



Appeal Decision

Site visit made on 30 June 2020

by P Mileham BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2020

Appeal Ref: APP/Z1510/W/3243946

Land to the east of Gosfield Road, Gosfield, Braintree

- 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 Ms Samantha Garvey against the decision of Braintree District Council.
 - The application Ref 19/01931/OUT, dated 23 October 2019, was refused by notice dated 19 December 2019.
 - The development proposed is described as an outline planning application with all matters reserved for the erection of 2no. dwellings.
-

Decision

1. The appeal is allowed and planning permission is granted for an outline planning application with all matters reserved for the erection of 2no. dwellings at Land to the east of Gosfield Road, Gosfield, Braintree in accordance with the terms of the application, Ref 19/01931/OUT, dated 23 October 2019, subject to the conditions set out at Annex 1.

Procedural Matters

2. The proposal is made in outline with all matters reserved for future consideration, and I have considered the appeal on this basis.
3. My attention has been drawn to policies from the emerging Braintree District Publication Draft Local Plan (2017) ('the PDBLP') which is currently undergoing an Examination in Public. The National Planning Policy Framework ('the Framework') sets out at paragraph 48 that local planning authorities can attribute weight to emerging plans depending on their stage of preparation. Whilst the examination is at an advanced stage, the plan is not yet adopted and policies may still be subject to some change. I have not been provided with evidence on the status of any unresolved objections to these policies, and as such, I can only attach limited weight to them at this time.

Main Issues

4. The main issues are:
 - Whether the site is in a suitable location for residential development;
 - The effect of the proposed development on the character and appearance of the area.

Reasons

Planning Policy

5. The Council has referenced Policies CS5 and CS7 of the adopted Braintree Local Development Framework Core Strategy (2011) ('the BCS') and Policy RLP2 of the Braintree District Local Plan Review (2005) ('the BDLPR') in its decision. Policy CS5 of the BCS seeks to strictly control development outside settlement boundaries to uses appropriate to the countryside to protect landscape character, biodiversity and the countryside. Policy CS7 seeks to provide future development in accessible locations that reduce the need to travel. Policy RLP2 of the BDLPR seeks to confine new development to within town development boundaries and village envelopes unless it is for affordable housing.
6. The Council has also referred to Policies LPP1 and LPP37 of the PDBLP which is currently being examined. Policy LPP1 seeks to strictly control development outside development boundaries to uses appropriate to the countryside. Policy LPP37 seeks, amongst other things, to ensure residential development relates to the character of the site and its immediate surroundings and the wider locality. As set out above in the procedural matters, these policies can only be attached limited weight at this time due to the current stage of the draft Local Plan.
7. The Council has indicated that it cannot demonstrate a 5 year land supply as required by paragraph 73 of the Framework. As such, paragraph 11d of the Framework indicates where the most important policies are out of date, permission should be granted unless the application of policies in the Framework protect areas or assets of particular importance provide a clear reason for refusing the development or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.

Suitable location

8. The appeal site is an area of grassed paddock located on the A1017 Braintree Road adjacent to White Ash House and opposite Eves Cottage. The site is separated from the White Ash House by an approximately 2 metre high close boarded fence. The site is screened from the road by mature trees and hedging and there are further mature trees and woodland beyond the site boundary to the rear. Longer views are available from the site to the south across the adjacent farmland.
9. The site is located a significant distance from the village of Gosfield albeit it is closer to the village of High Garrett (approximately 400 metres according to the Council's evidence). The proposed development would be located outside of the settlement boundary where Policy CS5 of the BCS seeks to strictly control development to uses appropriate to the countryside. As the proposed development is for private residential development, it would be contrary to the Development Plan in this regard.
10. Policy CS7 of the BCS seeks to provide future development in accessible locations that reduce the need to travel. No evidence has been provided to suggest High Garrett contains local services and facilities, and as such, Braintree is the likely to be the nearest settlement with a range of facilities to meet day-to-day needs. To the south of the appeal site, the road has a bus

stop and footpath through to High Garrett and a further bus stop can be found near to the site close to 'Woodside'. Evidence from the Council's Officer report indicates that there are frequent and regular public transport services in the area that would enable access to higher order settlements with a greater range of services and facilities. As a result, there would be opportunities for future occupiers to utilise public transport and non-vehicular transport into the village and beyond.

