



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/19/3236109

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 failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Wethersfield Developments Ltd against Braintree District Council.
 - The application Ref 19/00735/FUL is dated 18 April 2019.
 - The development proposed is erection of a single, two storey detached dwelling, access and associated works.
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Decisions

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. The appellant lodged the appeal on the grounds that the Council failed to determine the planning application within the statutory time period. The main issues in this appeal are based on the recommended reasons for refusal in the Council's Committee Report.
4. The appellant submitted amended plans during the processing of the planning application in response to a letter from the Council dated 8 May 2019. These show the proposed dwelling rotated within the site in order to seek to address potential harm to neighbours' living conditions. 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.
5. Since the appeal was lodged, the Council has confirmed by letter² that it is unable to demonstrate a deliverable a 5 year supply of housing, citing a 4.51 year supply for the period 2018-2023. I have proceeded on this basis.
6. The appeal site forms part of an allocation for residential development within the emerging local plan. This is clearly a material consideration. However, and importantly, the emerging plan is currently subject of an examination and is

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

² dated 11 March 2020

not yet adopted. Its final form is not yet agreed and there are outstanding objections that need to be resolved. The Inspector examining the Plan has yet to produce his final report. 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.

Main Issues

7. 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; and
- whether a planning obligation is necessary to secure affordable housing.

Reasons

Character and Appearance

8. The appeal site is located outside the settlement boundary of Wethersfield as identified within the adopted development plan which comprises the Local Plan Review (2005) and Core Strategy (2011). It was previously an agricultural field but has most recently been used as a site compound for the newly constructed adjacent scheme of nine dwellings³ which occupies a significant area. Consequently, because of this 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.
9. The proposed detached house would be located within the southern part of the site, away from the Silver Street frontage, and would be accessed from the cul-de-sac that is part of the recently approved residential development. As such, it would be 'read' as part of this neighbouring cul-de-sac development rather than as part the Silver Street streetscape. I do not consider that this arrangement would be harmful in terms of local character.
10. The proposed dwelling would be constructed from similar materials to those used on the neighbouring new housing development and therefore blend with the locality. Its scale would also be acceptable as there is a mixture of housing types and sizes near to the appeal site. The proposal would not appear out of character when viewed in the context of its immediate surroundings in terms of density and layout.
11. Furthermore, were the appeal to be allowed, boundary treatments and landscaping could be dealt with by way of condition to ensure they were visually compatible with the surrounding area. Although the garage would be detached in contrast to others within the existing approved scheme, I do not consider this, in itself, would be harmful to the wider area in terms of its position and appearance.

³ Ref 17/02253/FUL

12. Accordingly, I find on the first issue that the appeal development would accord with Policies CS8 and CS9 of the Core Strategy with respect to the proposal's impact upon the character and appearance of the locality.

Living Conditions

13. The garden for the proposed dwelling would abut the side boundary of the neighbouring properties to the east, including the Old Coach House and the Black Gables Annex⁴. Several of these neighbouring properties' windows, including those serving habitable rooms are located directly adjacent to the boundary and would overlook the rear garden of the proposed new property. This would afford a poor level of privacy for both the occupants of The Old Coach House and the Black Gables Annex. It would also result in poor levels of privacy for future residents using the garden of the new property. Future occupants using the garden of the proposed new dwelling would be able to look directly into the ground floor flank windows.
14. Furthermore, the Old Coach House is located on higher ground than the appeal site and its garden currently has clear views into the appeal site. According to the drawings, a 2-metre-high boundary wall would be retained between The Old Coach House's garden and the proposed dwelling's garden. However, because of the differential site levels, there would be significant mutual overlooking between the gardens of these properties, which would result in an unreasonable loss of privacy to both.
15. Whilst proposed planting adjacent to the Old Coach House and the Black Gables Annex may offer some degree of screening and privacy, it would also be likely to cause a significant and unacceptable loss of daylight to the ground floor habitable windows at these properties. If low level screening were to be used, this would allow direct overlooking into the ground floor flank windows and would cause significant harm to the privacy of these neighbours.
16. The habitable rooms at the main dwelling at Black Gables are set back from the boundary. The occupants at this property would experience some limited loss of privacy to their first-floor terraced area as a result of overlooking by future occupiers using the proposed dwelling's garden. This loss of privacy would be reciprocated for future residents using the garden of the proposed new dwelling. However, the impact would be much more limited as the living accommodation at Black Gables is set some distance back from the shared boundary.
17. Consequently, I conclude overall on the second main issue that the appeal development would harm the living conditions of the occupants of neighbouring dwellings and would fail to provide adequate living conditions for future occupiers of the proposed house. This is contrary to the Framework and Policy RLP90 of the Local Plan Review, which seeks amongst other things that there shall be no undue or unacceptable impact on the amenity of any nearby residential properties.

Affordable Housing

18. The Council argues that the appeal site forms part of a larger site which includes the adjacent recently developed area, and that this should form the

⁴ This annexe was vacant at the time of my visit

basis of assessing any affordable housing requirement. I understand that, although the appeal site and this neighbouring site have in the past been considered together as a whole site, the Council intended for the appeal site to be retained as an 'exclusion' or 'buffer' zone free of development. Therefore, I am satisfied that the site was not intentionally subdivided by the appellant with a view to deliberately avoiding the provision of affordable housing. This being so, the appeal site should be considered as separate with respect to affordable housing provision. The proposal is for one dwelling and would therefore not trigger any requirement for the provision of affordable housing.

19. Consequently, on this issue, I find a provision for affordable housing is not required for the appeal development. The proposal would not conflict with Policy CS2 of the Core Strategy and the Framework and Supplementary Planning Document Affordable Housing (2006), which together require specify a threshold of 5 dwellings or 0.16ha in rural areas for affordable housing provision.

Planning Balance and Conclusion

20. 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.
21. The proposal for a single dwelling would make a very limited contribution to the Council's housing land supply. The scheme would also offer 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 potentially contribute to biodiversity. I have taken into account that the appeal site forms part of a larger housing allocation in the emerging local plan.
22. However, notwithstanding the above, the proposal would result in a significant loss of privacy to the occupants of The Old Coach House and the Black Gables Annexe, with a more limited loss of privacy to the occupants of the main dwelling at Black Gables. The future occupiers of the proposed dwelling would also experience an unreasonable lack of privacy to their garden. Overall, I consider that the adverse impacts of the development significantly and demonstrably outweigh the benefits.
23. Consequently, for the reasons set out above, I conclude that the appeal should be dismissed.

L Gilbert

INSPECTOR