
Appeal Decision

Site visit made on 10 June 2020

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 July 2020

Appeal Ref: APP/Z1510/W/20/3247371

Land at Hedingham Road, Gosfield CO9 1PN

- 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 Marfleet Developments Ltd against the decision of Braintree District Council.
 - The application Ref 19/01804/OUT, dated 27 September 2019, was refused by notice dated 19 February 2020.
 - The development proposed is described as 'outline planning permission for a new residential development comprising of up to 23 dwellings alongside associated works with all matters reserved apart from access.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Planning permission for the proposed development was refused for, amongst other things, the lack of a planning obligation to provide for affordable housing, open space and early years education, which included childcare and primary school space provision. The appellant has since provided a completed planning obligation. The obligation seeks to provide for the contributions required. Those being on site affordable housing and commuted sums for the open space and education provision. Given the Council are signatories to the obligation it is clear they are satisfied with what it would provide. I therefore consider the relevant reason for refusal to have been addressed and there is no reason for me to have to investigate it further. I have taken the completed obligation into account in my findings.

Main Issues

3. There are therefore three main issues:
 - Whether the appeal site would be a suitable location for new housing with specific regard to sustainable patterns of new development;
 - The effect of the proposed development on the character and appearance of the area; and
 - The effect of the proposed development on the living conditions of future occupiers.

Reasons

Suitable Location

4. The appeal site is outside of a settlement and thus in the countryside. Located to the western side of Hedingham Road, it is to the north of Gosfield, beyond its boundary as it is defined by the development plan. Gosfield is identified as an 'other village' by the development plan's settlement hierarchy and thus not envisaged as a priority area for the delivery of new development. Having said that, it benefits from a range of services such as a shop, preschool and primary education provision, more than one public house and a restaurant, numerous recreational and community facilities and a place of worship. The village also benefits from a number of regular bus services that link it with larger urban areas such as Halstead, Witham and Braintree.
5. For the above reasons, one could legitimately consider Gosfield to be one of the more locationally sustainable of the 'other villages' given the level of service provision it has. Indeed, such a conclusion has been reached by my colleagues in considering other local housing schemes. However, the appeal site is located outside of its defined boundary by more than a marginal degree. It does not abut the boundary and is well separated from its northern extremity, linked to it by a single carriageway, unlit road without segregated footways. The centre of the village, where most of the services are located, is roughly 1km to the south, along Hedingham Road. There is a footway running alongside Hedingham Road which currently runs out roughly 100m to the south of the appeal site. The evidence suggests the appellant has been in discussions with the County Council (as the Highways Authority, HA) to extend the footway to the appeal site and thus complete a continuous pedestrian route between it and the village centre.
6. As I have said, the services the village has would be capable of supporting some limited growth, but I remain to be convinced that such growth should be so divorced from the settlement spatially. Yes, an extended footway could give occupiers of the appeal site an alternative to the use of the private car in accessing local services. A journey along it for this purpose would stack up against what is considered as a reasonable walking distance. That said, the route in its entirety would still be on the long side and for some of its part beside a main and unlit road. This would limit its usability and potentially not encourage its use by those less abled or parents with very young children. The lack of lighting would also inhibit its use at darker times of the day or year. These factors, as well as the rurality of the road, would also make a journey to and from the appeal site of limited appeal for cyclists, despite the distance being eminently reasonable.
7. There is an extensive public rights of way network locally that would also link the appeal site with the village's services but since routes are off road they don't strike me as capable of being relied upon for day to day usage as a genuine alternative to private car transport. There are bus stops that offer links to larger settlements through regular services as I have said, but these are also located closer to the village centre and thus remain some distance from the appeal site where all round ease of access still gives me cause for concern.
8. The appellant states that discussions have been had with the HA to agree the provision of an extended footway. It is shown on the proposed site layout

plans, but I have not seen a detailed design therefore. The land on which the new footway would be provided is part of the highway. I have not been made aware of a completed agreement between the appellant and the HA which would be required for works within the highway¹. The provision of the footway is not included as part of the appellant's planning obligation. I have given some thought to requiring the provision of the footway and thus for the appellant to enter into an agreement with the HA through the use of planning conditions. Any condition would likely have to be worded so as to restrict works on site past a prescribed point until details of the offsite highway works have been submitted, approved and then completed. The discharge of such conditions would likely have to rely on an agreement under the Highways Act to be completed. My concerns about the footway's status as a sufficiently genuine alternative to the use of the car aside, I am taken to Planning Practice Guidance (PPG).