11. As set out above, there is a footpath to the south of the site into the village of High Garrett. At the time of my visit, the road had an intermittent stream of traffic passing by and the national speed limit of 60 miles per hour applies at this point. This means that vehicular traffic would be likely to pass the site at speed. However, as there is no streetlighting, I consider that due to the nature of the road and its speed limit of 60 miles per hour, future occupiers of the proposed dwellings would be detracted from undertaking many journeys to access services and facilities in other service centres by non-vehicular modes of transport. Therefore, whilst the use of public transport would be possible, due to the lack of street lighting and the road speed the majority of journeys would likely be made by private vehicles. Paragraph 103 of the Framework considers opportunities to maximise sustainable transport solutions will vary between urban and rural areas. The proposed development would be divorced from services and facilities and despite the public transport opportunities the proposal would result in the use of private vehicles. However, I consider the level of harm arising from the vehicle movements generated from two dwellings to access services and facilities would not be significant.
12. The site would be located outside of the village envelope but be adjacent to an existing dwelling and there is a another dwelling directly opposite the site. Paragraph 79 of the Framework seeks to avoid the development of isolated new homes in the countryside. Given the adjacent properties, the proposed development would not result in the creation of isolated dwellings as set out in the Framework.
13. My attention has been drawn to a number of recent appeal decisions that have been dismissed. In the appeal at Choat's Farm, Panfield Lane near Braintree, the distance of the site to services and facilities was greater than the appeal site and the Inspector also found harm to the character and appearance of the area. The decision at Land South of Pen Lan, Bures Hamlet differs as that site was significantly further from a footpath into the nearby village and the availability of public transport services were not as frequent as would be the case as in this instance. The decision at Cobbs Fenn, Sible Hedingham was considered not to be accessible to higher order settlements for services and facilities which I consider is not the case in this appeal.
14. In light of the above, I conclude that the proposed development would not be in a suitable location for new housing having regard to access to services and facilities. The proposal would be contrary to policies CS5 and CS7 of the BCS and Policy RLP2 of the BDLPR which seeks to restrict development outside settlement boundaries, provide development in accessible locations and confine new development to within town development Boundaries and village envelopes unless it is for affordable housing.

Character and appearance

15. The site is a flat area of grassed paddock with mature trees and hedges adjoining the road. There are some wider views to the south as the site currently forms part of a larger area of paddock outside the site boundary. Although the site could be seen from dwellings to the south, it is well screened from the road. Whilst only glimpsed views would be available by passing traffic, the proposed dwellings would nonetheless be visible by adjoining properties. The site would extend built development in the countryside which Policy CS5 of the BCS seeks to resist development outside village envelopes to uses appropriate to the countryside to protect landscape character, biodiversity and the countryside.
16. The presence of the adjacent property and the dwelling directly opposite the site along with nearby dwelling 'Woodside' serve as a small cluster of development to which the proposed development would extend into the countryside. However, the proposed dwellings would not be isolated and would relate to the existing development. Further screening of the proposed development to the south and rear would minimise the extent of any harm to the landscape, and this would be able to be considered through subsequent reserved matters. Furthermore, a condition could be imposed to retain existing trees and landscaping so that the frontage remained verdant. As such, this would be capable of addressing any residual concerns in respect of the effect on the character and appearance of the area.
17. In light of the above, the proposed development would not harm the character and appearance of the area. As such, it would accord with Policy CS5 of the BCS which seeks to control development outside boundaries in order to protect and enhance landscape character. It would also accord with Policy LPP37 of the PDBLP which seeks to ensure that development relates to the character of the site and its immediate surroundings.
18. The proposal would also comply with paragraph 127 of the Framework which seeks to ensure development are sympathetic to the surrounding built environment and landscape setting.

