



Appeal Decision

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2020

Appeal Ref: APP/Z1510/W/20/3246355

Gosfield Lawn Tennis Club, 6 Braintree Road, Gosfield, Essex CO9 1PR

- 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 Mr Doherty against the decision of Braintree District Council.
 - The application Ref 19/00998/OUT, dated 30 May 2019, was refused by notice dated 20 December 2019.
 - The development proposed is described as 'Erection of 5 no. dwellings with access and car park for Tennis Club'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of five dwellings, an access and a car park at Gosfield Lawn Tennis Club, 6 Braintree Road, Gosfield, Essex CO9 1PR, in accordance with the terms of the application, Ref. 19/00998/OUT, dated 30 May 2019, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. In response to travel restrictions currently in place due to the COVID-19 pandemic I have determined this appeal without a site visit. This is because I have been able to reach a decision based on the information already available, supplemented by additional evidence supplied by the appellant and Council after agreeing to the appeal proceeding on this basis.
3. The planning application was submitted in outline with all matters of detail reserved for future consideration save for 'access'. After reviewing the submissions, I have interpreted this as meaning the positioning and treatment of the access to the appeal site from the public highway rather than internal access and circulation routes¹. The drawings are not labelled as being illustrative or indicative but the appellant's statement confirms that the scheme should be considered in this way and that is what I have done.

Main Issues

4. The main issues in this appeal are:
 - Whether the appeal site is a suitable location for the proposed development with reference to the spatial strategy for housing in the development plan;
 - The effect on the character and appearance of the area;

¹ 'Access' is defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 as the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network.

- Whether the proposal would provide adequate living conditions for future occupants, with reference to the effects from flood lighting;
- The effect of the proposed development on highway safety, with particular reference to visibility.

Reasons

Spatial Strategy

5. The spatial strategy for housing in the development plan includes saved Policy RLP 2 of the Braintree District Local Plan Review 2005 (LP), which directs new development to sites within the defined boundaries of towns and villages. Outside these areas it states that countryside policies will apply. The boundaries are in place to protect the countryside around settlements, prevent the extension of ribbon development and protect non-renewable and natural resources. Policy CS5 of the Braintree District Council Core Strategy 2011 (CS) states that development in the countryside will be strictly controlled in order to protect the landscape character, biodiversity and amenity of the countryside.
6. The nearest settlement boundary to the appeal site is around Gosfield, which is a village located a short distance to the north. The appeal site is located on the edge of a reasonably large cluster of houses but is separated from the settlement boundary of Gosfield by fields, hedges, belts of trees and only sporadic residential development. It is therefore located within the countryside for the purposes of applying the policies of the development plan.
7. The appeal scheme would introduce new housing into the countryside in a way that would not adhere to the countryside policies of the development plan, including Policy RLP 16. It would therefore be contrary to the local settlement policies identified above. This would harmfully undermine the spatial strategy for the location of housing contained in the development plan.

The effect on the character and appearance of the area

8. The appeal site encompasses a parcel of land located between Gosfield Lawn Tennis Club and Braintree Road. It is generally undeveloped in appearance save for a small area used as an informal car park by the patrons of the tennis club. The appeal site is enclosed on two sides by hedges and this affords it a verdant appearance. That said, the appeal site nevertheless has a semi-rural context due to the combined presence of a pavement along the site frontage, the hard surfaced tennis courts, flood lighting, camp site and fencing to the rear and, significantly, a moderately sized cluster of ribbon housing development to the south, which continues into Peterfields Lane and New Road.
9. The erection of five dwellings at the appeal site would have an inherently urbanising impact that would intrinsically erode and thus harm the open and verdant character of the appeal site. Moreover, if required, the replacement of the existing frontage hedge (as annotated on the illustrative plan) would compound this impact because it is a pleasing landscape feature that mirrors the mature hedge across the road and is contiguous with the planting around 5 Braintree Road. The development would also expand the existing ribbon development further along Braintree Road. This would not result in coalescence with Gosfield due to the small size of the scheme, but it would nevertheless erode the sense of separation and openness between the cluster of houses to the south of the appeal site and Gosfield, which the appeal site

currently contributes to in a modest way. Consequently, the proposal would harm the character and appearance of the site and countryside.

