



Appeal Decision

Site visit made on 15 January 2020

by L Gilbert BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th September 2020

Appeal Ref: APP/Z1510/W/19/3236106

Land to the west of the Old Coach House and south of Silver Street, Wethersfield

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Wethersfield Developments Ltd against the decision of Braintree District Council.
 - The application Ref 18/02118/FUL, dated 26 November 2018, was refused by notice dated 29 March 2019.
 - The development proposed is erection of 5, two bedroom, one and a half storey dwellings with associated infrastructure.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by Wethersfield Developments Ltd against Braintree District Council. This application is the subject of a separate Decision.

Procedural Matters

3. Amended plans have been submitted by the appellant. There is no evidence before me to suggest that they have been subject to consultation with interested people. However, the proposed amendments are minor in nature and relate to the location of the bin store, the reconfiguration of the car parking spaces and enlargement of Plot 1's garden. As these changes do not fundamentally alter the scheme, I am satisfied that having regard to the '*Wheatcroft Principles*¹', no-one would be prejudiced by my assessing the appeal on the basis of the revised plans.
4. Since the appeal was originally lodged, the Council has confirmed by letter² that it is unable to demonstrate a deliverable 5 year supply of housing, citing a 4.51 year supply for the period 2018-2023. I have proceeded on this basis.
5. The appeal site forms part of an allocation for residential development in the emerging local plan. This is clearly a material consideration. However, and importantly, the emerging plan is currently the subject of an examination and is not yet adopted. Its final form is not yet agreed and there are still outstanding objections that need to be resolved. The Inspector examining the

¹ *Bernard Wheatcroft Ltd v SSE* (JPL 1983 p37)

² Dated 11 March 2020

Plan has yet to produce his final report with recommendations. In these circumstances and having regard to Paragraph 48 of the National Planning Policy Framework ('the Framework'), I consider that only limited weight can be given to the emerging local plan at this time.

Main Issues

6. The main issues are:

- the effect of the development on the character and appearance of the locality;
- the effect of the development on the living conditions of the occupants of neighbouring dwellings and whether the proposal would provide adequate living conditions for future occupiers;
- whether an obligation is required to secure affordable housing and open space.

Reasons

Character and Appearance

7. The appeal site is located outside the settlement boundary of Wethersfield within the adopted development plan which comprises the Local Plan Review (2005) and Core Strategy (2011). It was previously an agricultural field but was last used as a site compound for the newly constructed adjacent scheme of nine dwellings³ which occupies a significant area. Consequently, because of this recent development, the locality has now changed, and the context and character of the appeal site and its surroundings is no longer that of open countryside.
8. The proposed terraced properties would be located centrally within the site, broadly parallel with the eastern boundary, and would not front on to Silver Street. However, given that other houses in the vicinity are set away from Silver Street and do not have frontages on to this road, I do not find that this arrangement would be unacceptable. Furthermore, the properties would take their cue from others in the locality and would, on balance, be acceptable in design terms. Although the proposed layout does appear slightly cramped, the form of development would not appear completely out of character when viewed in the context of its immediate surroundings.
9. Accordingly, I find on the first issue that the appeal development would not harm the character and appearance of the locality and would accord with Policies CS8 and CS9 of the Core Strategy and Policies RLP9, RLP10 and RLP90 of the Local Plan Review. These policies seek, amongst other things, for new development to respect and respond to the local context.

Living Conditions

10. The access road for the dwellings would run adjacent to the side boundary and the neighbouring properties to the east, including the Old Coach House and Black Gables Annex⁴. Several of these neighbouring properties' windows, including those serving habitable rooms, would directly overlook this access.

³ 17/02253/FUL

⁴ This annexe was vacant at the time of my visit

Future residents either walking or driving along the proposed access would be able to directly overlook the ground floor flank windows of these properties resulting in poor levels of privacy. Whilst planting adjacent to the Old Coach House may offer a degree of screening and privacy, it would also likely cause a significant and unacceptable loss of daylight to the ground floor habitable windows at that property. If low level screening were to be used, this would allow direct overlooking into the ground floor flank windows resulting in loss of privacy.

11. The proposed access would run along the boundary with the neighbouring properties and penetrate deep into the site. In my view, notwithstanding any landscaping, the deeper penetration of vehicular activity associated with the five new dwellings into the site in close proximity these neighbouring properties would noticeably add to the noise and disturbance through the coming and going of vehicles, and the manoeuvring into and out of the car spaces. The access and parking arrangement would significantly diminish the quiet enjoyment of these neighbouring properties, including their gardens, particularly in the summer months when gardens are used for relaxation and windows left open to improve ventilation.
12. Consequently, I conclude on the second issue that the proposal would harm the living conditions of the occupants of neighbouring dwellings. This is contrary to Policy RLP90 of the LP and the Framework, which seeks amongst other things that there shall be no undue or unacceptable impact on the amenity of any nearby residential properties.

Planning Obligation

13. The Council argues that the appeal site forms part of a larger site which includes the adjacent recently developed area, and states that this should form the basis for assessing any affordable housing requirement. I understand that, although the appeal site and the neighbouring site have in the past been considered as a whole site, the Council intended for the appeal site to be used as an 'exclusion' or 'buffer' zone free of development. Therefore, I am satisfied that the site was not subdivided intentionally by the appellants.
14. According to Policy CS2 of the Core Strategy, a target of 40% affordable housing provision is sought on sites in rural areas with a threshold of 5 dwellings or 0.16 ha. However, as the appellant notes, both the Core Strategy and the Braintree District Council Affordable Housing Supplementary Planning Document (2006) predate the Framework. Therefore, it is not clear that they fully accord with the Government's more recent affordable housing policy, as set out in the Framework⁵. Consequently, there is insufficient evidence before me to demonstrate that the requirement for affordable housing provision would be consistent with the Framework.
15. A public open space contribution is also sought for the proposed development. Policy RLP 138 of the Local Plan Review refers to the provision of open space for new housing developments. The Framework⁶ sets out the tests for planning obligations. A justification for how the financial contribution has been calculated is included within the Open Space Supplementary Planning Document (2009). However, it is unclear what exactly the contribution for this

⁵ Paragraph 63 of the Framework

⁶ Paragraph 56

scheme would be directly spent on or what the need is for. Accordingly, there is a lack of information to demonstrate that the public open space obligation would comply with the requirements of the Framework.

16. I therefore find overall that it has not been established with certainty that a planning obligation is required relating to affordable housing or open space.

Planning Balance and Conclusion

17. The Council now accepts it is unable to demonstrate a 5 year deliverable supply of housing land. Therefore, in light of Paragraph 11 of the Framework, the presumption in favour of development or so called 'tilted balance' is engaged which requires that 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.
18. The proposal comprising 5 dwellings would make a modest contribution to the Council's housing land supply and would offer two-bedroom units for which there is an identified need. The scheme would also offer limited economic benefits through construction jobs and spending in the local economy, and as such would help to maintain the vitality of the rural community. It would provide landscaping which could contribute to biodiversity. I have also taken into account that the appeal site forms part of a larger allocation for housing in the emerging local plan.
19. However, notwithstanding the above, the proposal would result in a significant loss of privacy to the occupants of the Old Coach House and the Annexe at Black Gables, with associated noise and disturbance resulting from vehicles using the access. As such, I consider that the adverse effects of the development significantly and demonstrably outweigh the benefits.
20. Consequently, for the reasons set out above, I conclude that the appeal should be dismissed.

L Gilbert

INSPECTOR