Other matters

19. The appellant has indicated that the proposed development would provide a benefit to the current land supply shortfall through the provision of two dwellings. Although the contribution to land supply is only for two dwellings, due to the acknowledged shortfall this would provide a benefit of the scheme.
20. The proposed development would have some economic benefit through construction of the proposed dwellings albeit this would be temporary, and as such, is afforded limited weight.

Planning Balance

21. In light of the above, although the proposed development would comply with the Development Plan in respect of its effect on the character and appearance of the area, it would not accord with the policies in respect of the location of new housing, and as such, it would not comply with Development Plan as a whole.

22. However, for the reasons above, there are a number of relevant Development Plan policies that are most important to the determination of this appeal that are out of date due to the Council's lack of 5 year land supply. This means that the tilted balance set out in Framework paragraph 11d) is engaged.
23. The appeal scheme would not result in harm to any protected areas or assets of particular importance which provide a clear reason for refusing the development proposed as set out in footnote 6 of the Framework.
24. Whilst the proposed development would have an adverse effect in respect of accessing services and facilities by the use of private vehicular transport, the extent of the effect from the use of private vehicles arising from two dwellings would be limited. Furthermore, although the proposed development would have some impact on the character and appearance of the area, this could be mitigated through the imposition of conditions. Therefore, I consider the adverse impacts of the proposed development would not significantly and demonstrably outweigh the benefits when assessed against the Framework when taken as a whole.

Conditions

25. The Council has identified conditions which the appellant has had the opportunity to comment on. I have considered these against the advice in the Framework and the Planning Practice Guidance and have only imposed them where I consider them to meet the tests, amending them where necessary for the sake of clarity, precision and enforceability.
26. I have imposed the standard condition requiring the submission and approval of reserved matters, a condition requiring commencement of the development within the prescribed period following approval of the final reserved matters and a condition requiring the development be carried out in accordance with the approved plans.
27. The Council has suggested conditions which relate to the submission of samples of the proposed materials. Such details would relate to future reserved matters in relation to design, and as such, has not been imposed.
28. In the interests of the appearance of the site and the living conditions of adjoining occupiers, a condition is required for the details of any gates, walls and fences.
29. In the interests of highway safety, conditions are required to ensure appropriate visibility splays are provided and that no unbound material shall be used in the finish of the driveways which I have amended to ensure this is retained thereafter. For the same reason condition is required for mud and dust control and management. This is required to be a pre-commencement condition in order to ensure any effects of site clearance can be mitigated.
30. In the interests of tree protection, conditions are required to ensure the protection of all of the existing trees, shrubs and hedges to be retained on the site, for details and adherence to an arboricultural method statement and tree protection plan and the preparation and submission of a biodiversity enhancement strategy. These are required to be pre-commencement conditions in order to ensure that the details of the trees to be retained are identified, and that the existing trees and shrubs are therefore not harmed by construction activity.

31. In the interests of biodiversity, a condition requiring the submission of a biodiversity enhancement strategy is required along with a condition to provide details of external lighting in order to avoid harm to protected and priority species.
32. In order to avoid harm to the living conditions of adjoining occupiers, conditions are required to manage any piling noise and vibration, dust and the hours of construction.
33. In the interests of archaeology, a pre-commencement condition is required for an archaeological assessment. This is required to be prior to commencement in order to avoid any harm to potential assets of archaeological importance arises from any initial site construction works.
34. In the interests of the living conditions of future occupiers, a condition is required which considers how the design and layout take account of the lighting of the nearby tennis club.

Conclusion

35. Although the proposal would be contrary to the relevant policies in the Development Plan, due to Council's lack of a 5 year land supply, they are considered to be out of date. As such, whilst I have identified conflict with the Development Plan, the adverse effect of proposed development would not significantly and demonstrably outweigh the benefits of granting planning permission when assessed against the policies in the Framework taken as a whole.
36. For the reasons given above I conclude that the appeal should be allowed.