10. However, the impact on the wider landscape would be muted due to the screening provided by the dense landscaping on the other side of the road as well as that to the north. This would ensure the visual envelope of the development was modest, with the appeal scheme mainly being visible from Braintree Road and the access road into the tennis club². The existing houses would be prominent in these limited views and therefore the appeal scheme would be seen as a visually contained and enclosed extension of the existing cluster of development. Moreover, the development would be in a semi-rural context due to it being surrounded by existing development on three sides with a frontage onto an A road. As such, it would not be a discordant or sporadic projection into open countryside. These factors would temper the harm to the countryside such that it would be no more than limited.
11. The existing hedge is not particularly mature and therefore a replacement would have a similar presence in the medium term. This would result in a negative short-term impact. However, the appellant has confirmed in their statement that it would only be necessary to remove some of the hedge to achieve the visibility splays. The combination of retaining some of the existing hedge and supplementing it with new planting would ensure a conflict with Policy RLP 80 of the LP, which seeks to protect landscape features, would not occur. There would also be potential to incorporate trees in the hedge to complement those across the road and for it to be more extensive in its depth. Therefore, there is scope for the development to facilitate an improvement and this can be considered at the reserved matters stage.
12. The submitted illustrative layout suggests a staggered composition to the dwellings with Plots 1 and 2 set back from the notional building line evident in the layout of the existing dwellings to the south. In addition, if the illustrative layout is pursued then the properties would have comparatively small front gardens and would be set behind a dominant access road, the turning head of which would breach the replacement hedge (as would the prominent bin store). Accordingly, the layout as shown would not be sympathetic to the grain of the existing cluster and would undermine the ability of the replacement hedge to soften the development as it matures. Furthermore, the relatively deep form of the dwellings sandwiched between wall to wall parking would give a suburban appearance that would look relatively cramped.
13. That said, the layout is a reserved matter, so the scheme need not be developed in the way indicated on the drawings. Space could be created to give a stronger linear character and larger front gardens if the access road was repositioned or different built forms used. The parking could also be reconfigured, and a different built footprint used, in order to create more space and therefore lessen any perception of the development being cramped. Even within the illustrative layout as presented there is ample space to provide additional landscaping in front and around the dwellings (and along the access drive to the tennis club car park) to soften the built form. As such, a final layout that includes the limitations I have identified, which would be at odds with Policy 90 of the LP and CS9 of the CS, need not be an inevitable

² Which interested parties have suggested is also a permissive footpath

consequence of permitting the appeal scheme. Thus, I am satisfied the appeal site is large enough to accommodate five dwellings in an acceptable manner.

14. The appeal scheme includes a replacement car park at the tennis club. This would be located behind the proposed dwellings and would be viewed with the backdrop of the courts. Consequently, it would not be prominent or out of place. It could also be surfaced in a material that would be appropriate in a rural context, such as the gravel drive serving 5 Braintree Road. Planting secured at the reserved matters stage could also be used around the car park and along the access road to further soften the impact and mitigate for the loss of two apple trees. As such, the car park would not harm the character and appearance of the area.
15. Nevertheless, my overall conclusion is that the appeal scheme would harm the character and appearance of the countryside, albeit to a limited extent in this instance for the reasons given. Accordingly, the proposal would be at odds with Policy RLP 2 of the LP and Policies CS5 and CS8 of the CS, which seek to direct development to sites within the settlement boundaries in order to prevent ribbon development and harm to the landscape of the countryside.

