
Appeal Decisions

Hearing Held on 19 November 2019

Site visit made on 19 November 2019

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2020

Appeal A: APP/Z1510/W/19/3226390

Land west of Hill House, Brent Hall Road, Finchingfield, Essex CM7 4JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by the Harding Group against the decision of Braintree District Council.
 - The application Ref 18/01442/OUT, dated 3 August 2018, was refused by notice dated 14 February 2019.
 - The development proposed is outline planning permission, with all matters reserved for the erection of 10 dwellings.
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Appeal B: APP/Z1510/W/19/3226391

Land west of Hill House, Brent Hall Road, Finchingfield, Essex CM7 4JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by the Harding Group against the decision of Braintree District Council.
 - The application Ref 18/01443/OUT, dated 3 August 2018, was refused by notice dated 14 February 2019.
 - The development proposed is outline planning permission, with all matters reserved for the erection of 16 dwellings.
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Decisions

Appeal A

1. Appeal A is allowed and outline planning permission is granted with all matters reserved for the erection of 10 dwellings at land west of Hill House, Brent Hall Road, Finchingfield, Essex CM7 4JZ in accordance with the terms of the application, Ref 18/01442/OUT, made on 3 August 2018, subject to the conditions set out in the Schedule attached to this decision.

Appeal B

2. Appeal B is allowed and outline planning permission is granted with all matters reserved for the erection of 16 dwellings at land west of Hill House, Brent Hall Road, Finchingfield, Essex CM7 4JZ in accordance with the terms of the application, Ref 18/01443/OUT, made on 3 August 2018, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

3. As set out above there are two appeals on this site. They differ only in Appeal A relating to a proposal for 10 dwellings and Appeal B for 16. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two appeals together, except where otherwise indicated.
4. Both proposals were made in outline, with all detailed matters reserved for later consideration. I have dealt with the appeals on this basis, taking into account also all the supporting evidence and illustrative material submitted.
5. Completed Section 106 planning agreements were provided at the Hearing. These provide for 40% affordable housing in both cases. Consequently, the Council's second reason for refusal over the lack of affordable housing, in each case, now falls away. In addition to the affordable housing, these agreements secure the provision and management of open spaces in both proposals and financial contributions towards outdoor sport, allotments and play space. These respective agreements are material considerations in each of the cases and I deal with the matters provided for later in this Decision.

Main Issue

6. The main issue, common to both appeals, is the effect the housing proposed would have on the character and appearance of the village, including that of the Finchingfield Conservation Area (CA).

Reasons

7. As entirely outline proposals, the effects of the alternate schemes for 10 and 16 dwellings are broadly the same in respect of character and appearance. The site of the appeals is a square agricultural field. The land fronts onto the road providing the main entrance to the village from the west. The field is towards the edge of the built-up settlement and has visually a quite enclosed appearance. This is by virtue of its level nature, the presence of trees and hedging along the road frontage and the existence of low-density residential development to each side.
8. There is a small close of modern detached houses immediately facing the site on the other side of Brent Hall Road. This existing housing opposite marks the clear edge of the built-up village on that side of the road, beyond which an expanse of farmland then provides for a more open landscape. By contrast, the appeal site is less open with the housing beyond, running alongside its western boundary, providing the clearly defined outward edge to the built-up village on this side of the road.
9. Given the relatively enclosed character of this site, with built development extending southwards from the road along the east and west boundaries, neither proposal would amount to an abrupt or obtrusive incursion into the open agrarian landscape. I am satisfied, in this regard, that in principle either scheme could be designed such that it reflects the general character and pattern of the surrounding development, subject to the controls available through reserved matters consent.
10. I find no harm in respect of either development through having any materially adverse effect on the transition from open landscape into the historic core of

the settlement. In my view, that transition from open farmland to the beginning of the developed village is already apparent on reaching this site.

