The Planning Inspectorate

Appeal Decision

Hearing held on 17 December 2019
Site visit made on 17 December 2019

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 9th April 2020

Appeal Ref: APP/Z1510/W/19/3223378
Land at Brook Street, Colne Engaine, Essex CO9 2JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant outline planning permission.
- The appeal is made by Mr and Mrs G and D Courtauld, Granville Developments against the decision of Braintree District Council.
- The application Ref: 18/00690/OUT, dated 3 April 2018, was refused by notice dated 29 August 2018.
- The development proposed is outline application for up to 7 No. dwellings (with all matters reserved).

Decision

1. The appeal is dismissed.

Procedural Matters

2. The spelling of the appellants' surname in the banner heading above is a correction to that shown on the application form.

3. The appeal proposal relates to an outline planning application for up to seven dwellings, with all matters reserved. Three illustrative layout plans - of which two were submitted with the application and one with the appeal - are presented as options to illustrate what could be accommodated on the site. The illustrative layouts have been taken into account insofar as they are relevant to my consideration of the principle of the development on the appeal site.

4. Although the emerging Braintree Local Plan (LP) is at an advanced stage, it is yet to be adopted and its policies may be subject to further change, which limits the weight to be attached to it. The saved policies of the Braintree District Local Plan Review (2005) (LPR) and the Braintree District Core Strategy (2011) (CS) therefore constitute the development plan for the purposes of the appeal. I will determine the appeal on this basis.

Main Issues

5. The main issues are:

    - The effect of the proposed development on the character and appearance of the area
    - Living conditions of future occupiers, with particular regard to privacy and access to a sewer easement

- Whether the proposed development's location is suitable and accessible, with particular reference to reliance on the private car, and
- The effect of the proposal on the Blackwater Estuary Special Protection Area (SPA) and Ramsar site.

Reasons

Character and appearance

6. The site is a field, bounded on its western and eastern boundaries by public rights of way. It is located off a dip in Brook Street, which descends in a westerly direction from the centre of the village. The topography of the site rises up in a broadly south-westerly direction from Brook Street.

7. There is a mixed pattern of development in the village, with modern development in depth around Oddcroft and Shellcroft adding variety to the more traditional linear development. Nevertheless, Brook Street and Station Road delineate a 'wishbone' shaped area of land which leads from the heart of the village towards the wider countryside. From what I saw during my site visit and the aerial view, there is an area of residential development within the wishbone which has a distinct boundary along the western edge of Oddcroft and Rainbow Way, up to Brook Street. Within this context, the appeal site is part of an area of fields to the west of this boundary, which contribute to the 'green frame' around the village. As such, the site contributes significantly to the rural character and identity of the setting of Colne Engaine.

8. The village envelope is under review, shown in the Publication Draft (2017) of the emerging LP as potentially to be expanded to include the northern part of the appeal site. Nevertheless, given that the LP is yet to be finalised and adopted, this is not certain, and the site is outside the village envelope as defined in the adopted LPR. Moreover, the depth and area of the appeal site substantially exceeds the boundary of the potential revised village envelope in the Publication Draft of the LP. Taking the above together, I consider the appeal site to be outside the village envelope.

9. The Council states that 'the site could lend itself to a sensitive linear frontage infill development without detriment to the local character and pattern'. Nevertheless, all three illustrative layout options indicate housing development extending further into the site onto its higher, southern part. Having regard to this, I consider that development of this 'top end' of the site is likely to be necessary to accommodate the upper end of the range of seven dwellings. This would result in residential development encroaching prominently on the higher part of the verdant and spacious field. This would lead to the proposal, in totality, having an incongruous, urbanising effect on the countryside setting of the village.

10. From what I saw during my site visit, it is likely that the above effect would be visible from the following viewpoints: travelling down Brook Street in a westerly direction from the village heart; looking up the access into the development from Brook Street at the front of the site; from the public right of way (PROW) along the eastern boundary of the site; from the eastern side of dwellings at Nos 39 and 41 Brook Street; and from the residential area around the junction of Oddcroft and Rainbow Way.

11. I acknowledge that the rolling landscape, vegetation and other developments in the area - which are noted in the Landscape and Visual Impact Appraisal provided by the appellant - would soften and screen some views of the proposed development. Furthermore, it is feasible that views of the proposed development from the countryside adjacent to the southern and south-western part of the site perimeter could be screened by a new landscape 'buffer', which would supplement existing vegetation alongside the western PROW.

12. However, judging by the illustrative layout options, landscape maintenance access to the buffer is likely to run through private garden space. As such, the prospect of the landscape buffer establishing and enduring, without being seen as an unwelcome liability and thus inviting pressure from future residents for its enclosure and reduction, would be undermined. Even if legal management arrangements secured the endurance of the southern landscape buffer, the latter is unlikely to significantly diminish the adverse impact of the proposal from the other viewpoints described above.

13. A future reserved matters application may provide a different layout and design than the illustrative drawings. Furthermore, as indicated by the illustrative house elevations, there is scope through materials selection and detailing for rustic vernacular house styling, to counterbalance the suburban character of some of the more modern housing in the village. However, such considerations do not outweigh the harmful effect of the factors identified above.

14. In conclusion, the proposal would harm the character and identity of the rural setting of the village. As such, it would conflict with Saved Policy RLP90 of the LPR, and Policies CS5 and CS9 of the CS, which together seek to ensure that development complements local character.

15. Saved Policy RLP3 of the LPR is not engaged in this case as it applies to development within town development boundaries and village envelopes. Together, Saved Policy RLP56 of the LPR and Policy CS7 of the CS cover parking provision and accessibility, and therefore are not engaged in respect of character and appearance.