The adequacy of living conditions for future occupants

16. The Tennis Club has recently installed flood lights around the central courts³. As established earlier, the layout of the proposed development is not before me, but it is nevertheless highly likely that in order to achieve an acceptable composition the dwellings would need to be angled with their rear elevations facing the tennis club. Consequently, the flood lights would be directly behind the proposed dwellings and at a closer distance than existing properties.
17. The appeal is not supported by a specific lighting assessment that considers the potential impacts of the flood lighting on the future occupants of the proposed dwellings. This was considered necessary by the Council's Environmental Health Team. However, the design and specification of the flood lights has been submitted. It is unclear why the Council considers this to be inadequate when it was submitted as part of the original application for the flood lights and used as evidence to confirm no harm to the living conditions of neighbouring properties from glare and light spillage.
18. The specification demonstrates that the flood lights have been designed carefully to include baffles and low energy lights. They would also be angled to ensure the light generated is focussed on the tennis courts. As a result, the glare beyond the site should be minimal and would not harm the living conditions of the future occupants of the appeal scheme. This finding is supported by the submitted luminance contour plan, which indicates that the glare would only just enter the appeal site at ground level and therefore light spill into the gardens could be prevented with boundary treatment. Moreover, the operating hours of the flood lights are controlled through a planning condition imposed on application 18/00027/FUL. Therefore, they would not be on during the night-time and therefore interfere with sleep.
19. In conclusion, I am satisfied that the existing flood lighting would not harm the living conditions of future occupants and therefore a conflict with Policy RLP90 of the LP and CS9 of the CS would not occur.

³ Planning approval 18/00027/FUL

The effect on highway safety

20. The proposal would intensify the use of the existing access and therefore it is a point of common ground between the appellant and the Council that adequate visibility splays of 2.4m by 120m to the south and 2.4m x 97.5m to the north should be provided and maintained, especially as the stretch of Braintree Road in the vicinity of the appeal site is subject to a 40 mile per hour speed limit and cars approaching from the north have to negotiate a bend in the road.
21. Drawing GTC/02 identifies the necessary visibility splays. When these are crossed referenced with the plan in Appendix 1 of the appellant's statement it is apparent that the visibility splays would be contained within land in the appellant's control or the public highway. The Council has not disputed the accuracy of the appellant's evidence or provided anything of substance to contradict it. Therefore, I am satisfied the site access can be constructed with adequate visibility in both directions and therefore it would be both safe and suitable. Accordingly, a conflict with Policy RLP 90 of the LP, or DM1 of the Highway Authority's Development Management Policies 2011, would not occur.

Other Matters

22. The Council has referred to the appeal site as including an allotment area and an interested party as suggested that local residents have grown fruit and vegetables on the land. However, there is nothing of substance before me that demonstrates the dwellings would occupy a formal allotment or other type of public open space that offers opportunities for sport and recreation.
23. After considering the information available I share the view of the Council's Ecology Officer that the proposal would be unlikely to harm protected species subject to the imposition of the planning conditions they have recommended. The concerns relating to land ownership expressed by interested parties are civil matters outside the scope of this appeal. The appellant has signed Certificate A in the application form to confirm ownership of the land required to undertake the development.
24. I have not been directed to any other sites around Gosfield where development is likely to take place and the circumstances at the appeal site are replicated. Therefore, a harmful precedent would not be set by my decision. The position of windows and the height of the proposed dwellings could be designed in a way that would safeguard the privacy of the residents of 7 Braintree Road. Moving the existing car park to the rear of the site would not result in a harmful level of noise and disturbance as there is already activity at the site and landscaping could be used to provide a buffer between the access/car park and the garden of No 7. This could be secured at the reserved matters stage.
25. The evidence before me does not demonstrate the Council's emerging Section 2 Draft Local Plan is at an advanced stage of preparation and consequently there is potential for further amendments following consultation and examination. As such, the emerging policies referred to by the Council in its reason for refusal carry limited weight and have not been determinative in my assessment of the proposal.

Planning Balance

26. The proposal would not prejudice highway safety and the living conditions of future occupants would not be inherently harmed by the glare from the nearby

flood lights. However, the proposal would be at odds with the Council's adopted spatial strategy in Policies RLP2 of the LP and CS5 of the CS and it would result in some limited harm to the countryside contrary to Policy CS8 of the CS. Thus, it would be at odds with the development plan as a whole. A development should be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (the 'Framework') is a material consideration of significance.

