



Appeal Decision

Site visit made on 5 November 2019

by Beverley Wilders BA (Hons) PgDurp MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2020

Appeal Ref: APP/Z1510/W/19/3236192

The Victoria PH, Powers Hall End, Witham CM8 1LT

- 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 James Collins (Oxygen 56 Limited) against the decision of Braintree District Council.
 - The application Ref 19/01196/FUL, dated 27 June 2019, was refused by notice dated 29 August 2019.
 - The development proposed is construction of two detached dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The name of the appellant used in the heading above has been taken from the application form. Although the appeal form stated the appellant's name to be Mr John Collins, written confirmation has been received to confirm that the appellant details are as stated on the application form. I have determined the appeal accordingly.
3. The Council has referred to a number of policies in the Emerging Braintree District Publication Draft Local Plan 2017 (ELP). However, it appears from the evidence that whilst the ELP has been consulted on, there are a number of outstanding matters in relation to it following examination hearings. Consequently, I have given limited weight to policies in the ELP.

Main Issues

4. The main issues are the effect of the proposal on:
 - biodiversity;
 - the character and appearance of the area.

Reasons

Biodiversity

5. The appeal site is located approximately 10km from the Blackwater Estuary (Mid Essex Coast) Special Protection Area (SPA) and Ramsar Site, plus the Essex Estuaries Special Area of Conservation (SAC), along with the nearby River Ter Site of Special Scientific Interest (SSSI). Consequently, Natural England (NE), the appropriate nature conservation area body, was consulted as

part of the appeal process. NE advises that the site falls within the zone of influence for the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). Although it appears that the RAMS has yet to be finalised, NE has provided interim guidance to the affected Councils, including Braintree, advising that small scale residential developments of the type proposed would be likely to have a significant effect on the interest features of the designated sites through increased recreational pressure, when considered either alone or in combination. Under the circumstances, NE advises that a financial contribution would be required in order to address the impacts of the proposed development on the designated sites.

6. As it seems likely, based on the evidence before me, that the proposal would have a significant effect on European designated sites, either alone or in combination with other projects, and as it is not required in connection with the management of the designated sites, I am required to undertake an appropriate assessment of the proposal.
7. As stated by NE, small scale residential proposals would be likely to result in increased recreational pressure on nearby designated sites and would therefore be likely to result in an adverse impact on the integrity of the sites. Although the appellant appears willing to make a financial contribution in order to mitigate for such impacts and as advised by NE, no mechanism is before me which allows for such a contribution to be made as such contributions cannot be reasonably sought by the imposition of a planning condition. In the absence of this, I am not satisfied that the proposal would not be harmful to the designated sites, notwithstanding that the Council appears to be satisfied that the small scale nature of the proposal means that no harm would result. An alternative solution could be to construct residential development outside of the zone of influence for the designated sites and there are no imperative reasons of overriding public influence in support of the proposal. Consequently, it fails to meet the requirements of regulation 63 of the Habitats Regulations¹.

Character and appearance

8. The appeal site comprises the former car park of The Victoria public house which is positioned to the side of the pub building. Planning permission has recently been granted to convert the pub to a dwelling and at the time of my visit the pub did not appear to be trading (Ref 19/00788/FUL permission granted July 2019). The former car park is hard surfaced and is bounded to the side and rear by fencing and landscaping separating it from garden land and undeveloped countryside beyond. The site is prominently positioned and has an open frontage onto Powers Hall End at the point where it meets Faulkbourne Road.
9. The pub building is a traditional, detached two storey building set back at an angle to Powers Hall End. Surrounding development comprises residential dwellings which are either semi-detached or within terraces of 4 dwellings. Most are two storey though there are some bungalows opposite and near to the site on Faulkbourne Road. Nearby dwellings are set behind front garden areas, a number of which have been hardsurfaced to provide off-street parking areas.
10. Two, two-storey detached dwellings are proposed adjacent to the pub building on the former car park. The dwellings would be set back slightly from the front

¹ The Conservation of Habitats and Species Regulations 2017

boundary of the site and from the front of the pub building and would have a staggered layout reflecting the curve in the adjacent road. The proposed dwellings are traditional in design and appearance reflecting the form and general proportions of the adjacent building and also incorporating a front gable feature. Off-street parking would be provided to the side of the dwellings with front driveways providing turning facilities.

11. I note the concerns raised by the Council and the Town Council with regard to the proposal and acknowledge that the appearance and layout of the proposed dwellings differs to that of the majority of dwellings nearby. However, the position of the site adjacent to the pub building and on the edge of the settlement means that I do not consider it necessary for development on the site to replicate that of other dwellings nearby. In any event, the dwellings are traditional in appearance and the plot sizes and spacing between dwellings are not out of keeping with nearby development. Though the front set back would be modest and would partly comprise driveway, there would nevertheless be some scope for soft landscaping to the front of the dwellings and as stated, there are examples of hard surfaced front gardens nearby. Consequently, and having regard to its layout, scale and detailed design I do not consider that the proposal would appear cramped or congested or that it would represent overdevelopment of the site.
12. Taking the above matters into consideration, I conclude that the proposal would not adversely affect the character and appearance of the area. It therefore accords with policies RLP3, RLP9, RLP10 and RLP90 of the Braintree District Local Plan Review adopted July 2005, Policy CS9 of Braintree District Council Local Development Framework Core Strategy adopted September 2011, with relevant paragraphs of the National Planning Policy Framework (the Framework) and with policies LPP1, LPP37, LPP50 and LPP55 of the ELP insofar as they relate to this issue. These policies seek, amongst other things, to ensure that proposals, including for residential development, are of a high standard of layout and design, protect the character of the area and relates to its surroundings having regard to its density, scale and design.

Other Matters

13. In reaching my decision I note the reference made by the parties to the Council's housing land supply position and that the proposal would provide 2 additional dwellings in an area where it is alleged there is demand for larger dwellings. However, even if I were to take the view that the Council cannot demonstrate a five year supply, having regard to footnote 6 of the Framework, the harm to habitats sites identified means that the presumption in favour of sustainable development does not apply.

Conclusion

14. Although the proposal would not adversely affect the character and appearance of the area, it would be harmful to European designated sites. Therefore, for the above reasons and having regard to all matters raised, I conclude that the appeal should be dismissed.

Beverley Wilders

INSPECTOR