11. There is a lack of inter-visibility between the site in question and the historic core of Finchingfield. The latter is only revealed as Brent Hall Road continues past the appeals site and descends the side of the valley. It is only at this further point that the picturesque centre of the village is apparent. The significance of the CA lies strongly in the character and appearance of this village core, where the historic and well-preserved pattern of traditional buildings are grouped around the village greenspaces framing the centre-piece of a bridged stream with duckpond.
12. There is more recent, sometimes higher density, development away from this historic centre. This is along rising land to its sides where the settlement has expanded beyond its original core. The appeal schemes would reflect this pattern and either would provide the comparatively lower density of housing, appropriate to the immediate surroundings at this western edge of the village. As such, either scheme would be appropriate to its context, integrating acceptably into the built form of the village. The result would be a consolidation of residential development within the present built-up confines, with neither proposal impinging on the legibility of the historic core to the village.
13. Any development inevitably involves change. However, this in itself does not necessarily equate to harm. The change associated with either of the relatively modestly-sized proposals would not amount to harm. The development would be quite clearly contained within the existing developed fabric of the settlement, such that the housing would not sprawl haphazardly into open countryside. Either proposal would provide an appropriate consolidation of housing on this side of the village, in keeping with its developed form, preserving its overall character and appearance including that of its picturesque historic centre.
14. In relation to development within conservation areas, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of the CA. The proposals include landscaping and a buffer zone along the roadside edge. The vehicular and pedestrian access to the site would result in some opening up of the site frontage. However, the overall appearance of either scheme would be softened by the buffer area and planting. Subject to appropriate design, scale and layout, neither proposal would have an unduly urbanising effect or be visually out of keeping in this location. I consider therefore, that neither proposal would be out of character with the village generally or harm the character, appearance or significance of the CA, which would be preserved.
15. Therefore, both proposals would comply with Policy CS9 of the Core Strategy¹ (CS) insofar as respecting and responding adequately to the local context of the CA and its setting. There is no conflict either with saved policies RLP90 and RLP95 of the Local Plan Review² (LPR) which seek to ensure that development is sensitive to the need to preserve the character and appearance of the CA. Whilst giving emerging Local Plan³ (eLP) policies LPP50, LPP55, LPP56 and

¹ Braintree District Council Local Development Framework Core Strategy – 19 September 2011

² Braintree District Local Plan Review – adopted July 2005.

³ Braintree District Council Local Plan Publication Draft June 2017

LPP60 more limited weight, neither proposal would conflict with these insofar as they seek to ensure that new development preserves the character and appearance of areas and heritage assets.

16. Moreover, neither proposal would conflict with the Government's aims for the planning system to conserve and enhance the historic environment, as set out in Chapter 16 of the National Planning Policy Framework (the Framework).

Benefits of the schemes

17. Greater in the case of the larger Appeal B scheme, socio-economic benefits would flow from both the proposals, including construction spend, the generation of jobs over the build out period, as well as indirect revenue to the supply chain. I recognise that the benefits to the construction industry would be time limited and there is no suggestion that local facilities are struggling and would thus benefit significantly from increased patronage. Accordingly, whilst welcome, I therefore afford these benefits moderate weight overall.
18. Finchingfield is a picturesque village, which attracts large numbers of visitors that in turn help support a good range of facilities for a settlement of this size. The housing proposed would generate increased local spend and further use of these services and facilities without harming the qualities that the village holds and which in turn attracts visitors and supports these businesses. That is a benefit that attracts appreciable weight.
19. Notwithstanding the Council's asserted position that it can currently demonstrate a five year supply of housing land, the provision of additional homes on the site is a benefit of both schemes in light of the national housing crisis, with provision of 40% affordable housing carrying considerable positive weight.
20. Future occupiers of either scheme would have access to Finchingfield Church of England Primary School. The school confirms that without new development in the village providing a larger intake of pupils, it could be at risk within a few years as it currently has a very low number of children attending. That is a consideration attracting no more than limited weight, given the likely further child numbers involved with either proposal.
21. The proposed developments include a new area of public open space on land that is not publicly accessible, secured via the planning agreements (as set out below). That provision would also benefit existing local residents. However, since the purpose of the obligations secured is primarily to mitigate harm arising from the development proposed, I am not persuaded that it is a consideration that attracts any more than limited weight.
22. Biodiversity benefits would be achieved through landscaping and landscape management, a consideration that attracts moderate weight.
23. Reference is made to income for the Council from the New Homes Bonus as a benefit. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. However, New Homes Bonus payments recognise the efforts made by authorities to bring residential development forward. I am mindful, in this regard, that the planning guidance makes it clear that it would not be appropriate to make a decision based on the potential for a development to raise money for a local authority. Accordingly,

whilst the Bonus is a material planning consideration, it is not one to which I attach positive weight.

24. Increased Council tax receipts are also mentioned as a benefit. However, since the development would result in a corresponding increase in demand on local services and infrastructure, again that is not a consideration to which I attach positive weight. Other aspects cited in support of the proposals by the appellant relate to an absence of harm, rather than considerations that provide positive advantages.