P Mileham

INSPECTOR

Annex 1 - Schedule of 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 development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan

- 5) Development shall not be commenced until details of the means of protecting all of the existing trees, shrubs and hedges to be retained on the site from damage during the carrying out of the development have been submitted to the local planning authority for approval. The approved means of protection shall be installed prior to the commencement of any building, engineering works or other activities on the site and shall remain in place until after the completion of the development to the complete satisfaction of the local planning authority.

No materials, goods or articles of any description shall be stacked, stored or placed at any time within the limits of the spread of any of the existing trees, shrubs or hedges.

No works involving alterations in ground levels, or the digging of trenches, or excavations of any kind, (including the laying or installation of drains, pipes, cables or other services) shall be carried out within the extent of the spread of any existing trees, shrubs and hedges unless the express consent in writing of the local planning authority has previously been obtained. No machinery of any kind shall be used or operated within the extent of the spread of any existing trees, shrubs and hedges unless the express consent in writing of the local planning authority has previously been obtained.

- 6) Development shall not be commenced until an Arboricultural Method Statement (AMS) has been submitted and approved in writing by the Local Planning Authority. The AMS will include a Detailed Tree Protection Plan (DTPP) indicating retained trees, trees to be removed, the precise location and design of protective barriers and ground protection, service routing and specifications, areas designated for structural landscaping to be protected and suitable space for access, site storage and other construction related facilities. The AMS and DTPP shall include details of the appointment of a suitably qualified Project Arboricultural Consultant who will be responsible for monitoring the implementation of the approved DTPP, along with details of how they propose to monitor the site (frequency of visits; key works which will need to be monitored, etc.) and how they will record their monitoring and supervision of the site.

The development shall be carried out in accordance with the approved details. Following each site inspection during the construction period the Project

Arboricultural Consultant shall submit a short report to the local planning authority.

The approved means of protection shall be installed prior to the commencement of any building, engineering works or other activities on the site and shall remain in place until after the completion of the development to the complete satisfaction of the local planning authority.

The Local Planning Authority shall be notified in writing at least 5 working days prior to the commencement of development on site.

- 7) No above ground construction shall take place until "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 and shall be retained in that manner thereafter.

- 8) Prior to the first occupation of the development, 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 consent from the local planning authority.

- 9) Prior to first occupation of the development hereby approved details of all gates / fences / walls or other means of enclosure shall be submitted to and approved in writing by the local planning authority. The details shall include position, design, height and materials of the enclosures. The enclosures as approved shall be provided prior to the occupation of the development hereby approved and shall be permanently maintained as such.

- 10) No piling shall be undertaken on the site in connection with the construction of the development until a system of piling and resultant noise and vibration

levels has been submitted to and agreed in writing by the Local Planning Authority and shall be adhered to throughout the construction process.

- 11) Development shall not be commenced until a dust and mud control management scheme has been submitted to and approved in writing by the local planning authority and shall be adhered to throughout the site clearance and construction process.
- 12) No site clearance, demolition or construction work shall take place on the site, including starting of machinery and delivery of materials, outside the following times:-

Monday to Friday 0800 hours - 1800 hours

Saturday 0800 hours - 1300 hours

Sundays, Public and Bank Holidays - no work
- 13) No development of 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 local planning authority in writing.
- 14) The reserved matters application pursuant to condition 1 in relation to scale, appearance and layout shall include details of an assessment of the impact of the existing floodlighting serving Gosfield Tennis Club on the future residential occupiers of the development hereby approved and, if required, how the development has been designed to minimise the impact on the amenity of future occupiers. The development shall be implemented in accordance with the details agreed and thereafter maintained in the approved form.
- 15) Prior to occupation of the development visibility splays with dimensions of 2.4m x 120 metres as measured from and along the nearside edge of the carriageway shall be provided on both sides of the access/junction. The area within each splay shall be kept clear of any obstruction exceeding 600mm in height at all times.
- 16) No unbound material shall be used in the surface finish of the driveway within 6 metres of the highway boundary of the site and thereafter retained in the approved form.