
Appeal Decision

Site visit made on 22 December 2020

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd January 2021

Appeal Ref: APP/H1515/W/20/3258253

4 Nags Head Lane, Brentwood CM14 5NJ

- 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 Paul Savill against the decision of Brentwood Borough Council.
 - The application Ref 19/01199/FUL, dated 21 August 2019, was refused by notice dated 29 June 2020.
 - The development proposed is described as 'new detached dwellinghouses'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The decision notice refers to drawing references PL001 Rev E and PL003 Rev A. However, the Council has clarified that it based its decision on drawing references PL001 Rev F and PL003 Rev C instead. Accordingly, I have taken the latter drawings into account in making a decision.
3. The Council has stated that its emerging Local Development Plan started being examined in December 2020 and there are currently unresolved objections to it. The emerging plan is therefore subject to change and thus it attracts limited weight in my consideration of this appeal.
4. On 19 January 2020 the latest Housing Delivery Test results were published. These indicate that the presumption in favour of sustainable development, as set out at paragraph 11d of the Framework, is consequently applicable. However, it is common ground between the main parties that paragraph 11d applies in any case, as the Council is unable to demonstrate a 5 year supply of deliverable housing sites. It has not therefore been necessary to seek the views of the parties on the results.

Main Issues

5. The main issues are the effects of the proposal on:
 - the biodiversity of the site and the surrounding area;
 - the need to travel and the availability of sustainable transport options;
 - the character and appearance of the area; and
 - the living conditions of the future residents in terms of noise.

Reasons

Biodiversity

6. The site includes the dwelling and garden land at 4 Nags Head Lane. It is part of a group of residential properties that form a ribbon of development along the lane. A railway line is located on an embankment to the rear of the properties and the M25 motorway is nearby.
7. Interested parties have raised concerns regarding the effects of the proposal on biodiversity. In addition, a previous appeal decision¹ relating to a scheme for 5 dwellings at the site identified effects on bats as a main issue. Whilst the Council has not objected to the proposal before me for such reasons; I must nevertheless be satisfied that its effects would be acceptable.
8. An ecological report has been submitted in support of the proposal, which refers to the previous scheme. The report states that the dwelling has moderate to high bat potential and there are excellent surrounding habitats for bats. It recommends that 2 to 3 bat emergence surveys are carried out to establish whether bats are roosting within the dwelling. No emergence surveys have been provided. Consequently, I cannot be sure that the proposal, which includes the demolition of the dwelling, would not result in harm to bats.
9. In addition, the Essex Badger Group has identified that there are suitable habitats for badgers in the immediate area. Although the ecological report states that there is no evidence of badgers on or near to the site, this is based on a site survey that was undertaken in December 2014 and it indicates that a re-assessment is required after the expiry of one year from the date it was produced. Given that a considerable amount of time has passed since then, I cannot be certain that the findings of the report are reliable in respect of badgers or other protected species.
10. Circular 06/2005² states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development, is established before planning permission is granted. Therefore, it is not appropriate to condition the undertaking of further surveys. A condition to require mitigation in the absence of surveying would also not be appropriate, as there can be no certainty that mitigation would acceptably address any harm to protected species which may be present.
11. I am not satisfied that sufficient evidence has been provided to ascertain the proposal's effects on protected species and thus I conclude that the proposal fails to demonstrate that its effect on biodiversity would be acceptable. It is contrary to Policy CP1 of the Brentwood Replacement Local Plan (LP), which expects proposals to take full account of the need to conserve or enhance biodiversity. It also conflicts with paragraph 170 of the National Planning Policy Framework (the Framework), which seeks to protect biodiversity.

Travel

12. A limited number of services and facilities are available in Brook Street, which is around 15 minutes' walk or a few minutes' cycle journey from the site. There

¹ Appeal reference: APP/H1515/W/16/3154871

² Office of the Deputy Prime Minister Circular 06/2005: Biodiversity and Geological Conservation - Statutory Obligations and their Impacts within the Planning System

are footways along the route but it largely lacks street lighting. Details regarding bus routes and services have not been provided. Based on the evidence, the proposal would give rise to a need for the future residents to travel by private motor vehicles to satisfy most requirements for daily living.