27. The Council are currently unable to demonstrate a five-year housing land supply at odds with Paragraph 73 of the Framework. The supply is presently around 4.51 years. The Council are therefore failing to significantly boost the supply of housing. In such circumstances, Paragraph 11 of the Framework states that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole.
28. As an adverse impact, the proposal would undermine the spatial strategy in the development plan but a rigorous application of Policies RLP 2 and CS5 would frustrate attempts to remedy the housing shortfall. That said, the identification of settlement boundaries can be a useful tool in addressing some of the aims in the Framework, such as recognising the intrinsic character and beauty of the countryside whilst allowing some housing to support the vitality of local services. As such, Policy RLP 2 of the LP and Policy C5 of the CS are not entirely inconsistent with the Framework and therefore the conflict with them carries moderate weight. Similarly, the negative impact to the countryside would be at odds with Framework's aims of ensuring developments are sympathetic to local character. Nevertheless, the harm I have identified would be limited for the reason already given.
29. Conversely, the proposal would deliver several benefits. It would contribute to housing supply and choice at a point in time when there is a shortfall. Due to the scale of the proposal it is likely the housing could be delivered quickly but the appellant has not disputed the Council's proposition that the shortfall is modest. In the circumstances, the provision of housing is a moderate benefit.
30. In addition, the housing would not be isolated being surrounded by existing development. It would also be connected to Gosfield by a pavement, which is a reasonably well served settlement a short distance to the north. There is also a bus stop outside the site. Accordingly, the proposal would be quite well placed to assist the vitality of a rural community. However, there is little evidence before me to suggest five additional households would have a notable economic or social effect. The proposal would provide some support to the construction industry, but this would be limited in scale and short lived. Thus, the weight I attach the potential socio-economic benefits is limited.
31. The appellant has stated that the entire uplift in the value of the land would be reinvested into the tennis club to upgrade facilities and provide a trust fund. This has the potential to be a significant local benefit that would secure the financial sustainability of the club into the future. However, little evidence has been submitted regarding the club's current financial position and its revenue streams. It's therefore difficult to gauge to what extent the sale of the land is necessary. Moreover, there is nothing to suggest the club is in decline due to the quality of its current facilities. That said, the windfall derived from the sale

of the land would still considerably benefit the club, which is a not for profit community sports facility. I therefore attach this benefit moderate weight.

32. When taken cumulatively, the moderate adverse impacts of the appeal scheme would not significantly and demonstrably outweigh its moderate benefits. This is a material consideration that indicates the appeal should be determined otherwise than in accordance with the development plan.

Conditions

33. I have had regard to the advice in the Planning Practice Guide and it is necessary in the interests of safeguarding the character and appearance of the area and the living conditions of neighbours to secure the approval of the reserved matters. To protect yet unknown archaeology a condition is necessary requiring a scheme of investigation. In the interests of highway safety, it is necessary to secure a detailed access design and the provision of visibility splays. In the interests of safeguarding and enhancing biodiversity it is necessary to impose those conditions recommended by the Council's Ecologist.

Conclusion

34. In conclusion, the proposed development would not adhere to the development plan but material considerations, namely the Framework, indicate that the appeal should be determined otherwise than in accordance with the development plan. Accordingly, the appeal should succeed.

Graham Chamberlain
INSPECTOR

Schedule of Planning Conditions

1. Approval of the details of access (in so far as it relates to internal circulation), scale, layout, appearance and landscaping (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before the development is commenced.
2. Application for the approval of the reserved matters must be made not later than the expiration of three years beginning with the date of this permission.
3. The development to which this permission relates shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
4. No development or preliminary groundworks of any kind shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the planning authority. For the avoidance of doubt, the development shall be implemented in accordance with the approved scheme.
5. The development hereby approved shall not be commenced until the proposed vehicular site access to Braintree Road has been constructed in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The vehicular access shall be provided with visibility splays of 2.4m x 120m to the south and 2.4 x 97.5m to the north. Thereafter the visibility splays shall be kept permanently clear of any obstruction above 0.6 metres above ground level.
6. A Biodiversity Enhancement Strategy for Protected and Priority species shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following: a) Purpose and conservation objectives for the proposed enhancement measures; b) detailed designs to achieve stated objectives; c) locations of proposed enhancement measures by appropriate maps and plans; d) persons responsible for implementing the enhancement measures; e) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details prior to the first occupation of the dwellings and shall be retained in that manner thereafter.

7. A lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior written consent from the local planning authority.