



Appeal Decision

Site Visit made on 1 December 2020

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 15 December 2020

Appeal Ref: APP/Z1510/W/20/3257068

Pump House adjacent Ashbourne Cottage, Smeetham Hall Lane, Bulmer CO10 7EU

- 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 Mr A Hyde Parker against the decision of Braintree District Council.
 - The application Ref 20/00479/FUL, dated 4 March 2020, was refused by notice dated 24 July 2020.
 - The development proposed is demolition of existing garages and erection of two dwellings, garages, access and landscaping and restoration of existing pump station.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant submitted an amended drawing¹ prior to determination of the planning application, however, there is no evidence before me to demonstrate that this amendment was consulted upon with other interested parties and it is not listed in the decision notice amongst those plans upon which the Council made its decision.
3. The 'Procedural Guide – Planning Appeals – England' advises that: -
"If an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal they should normally make a fresh planning application". (Annexe M.1.1) and: -
"If an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought". (Annexe M.2.1)
4. However, the drawing only changes the external finishes of one of the dwellings. This amendment does not fundamentally alter the proposal from that which was considered by the Council and upon which interested parties were consulted.
5. I therefore consider that accepting the amended drawing would not prejudice the outcome of the appeal and I have considered this appeal on the basis of the proposal as amended by the revised drawing.

¹ Drawing No 4100/123/a dated July 2020 – House Type 'A' – Plot One

Main Issues

6. The main issues are: -

- Whether the site is a suitable location for two dwellings having regard to local policy for the delivery of housing, accessibility to everyday local facilities and services by a range of modes of transport and the character and openness of the countryside, and: -
- The effect of the development on the biodiversity of the area.

Reasons

Suitability of the location of the site

7. The appeal site is a field on the northern side of Smeetham Hall Lane. It lies within a small linear group of dwellings fronting onto the lane. The site contains a modest building containing a water pump and a block of three garages and is contained within existing mature planting. Smeetham Hall Lane is a single carriageway road without street lighting or footway provision and is subject to a 60 MPH speed limit. The road is fronted by hedges and occasional small groups of dwellings. Overall the area has an open, rural character.
8. The site is situated outside any settlement boundary and is defined as countryside by the development plan. It is therefore in the countryside for planning purposes where development will only be permitted subject to the exceptions set out in the Council's countryside policies.
9. Policy CS5 of the Braintree District Council Local Development Framework Core Strategy – 2011- (the Core Strategy) seeks to avoid inappropriate development in the countryside in order to protect and enhance its landscape character, biodiversity, geodiversity and amenity. Policy CS7 of the Core Strategy promotes development in accessible locations. Policy RLP 2 of the Braintree District Local Plan Review -2005- (the Local Plan) seeks to confine new development to areas within Town Development Boundaries and Village Envelopes.
10. The group of dwellings within which the appeal site lies lack any services and facilities to provide for the day-to-day needs of future occupiers and the site is located a significant distance from Sudbury, the nearest centre that would provide a full range of such services. The unlit nature of the intervening roads, with their lack of footways and vehicular speeds would be likely to deter pedestrians and cyclists, particularly after dark, with children or during inclement weather and so residents of the site would almost certainly rely very heavily on the private car to meet their day-to-day needs. I have no evidence before me to demonstrate that public transport is available to provide a realistic alternative to the use of the private car to cater for the day-to-day needs of residents.
11. There is thus no meaningful alternative to using the private car to satisfy the day-to-day needs of future occupiers. With, for such a limited scale of development, no real scope to improve connexions for walking, cycling or public transport dependency upon private motor vehicles would be almost total.
12. Policy CS8 of the Core Strategy and Policy RLP80 of the Local Plan seek to protect the Natural Environment and Biodiversity, including, amongst other

things the distinctive character of the landscape and restrict development that fails to successfully integrate into the local landscape.

13. The proposal would fill a gap within the existing built frontage and it would not extend the length or overall depth of development further into the countryside. Further, the proposed dwellings would be of a scale and overall design that would not be out of keeping with their neighbours in the context of the rural setting.
14. Concerns have been raised over the white rendered finish to one of the dwellings. The appellant has indicated a willingness to change this to satisfy the Local Planning Authority and the Parish Council and has submitted an amended plan to demonstrate this. Were I minded to allow the proposal to proceed, I am satisfied that such matters could be covered by the imposition of suitable planning conditions.
15. However, there would be a significant increase in built form within the group of buildings and the proposal would introduce additional residential activity, and associated paraphernalia to the countryside location. This would result in additional urbanisation of the locality and reduce the openness that I have identified above. Notwithstanding that views of the proposal would be limited, to a degree, by existing planting, the proposed dwellings would be readily apparent from the lane and the surrounding area. This increased urbanisation and reduction in openness would, in this case, result in material harm to the character and appearance of the site and immediate locality.
16. The appellant has proposed additional planting on the boundaries of the site to increase screening. Whilst such planting could be provided by planning condition, I am not satisfied that such measures would, of themselves, be adequate to mitigate the harm identified, as new planting would take time to establish itself and there is no substantive evidence before me that sufficient screening would be achieved to address the matter successfully.
17. I therefore conclude that the appeal site would, lacking access to everyday local facilities and services by a range of modes of transport and adversely affecting the character and openness of the countryside, not be a suitable location for two dwellings. It would thus be contrary to the aims of Policies CS5, CS7 and CS8 of the Core Strategy and Policies RLP2 and RLP80 of the Local Plan.

