal relating to a site elsewhere in the District<sup>3</sup>, affirming the grant of permission for residential development of a site about 2 miles from the nearest services. In that judgment, the Court found that development not located near services could still contribute to the social sustainability of a settlement, as it would support services in neighbouring settlements. This is supported by paragraph 78 of the National Planning Policy Framework (the Framework), and paragraph 103 of the Framework recognises that in rural locations sustainable transport options may be limited.
7. As I do not have the full details of the case subject of that judgment, I cannot be sure that that they represent a direct parallel to the appeal proposal on matters such as the accessibility of services. Nonetheless, clearly the appeal proposal was found to be acceptable on sustainable transport grounds, when all other considerations were weighed. I note that one of those considerations was the absence at the time of the Inspector's decision of a 5-year supply of housing land in the District. The Council can now show a 5-year supply, and therefore this is not a consideration in the determination of this appeal.
8. The appellants have stated that saved policies RLP16 Braintree District Local Plan Review July 2005 (the LP) provides support for the development proposed. The Policy states that where there is a defined nucleus of at least ten dwellings the filling of a gap for a single dwelling may be acceptable. However, the Policy states that this does not apply where a gap could accommodate more than one dwelling. The size of the appeal site is such that it could physically accommodate more than one dwelling, and therefore I consider that Policy RLP16 does not apply in this case.
9. The appellants have also referred to saved Policy RLP18 of the LP, and contend that the approved use of the building along the northwest boundary as an annexe is not justified with reference to its criteria. However, it is not the purpose of this appeal to reassess previous approvals on the appeal site. The use of this building as an annexe is lawful. Introducing a separate residential use for the building would result in additional traffic generation from the site.
10. As noted above, every appeal must be determined on the merits of the proposed development. While the appeal site is within a walkable distance of the village, that distance involves use of a narrow and unlit country lane or the PRoW. That the appeal site is suitable for residential development has been established by the extant permission. However, the proposed development would result in a more intensive level of occupancy, with three houses proposed in place of the one for which permission has been granted. This would

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<sup>3</sup> *Braintree District Council vs. SSCLG, Greyread Ltd & Granville Developments* [2018] EWCA Civ 610

result in a significant increase in traffic associated with the appeal site, and it is reasonable to assume that most of this traffic would be private vehicles.

11. As future occupiers would depend heavily on the use of private vehicles to access services and facilities, the proposed development would not be in an appropriate location, having regard to the aims and objectives of local and national planning policies. It would be in conflict with Policies CS5 and CS7 of the Braintree District Council Local Development Framework Core Strategy September 2011 (the CS), Policy RLP2 of the LP and the sustainable transport requirements of the Framework.
12. The Council referred to LP policy RLP80 and CS policy CS8 in their reason for refusal relating to this issue. These policies relate to landscape and ecology matters. It is not clear how this relates to the matter under consideration, as the Council has not raised any specific concerns on these grounds. I do not consider the policies to be determinative in considering this aspect of the appeal.

### *Highways*

13. The proposed development would include parking for four cars on land to the north-east of the buildings. This would be accessed along land crossed by the PRow. The arrangement of the spaces, and the proximity to the larger building, would result in limited manoeuvring space for users of the spaces. This would be likely to result in obstruction of the PRow with vehicles having to use the shared land for manoeuvring in and out of spaces. I consider that this would make use of the PRow less attractive for residents of the development proposed, as well as residents of the existing properties in the local area, as based on the evidence before me this land is not currently used by motor vehicles. This would conflict with requirements of policy CS7 of the CS, which seeks to encourage sustainable travel. It would also be contrary to paragraph 98 of the Framework, which states that planning decisions should protect and enhance public rights of way.
14. The appellants have suggested that the layout is only indicative, and that an alternative scheme could be secured by condition. I have considered this, but on the evidence before me it is not clear that sufficient space is available and accessible within the proposed site layout to provide enough spaces to meet the Council's parking standards, as set out in policy RLP56 of the LP.

### **Other Matters**

15. The appellants have suggested that the use of the smaller of the buildings as a residential annexe results in a development that is not viable. However, no clear evidence has been submitted to show that this would be the case.
16. The appellants contend that the lawful use of the smaller of the buildings for purposes within Use Class B1 would result in greater disturbance to neighbouring residents. However, I must consider the likelihood of that use being implemented. At the time of my visit the building was only constructed up to the frame. Implementation of the B1 use would require considerable investment on the part of the appellants, and based on the evidence before me, including the July 2017 viability assessment, it is not likely that this would generate a worthwhile return on investment. I therefore attach little weight to this possibility. In any case a B1 use is, by definition, a use which can be carried out in any residential area without detriment to the amenity of that

area. I do not therefore consider that there would be a significant difference in disturbance arising from a B1 use, compared to a residential use.

### **Planning Balance and Conclusion**

17. The appeal site is not located in an accessible location, and the development proposed would result in future occupiers being dependent on private car use to reach the nearest services. In addition, the proposed parking arrangement would result in obstruction of the PRoW due to the proposed shared use for accessing and manoeuvring of vehicles. I accord these harms significant weight in determining this appeal.
18. Set against this, there would be both economic and social benefits from the proposed development. A short-term economic benefit would derive from the construction of the three houses. Social benefits would derive from the provision of additional housing, and the support of services in Sible Headingham and other settlements. In addition the development proposed would provide two additional houses above the existing permission. Cumulatively I accord these benefits moderate weight in determining this appeal.
19. Overall, however, I consider that the harm arising from the proposed development would be significant. Even if I were to apply the 'tilted balance' at Paragraph 11 of the Framework, this harm would significantly and demonstrably outweigh the benefits in this case. The proposal would therefore not be a sustainable form of development, when considered against the Framework as a whole.
20. For the reasons given above I conclude that the appeal should be dismissed.

*M Chalk*

INSPECTOR