Other Matters

25. Interested parties raised other concerns both at the application and appeal stages and at the Hearing. Brent Hall Road narrows on the approach to the village from the appeal site and, lacking a footpath, I accept is not ideal from a road safety point of view. However, these highway characteristics would influence road user behaviour, instilling care and caution, and are not uncommon in rural situations. The local highway authority has not raised an objection to either proposal. In all, there is no substantiated evidence that leads me to the view that the appeals should fail from a highway safety point of view.
26. Concerns have been raised over further hardstanding areas exacerbating the risk of flooding from the watercourse running through the village centre. There is not the evidence for me to resist the principle of either housing proposal on these grounds, although runoff from the developments could be adequately addressed by a condition requiring agreement over the surface water drainage arrangements.
27. Concerns over foul sewerage capacity in the village have also been raised and conditions might similarly be applied to each scheme for suitable arrangements to be provided.
28. All detailed matters are reserved with both proposals. Subject to these, the site would be able to accommodate either 10 or 16 dwellings without having a materially harmful impact on the living conditions of any existing neighbouring occupiers in respect of privacy, loss of light or undue disturbance. There would be some disruption during the construction phase. However, this is inevitable with any development project and would be for a limited period.
29. There had previously been some significant trimming works to the trees and hedging along the frontage of the site of these appeals, and the formation of an access, which has caused local concern. I have looked at the before and after photographs submitted. However, these concerns would not provide adequate grounds for rejecting either proposal, with landscaping and means of access being details to be agreed as reserved matters. This might then provide an avenue for reinforcing the greenery at the front of the site.
30. Neither is there sufficient reason for me to reject the principle of housing on the site due to harm to biodiversity. The requirement for landscaping to be agreed, and the potential for any wildlife interest to be protected and enhanced by means of conditions, could help remedy and restore biodiversity interest, particularly with the open space and frontage buffer zone which form part of both proposals.

Section 106 agreements

31. The section 106 agreements between the site owners and the Council in respect of both appeal proposals have been considered. They secure 40% affordable housing and financial contributions towards outdoor sport, allotments and play space, as well as cementing the provision and management of the open space areas in both proposals. I have considered both agreements against the advice in paragraph 56 of the Framework and the statutory requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations. Together, these require that planning obligations should only be accepted where they are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to it. I am content that both agreements satisfy these tests and therefore are material planning considerations in deciding these appeals.

Planning Balance

32. Whilst I have found no conflict with CS Policy CS9 or with saved LPR policies RLP90 and RLP95, the proposals relate to land situated outside the development boundary for Finchingfield as defined in both the current and emerging development plans. In both cases, there would therefore be conflict with CS Policy CS5, LPR Policy RLP2 and eLP Policy LPP1, which together and among other things, seek to focus new development within settlement boundaries and restrict that outside to where a countryside location is required. The restriction imposed by settlement development boundaries on housing growth in villages such as Finchingfield, broadly supports the development plan objective of steering most development to the main town of Braintree. This strategy remains generally consistent with the overall aim of the Framework to secure sustainable development, including by focusing significant amounts of housing in locations which achieve this aim, making effective use of infrastructure and protecting the countryside.
33. In my view, however, the restriction on development close to but outside of village development boundaries is out of step with the more recent Framework policy for rural housing contained in paragraph 78. This states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities and that planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Indeed, the Council itself acknowledges that to be found sound, its emerging plan will result in a higher housing land requirement. Therefore, in this context, the Council accepts that only 'more than moderate but less than significant weight' be attached to CS Policy CS5 and LPR Policy RLP2, given that they serve to restrict the supply of housing land.
34. Paragraph 73 of the Framework requires that local planning authorities identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against local housing need where, as in the case of Braintree, strategic policies are more than five years old. A failure to demonstrate a five year supply would be grounds for engaging the so called 'tilted' balance implicit in paragraph 11 of the Framework.⁴ In this

⁴ This is where the application of policies in this Framework that protect areas or assets of particular importance provides no clear reason for refusing the development proposed, granting permission unless any adverse impacts

regard, as updated at the Hearing, the Council's position was that it can demonstrate a 5.15 year housing land supply. That is a fragile margin, with the evidence of the appellant indicating that a slippage of just 140 dwellings over the five year period would mean that the Council could not demonstrate the required supply. Whilst there was dispute, in this regard, over likely housing starts and annual build out rates, I shall adopt the Council's figures in terms of its five year land supply. That is not to be taken as indicating that I necessarily agree with the figure, rather I adopt that position for the purpose of carrying out the planning balance. As such, the so-called 'tilted' balance is not engaged. That leaves the application to be determined in accordance with the development plan unless other material considerations indicate otherwise.

35. In coming to a view on this matter, Finchingfield has a number of services and facilities within walking and cycling distance of the site, including a primary school, village shop/ post office, a petrol station, several public houses, village hall, tea rooms, GP surgery, recreation ground and a restaurant. The settlement also has bus services to adjacent towns, such as Braintree. In common with many rural villages, future occupiers of both these proposals would be reliant to some extent on a private car to access employment, secondary schools and large supermarkets. Nonetheless, that does not suggest to me that this is a wholly unsustainable location for the modest amounts of additional housing proposed.
36. I am mindful also that the Council itself acknowledged that, to be found sound, the emerging plan will result in a higher housing land requirement.
37. The five year requirement is not a ceiling on provision and the Framework seeks generally to boost housing supply. In this case, I consider that the combination of the benefits I have identified, together with the absence of material harm in terms of character and appearance generally and in relation to that of the CA, the acknowledged need for additional housing land going forward, and the sustainability of the location in terms of access for future occupiers to everyday services and facilities without over-reliance on car journeys, is sufficient to justify a decision contrary to the development plan in the circumstances of these appeals.