Effect on biodiversity

18. Policy CS8 of the Core Strategy seeks, amongst other things, to protect biodiversity and habitats. Policies RLP80 and RLP84 of the Local Plan together seek to safeguard habitats and species protected under various UK and European legislation, or on the objectives and proposals in National or County Biodiversity Action Plans.
19. An ecological appraisal of the site was carried out to accompany the planning application which identified that the site has potential for foraging and nesting bats, birds and reptiles.
20. Whilst I understand that the appellants have made efforts to assess the effect of the proposal on protected species, this has been thwarted by the onset of the Coronavirus pandemic.

21. The Appellants consider that the issue of ecological mitigation could be dealt with by planning conditions to cover, for instance, external lighting and the provision of bat and bird boxes. However, I am mindful of the advice provided in paragraph 99 of Circular 06/2005 that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted. The circular further advises that the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances. For the reasons set out above, I am not satisfied, in the absence of information to determine whether mitigation is needed, possible or its scope, that planning conditions would provide sufficient mitigation, or that appropriate mitigation could be provided.
22. I therefore find that the proposal would result in harm to the biodiversity of the area. This would be contrary to Policy RLP84 of the Local Plan and Policy CS8 of the Core Strategy.

Other Matters

23. There is no dispute between the parties that the Council is unable to demonstrate an effective five year housing land supply. The development plan pre-dates the National Planning Policy Framework -2019- (the Framework) and so policies within it should be assessed and given weight in terms of their consistency with the aims of the Framework.
24. The Framework does not impose a blanket restriction on development outside defined settlements, nor does it explicitly prevent the use of such boundaries. The appeal site is located in close proximity to existing dwellings and is not isolated and so the countryside location does not conflict with paragraph 79 of the Framework.
25. Paragraph 78 of the Framework states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities and that Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services.
26. The Framework recognises that sustainable transport solutions will vary between urban and rural areas and that rural housing development in smaller settlements can enhance or maintain the vitality of rural communities. The appeal site lies in an area of only sporadic development, where dwellings form small loose groups or hamlets with no services within them requiring, in all likelihood, a trip into the local town to satisfy their day-to-day needs. Thus it could not be said that the development would contribute meaningfully to the vitality of villages outside the town.
27. Thus, the policies in the Core Strategy and JPMP Plan that are most important in this case are broadly consistent with the aims and policies set out in Sections 5, 9 and 15 of the Framework. However, they are more restrictive than the approach taken within the Framework and so I afford the conflict with them moderate weight.
28. The development would provide benefits in terms of delivering an additional two homes to boost housing supply albeit that, irrespective of any shortfall in supply, two homes would only have a limited benefit. Whilst small

developments are generally built out relatively quickly, there is no guarantee of this and no means of securing a precise development timeframe.

29. Future occupiers would be likely to participate in local events and societies and so contribute to the vitality of the local community. There would be minor benefits to the local economy in terms of short term employment in the construction industry and longer term support to shops and businesses. The long term support to shops and businesses would be mainly felt in the local town, rather than supporting rural villages. The pump station would be renovated, improving its appearance. Taken together these benefits carry limited weight.
30. Given the location of the site and the lack of access to safe walking and cycling routes or public transport to provide for day-to-day needs it is likely that future occupants of the development would be heavily reliant on private motor vehicles to access local shops and services. This, together with the harm that I have found the development would cause to the character and openness of the countryside and local biodiversity, are significant factors weighing against the scheme.
31. In conclusion the identified harm would significantly and demonstrably outweigh the limited benefits provided by the scheme when considered against development plan policies and the Framework when read as a whole.
32. The Council have referred to policies in the emerging plan. The emerging Braintree District Publication Local Plan -2017- has been submitted but it has not been found sound or adopted, therefore it does not yet form part of the Development Plan. I have therefore given it limited weight and in any event it has not altered my findings above

Conclusion

33. For the reasons given above the appeal is dismissed.

I Dyer

INSPECTOR