Living conditions of future occupiers

16. The Council is concerned that the proposal could not be accommodated without overlooking between some new dwellings and some private amenity areas of other new properties. However, the illustrative layouts indicate that there is a reasonable prospect of accommodating separation gaps in the region of 10 to 15m between direct main elevations and rear and side garden boundaries. Furthermore, gaps typically in the region of 20 to 25m between habitable windows of different properties are illustrated. The above factors, together, lead me to find that the proposal would not be harmful in relation to privacy of future occupiers. The above absence of harm is a neutral matter which does not weigh in favour of the proposal.

17. As indicated on the illustrative layout plans, it is likely that a sewer easement would run through a significant proportion of private garden space on the eastern part of the site. The appellant suggests that future legal management arrangements and detailed design would be capable of addressing concerns about maintenance of the sewer easement. However, there is not substantive evidence before me that the likely relationship between easement and private garden space could be accommodated without placing an onerous management

responsibility on future occupiers, and jeopardising their enjoyment of garden space.

18. I therefore conclude that, in respect of the sewer easement, the proposal would harm future residents' enjoyment of their garden space. As such, it would conflict with Saved Policy RLP90 of the LPR, which seeks to ensure that development safeguards the living conditions of residents.

Whether suitable location

19. The village has a shop, church, primary school, village hall, pre-school and pub. Some use of the bus service stops in the village is possible. However, travel outside the village would be necessary for future occupiers to access services and facilities, including employment, leisure and healthcare. Furthermore, the limited frequency and operating hours of the bus service, combined with the lack of complete, lit pavement access from Brook Street to the centre of village and Earls Colne, is likely to constrain access to facilities by means other than the private car.

20. The above combination of factors leads me to find that the proposed development would lead to reliance on the private car by future occupiers of the proposed development. As such, it would conflict with Policy CS7 of the CS, which seeks to locate development where it will reduce the need to travel, in the interests of accessibility and environmental sustainability.

SPA and Ramsar site

21. The site falls within the zone of influence (ZOI) for the European designated Blackwater Estuary SPA and Ramsar site. The definition of strategic mitigation measures for residential development within the ZOI is yet to be finalised through an emerging Supplementary Planning Document, pursuant to the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). Whilst no mitigative obligation in respect of the Blackwater Estuary is presented, within the above context the Council has stated that it no longer wishes to defend the second reason for refusal of the appeal scheme, which covered the following: lack of formal undertaking to secure an appropriate financial contribution to the provision of mitigation, in respect of the RAMS.

22. Given the above, and as I am dismissing the appeal on other grounds, I have not undertaken an Appropriate Assessment of the proposal. Accordingly, it is not necessary for me to address this matter in further detail.

Other Matters

23. I note residents' concerns about highway safety and flood risk. As I am dismissing the appeal on other grounds, it is not necessary for me to consider these matters further.

Planning Balance and Conclusion

24. The evidence before me indicates the Council cannot demonstrate a five year supply of deliverable housing sites. The adequacy of supply is a matter of dispute between the main parties, centring on deliverability factors including sites' lead-in times, build-out rates and market demand. Having regard to the above, I consider that, for the purposes of making my decision, there is a supply shortfall of between around a third of a year and a year.

25. As such, policies which are most important for determining the application are to be considered out of date. The tilted balance, as set out within paragraph 11 of the National Planning Policy Framework (the Framework), would normally apply. The tilted balance would be disengaged if I were to find that there would be unmitigated harm to the SPA and Ramsar site. However, having not undertaken an Appropriate Assessment of the proposal for the purposes of making my decision, I have applied the tilted balance.

26. The proposal would make a modest contribution to local housing supply, in the form of up to seven dwellings. The above would bring associated socio-economic benefit during and after construction, including potential additional custom for local services and facilities in the village and Earls Colne, which would help to support their future provision. Nonetheless, I have identified significant harm in relation to the character and appearance of the area, living conditions of future occupants and suitability of location.

27. I appreciate that the Framework sets out a presumption in favour of sustainable development but even where the tilted balance is engaged, the benefits of additional housing do not necessarily outweigh all other concerns. Moreover, case law has found that even where policies can be considered out of date, this does not mean that they carry no weight. The balancing exercise remains a matter of planning judgement.

28. As such, given the totality of harm identified above, I conclude that the adverse impacts of the proposed development would significantly and demonstrably outweigh the relatively modest scale of benefit, when assessed against the policies in the Framework taken as a whole. The proposals would fail to comply with the relevant policies of the development plan and national guidance, and therefore the appeal should be dismissed.

William Cooper

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Kirsten Bowden	Landscape Architect
Lyndon Gill	Barton Willmore
Edward Gittins	Edward Gittins & Associates
Sophie Gittins	Granville Developments
Malcolm Inkster	Trinity Planning
Andrew Winter	Barton Willmore

FOR THE LOCAL PLANNING AUTHORITY:

Alex Evans	Braintree District Council
Mathew Wilde	Braintree District Council

INTERESTED PARTIES:

Mike Burrage	Local resident
Nicola Cameron	Local resident
Boris White	Strutt and Parker

DOCUMENTS SUBMITTED AT THE HEARING

1. Planning Appeal Decision Ref: APP/Z1510/W/19/3228506, Land west of Kelvedon Station.
2. Photographs of brook at No 25 Brook Street.
3. Notification of interested parties by Braintree District Council.
4. Essex County Council's Parking Standards, Design and Good Practice (2009).