Conditions

38. I have considered the conditions set out in the Statement of Common Ground in the light of the advice in paragraph 55 of the Framework. This states that these should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have amended those found necessary, mainly for simplicity and succinctness.
39. The standard outline conditions are necessary, including the time limit imposed for the submission of reserved matters (1-3). In the interests of the character and appearance of the area, the reserved matters shall accord with the submitted buffer zone parameter plans (4). Conditions are necessary to govern foul and surface water drainage (5,6). In the interests both of character and appearance and biodiversity, details of external lighting within the approved developments must be agreed in advance (7).

of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

40. Conditions are also needed to secure archaeological investigation as part of the developments and to incorporate biodiversity enhancements (8,9). The surfacing of the site access and the maintenance of visibility splays are both details that may be addressed under the relevant reserved matters. The same applies to the details and implementation of hard and soft landscaping.

Conclusions

41. For the reasons set out above, having taken into consideration all other matters raised, I conclude on balance that both Appeal A and Appeal B should succeed, in each case subject to the conditions set out below.

Jonathan Price

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Calder	Phase 2 Planning
Thomas Copp	RPS
Nigel Cowlin	Nigel Cowlin Landscape Planning and Design
Lyndon Gill	Barton Willmore
Andrew Winter	Barton Willmore
Andrew McDonald	Waterman Group

FOR THE LOCAL PLANNING AUTHORITY:

Derek Lawrence	Braintree District Council (BDC)
Juliet Kirkaldy	BDC
Ana Patriarca	BDC
Alex Evans	BDC
Neil Jones	BDC
Nicolas Page	Place Services

INTERESTED PERSON:

Peter Ashton

DOCUMENTS SUBMITTED TO THE HEARING

- 1 Email to BDC from agents providing anticipated delivery milestones for Panfield Lane housing development by Mersea Homes and Hill Residential.
- 2 BDC spreadsheet, updated to end of September 2019, for lead times and delivery rates for large sites in Braintree.
- 3 Linked appeal decisions, references APP/Y0435/W/18/3214365 and APP/Y0435/W/18/3214364, regarding housing developments allowed at adjacent sites in Castlethorpe Road, Haslope MK19 7HQ.
- 4 BDC spreadsheet of average delivery rates from date of first completion for large sites in Braintree (with 3 sites removed with less than 6 months of completions).
- 5 Council's latest revised trajectory for outline pp 10+ units, resolution to grant/local plan allocations and outline pp 0.5ha+/less than 10 units.
- 6 Average build out rates from BDC Appendix 3 – appellant's updates to September 2019, lead time and delivery rates in large sites.
- 7 Email from agents providing updated delivery (18 November 2019) milestones for Panfield Lane.
- 8 Email correspondence (November 2019) with latest housing delivery timescales for Cala Homes development, Kelvedon.
- 9 Photographs showing development progress at land off Western Road, Silver End.
- 10 Spreadsheet updating appellant's numbers in rebuttal statement over Braintree HLS, following discussions with BDC outside of hearing and subsequently reported.
- 11 Completed Section 106 agreement between appellant and BDC in respect of Appeal A.
- 12 Completed Section 106 agreement between appellant and BDC in respect of Appeal B.

Schedule – Appeal A and Appeal B Conditions

- 1) Details of the access, appearance, landscaping, layout and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The details required under condition 1 (above) shall accord with the Buffer Zone Parameter Plans ref: 967.218.00 and 967.1.218.00, with no dwellings, garaging or other ancillary buildings to be constructed within the 'no development buffer zone' as defined on these drawings.
- 5) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details that shall have first been submitted to and approved in writing by the local planning authority.
- 6) No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and
 - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 7) None of the dwellings hereby permitted shall be occupied until an external lighting scheme has been submitted to and approved in writing by the local planning authority. Thereafter no external lighting shall be installed other than as detailed in the agreed scheme unless otherwise agreed in writing by the local planning authority.

- 8) No development shall take place until a Written Scheme of Investigation of archaeology has been submitted to and approved in writing by the local planning authority. No development shall take place other than in accordance with the approved Written Scheme of Investigation.
- 9) No development shall take place until a scheme for biodiversity protection and enhancement has been submitted to and approved in writing by the local planning authority. The measures agreed shall be implemented as part of the development and maintained thereafter.