9. PPG explains that a positively worded condition which requires an applicant to enter into a planning obligation under section 106 of the Town and Country Planning Act 1990 or an agreement under other powers (emphasis added), is unlikely to pass the test of enforceability. A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency. However, in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk.
10. In the case of the appeal scheme, I remain to be convinced that the situation constitutes exceptional circumstances. Nor is there substantive evidence to suggest the delivery of the development would otherwise be at serious risk if I were to not impose such a condition, taking into account my conclusion on the appeal scheme and the fact that there seems to be a workable design available and acceptable to the HA.
11. Paragraph 103 of the Framework² states, amongst other things, that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Arguably, the lack of options available to the appeal site in terms of access to means of transport other than the private car is reflective of its rural location. However, the Framework's statement in this regard is a tacit recognition of the challenges rural areas face and should not to my mind be used as a justification for the siting of development in unsustainable locations.
12. Taking all of the above factors into account, the appeal site would not be a suitable location for new housing. It would serve to promote unsustainable patterns of new development for the reasons I have given. Having regard to the substantial scale of the proposed development, journeys to and from it would be very frequent and high in number, these would likely be through the

¹ Section 278 of the Highways Act 1980

² The National Planning Policy Framework 2019

use of the private car for the reasons I have explained. This is the least sustainable travel option. The proposed development would conflict with Policies CS5 and CS7 of the Core Strategy³ and saved Policies RLP2 and RLP53 of the Local Plan⁴. Amongst other things and along with the Framework, these policies seek to ensure that development outside boundaries will be strictly controlled to uses appropriate, future development is provided in accessible locations to reduce the need to travel, development is confined to within boundaries to prevent sporadic development and major developments are easily linked to public transport.

Character and Appearance

13. The appeal site is a relatively flat rectangular parcel of land currently enclosed in part by temporary construction style fencing and gated from its entrance off Hedingham Road. There are some trees to the boundaries. It is laid to hard standing for some part, the wider site having been previously used as an airfield storage depot. The site is generally open and undeveloped save for remnants of the historic use. The wider area is rural in character, clearly and noticeably outside of a settlement with a distinctly verdant feel with areas of dense tree planting to the north, south and west. The appeal site is situated some distance beyond where the built form of the village's edge has 'petered out' to open spaces. Open fields form the main land use opposite the site.
14. Owing to how detached it would be from the settlement, the appeal scheme would appear as something of an oasis of distinctly urban built form in an otherwise rural area. Despite more precise details such as layout and appearance being reserved for future consideration, the proposed development would still constitute a large collection of buildings as a self contained estate in a fairly tight cluster given the areas of the site envisaged for built form. Such features and arrangement thereof would arguably be more befitting of a built up area. In being surrounded on all four sides by mainly open space and being significantly detached from the nearest village they would jar against the prevailing rural character of the area. The impact of buildings, their potential upper number and urban estate like form would be exacerbated by the addition of features such as a formalised footway on the edge of Hedingham Road, defined curtilages and what would likely have to be an access road of some substance. The scheme would not be a logical extension of the village or be able to be read against one and whilst there are other dwellings in reasonably close proximity to the appeal site the area is far from urban in character.
15. The trees to the north and south of the appeal site as well as any additional planting that could be secured through a landscaping scheme would assist in screening the proposed development. Whilst this and the use of good quality materials might reduce any obvious visual impact, it would not alter how the proposed development would affect the character of the area. In any case, I do not subscribe to the notion that development of an unacceptable type or form should be deemed acceptable for an area if it cannot be readily seen.
16. For these reasons, the proposed development would harm the character and appearance of the area, such that it would fail to comply with Policies CS8 and CS9 of the Core Strategy and saved Policies RLP9, RLP10, RLP80 and RLP90 of the Local Plan. Amongst other things and along with the Framework these

³ Braintree District Council Local Development Framework Core Strategy 2011

⁴ Braintree District Local Plan Review 2005

policies seek to ensure that new development is of a high quality, standard and contextually appropriate design and appearance, has regard to and does not harm the character of the landscape or its features, creates a visually satisfactory environment, is in character with the site and relates to its surroundings and massing to the characteristics of the site.

Living Conditions

17. There is limited evidence pertaining to this issue in the Council's material. Equally, the appellant does not directly address the matter in their statement of case, despite the decision notice explaining that the proposed development would fail to secure a high standard of design "*or good level of amenity for future occupiers*".
18. The dwellings on the appeal site would be sufficiently serviced in terms of their internal space and layout. They would also be well spaced out with generous gardens. They would be orientated to ensure that occupiers would enjoy an acceptable level of privacy. I cannot therefore agree that the proposed development would give rise to harm in regard to this issue and consequently the scheme would comply with the Framework, specifically paragraph 127 which states, amongst other things, that developments should create places that are safe, inclusive and accessible with a high standard of amenity for existing and future users.

The Planning Balance

19. It is common ground that the Council are unable to demonstrate the supply of housing sites as required by the Framework. As such, I am required to consider the appeal scheme in the context of the so called tilted balance as it is explained by paragraph 11 of the Framework. For this particular case that is to say that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Accordingly, and in a paragraph 11 situation, I would be considering the most important policies for determining the proposals out of date.
20. As I have explained above, the proposed development would give rise to harm of an environmental type not only in regard to its principle but also in respect of the character and appearance of the area. The out of date nature of some of the policies I have cited above as a result of not only the housing supply position but also what their requirements were based on may lead me to reduce weight I ascribe to them. The planning harms the appeal scheme would cause however would not be so affected. In considering the scheme in the context of the Framework's presumption in favour of sustainable development as paragraph 11 sets out, I am also mindful of how the new housing, of some substance in itself, would lack social integration with the village owing to where it would be. Residents would feel detached and not part of the village. They would exist as a separate and unrelated entity. An enclave of housing as the Council describe it. This adverse social impact would add to the harms I have found on the two main issues. I attach substantial weight to these harms which would be significant and wide reaching.
21. The appeal scheme would provide for new housing which would add to choice and mix locally as well as contributing to the Council's undersupply. It would also secure affordable housing for which there is some need. Economically

there would be employment sustained in the construction industry and expenditure to the local economy from future residents and taxation. The appeal site would also secure the redevelopment of previously developed land. Positive and worthy of weight these benefits may be, some would be inherently limited by the scale of the proposed development and time limited. Also, I am not advised of whether any local services are either underutilised or whether their long term viability is under threat such that additional support is necessarily needed.

22. I note the appellant's reference to open space and education provision, landscape and ecological enhancement but these are less tangible benefits and more measures to off set the impacts of the appeal scheme. In addition, matters such as the use of appropriate materials, a drainage scheme, the land not being at risk of flooding and the capability of the local highway network to absorb the traffic associated with the proposals would be a lack of harm in each case and would not be benefits. They would accordingly be neutral in any balance.
23. Bringing matters together, with the scope and extent of the benefits that the appeal scheme would provide in mind, and placing them alongside the harms I have found, even in the event that the policies which are most important for determining the application were out-of-date under the terms of the Framework, I conclude in this particular case that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Other Matters

24. As I have mentioned above as part of the planning balance, the appeal site is previously developed land that had a historic use. It is currently something of a vacant site that garners a semi industrial appearance which also appears out of place with its rural surroundings. There is therefore an argument to suggest that a designed residential development would be something of a visual improvement. Be this as it may, such an argument would only go so far. Specifically, not far enough to justify a development that would also in itself be harmful to the character and appearance of the area as well as one that would give rise to harm in principle terms.
25. A planning permission for the erection of 35 dwellings has been granted on land to the west of Hedingham Road, Council reference 17/01066/OUT. This is a greenfield site but nonetheless one that directly abuts the edge of the existing village and as such its situation is not directly comparable to the appeal site. There is also a proposal for a residential development to the opposite side of Hedingham Road to the appeal site⁵ currently at appeal itself. On the basis of what I have seen however it is yet to be determined. In any case, it too would abut the back edge the existing settlement and as such does not share sufficient characteristics with the appeal site for me to change my conclusions thereon.
26. As well as setting out how sustainable transport should be promoted, section 9 of the Framework, and paragraph 103 in particular, explain that significant development should be focused on locations which are or can be made

⁵ Land at Shardlowes Farm, Hedingham Road, reference 18/00279/OUT

sustainable. I refer in part to my earlier comments on paragraph 103 but would add that it is not the intention of the Framework, given its general stance on promoting sustainable patterns of new development, to conversely mean that lesser development can be in unsustainable locations.

Conclusion

27. I have had regard to the matters that have been raised by third parties and I note that I have not found harm in respect of living conditions. I have however found harm would arise from the principle of the proposed development, with specific regard to its location and how it would detrimentally affect the character and appearance of the area. I have weighed these adverse social and environmental impacts as per the requirements of the Framework and for the reasons I have given the appeal scheme would not be sustainable development for which the presumption in favour applies. The appeal is therefore dismissed.

John Morrison

INSPECTOR