13. Paragraph 103 of the Framework sets out that patterns of growth should support its transport objectives, which includes the promotion of walking, cycling and public transport. However, it also recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In this case, some trips to services and facilities could be made by walking and cycling. Moreover, the site is within a short travelling time of Brentwood by private motor vehicles. The environmental harm generated by the movements of the residents would therefore be limited.
14. The proposal conflicts with LP Policy CP2, which seeks to reduce the need to travel and encourages accessibility to a choice of transport modes. It also conflicts with paragraphs 103 and 110 of the Framework, the latter of which states that development should prioritise pedestrian and cycle movements and facilitate access to high quality public transport. However, as with the findings for the previous appeal decision, this matter should not be a bar to development on its own, but a factor to be weighed in the planning balance.

Character and appearance

15. The residential properties near to the site vary in design, whereas the proposed dwellings and garages would have a consistent layout and appearance. However, the development would create a small cul-de-sac with its own character. The proposed buildings would not be apparent from the lane nor would they be read within the context of the properties along it. The buildings would thus not harm the character and appearance of the area.
16. The acoustic fencing proposed to enclose the rear gardens of the dwellings would have a wooden appearance not unlike typical garden fencing. At mostly 2m in height, the size of the fencing would be unremarkable. There would be 3m high fencing between the dwellings; however, these sections would be limited in length and set back from the front walls. There would also be 3m high fencing along the side boundary of the dwelling closest to the motorway, but it would be set back from the access road and screened by the garages. The fencing would thus not compete with or detract from the dwellings or appear incongruous within the cul-de-sac.
17. The appellant's arboricultural reports set out that most trees would be retained, except for a limited number that would be removed from near the centre of the site and adjacent to the embankment. However, I note that a 'concept proposal' landscape plan has also been submitted which does not indicate any trees for retention. Whilst it is thus not entirely clear whether existing landscaping is proposed for retention, this matter could be addressed by means of a condition to require the submission of a detailed landscaping scheme.
18. The proposal would not have a harmful effect on the character and appearance of the area. In respect of this matter, it accords with LP Policy CP1, which seeks to prevent unacceptable detrimental impacts on visual amenity and the character and appearance of an area. It also accords with paragraph 127 of the Framework and the National Design Guide, which have similar objectives.

Living conditions

19. The appellant's noise impact assessment puts forward that the acoustic fencing would provide, and the dwellings could be constructed in a manner that would ensure, that there would be adequate living conditions for the future residents. The Council's Environmental Health Officer has confirmed that acceptable noise levels can be achieved and that position was taken cognisant of changes to the noise environment such as increasing traffic and Crossrail. I do not have compelling evidence before me which indicates that I should find otherwise. Despite this, the Council is concerned that the use of the gardens would be unattractive and natural ventilation of the dwellings would be inhibited.
20. The proximity from the site to the motorway and the railway would be obvious to prospective occupiers and thus they would be able to gain an awareness of the noise environment prior to deciding whether to rent or buy one of the properties. The existing site is mainly garden land and firm evidence has not been provided which suggests that the noise levels would likely result in the gardens being unused. In addition, the extent and height of the fencing would not be such that there would be poor outlook from the gardens.
21. The Planning Practice Guidance indicates that it is undesirable for noise to cause changes in behaviour such as keeping windows closed³. In respect of new residential development, it says that living conditions should be considered where mitigation relies on closed windows and that suitable alternative means of ventilation are likely to be necessary⁴. However, it does not direct that development should be refused in such circumstances.
22. The main parties agree that the dwellings could be ventilated by trickle vents and mechanical extract systems. Whilst it would be preferable for the residents to be able to open windows without any notable changes in noise levels, the living conditions would not be inadequate on the basis that windows may not be opened. I note that both main parties agree that the site is in a location where noise exposure is such that planning permission should not normally be granted. However, based on the evidence before me, I am satisfied that the living conditions of the future residents would be acceptable in respect of noise.
23. In this limited respect, the proposal accords with LP Policies CP1 and PC4, which requires development to not have an unacceptable detrimental impact on health and amenity or result in significant noise disturbance. It also accords with paragraphs 127 and 180 of the Framework, which seeks high standards of amenity and the avoidance of noise giving rise to significant adverse impacts on health and the quality of life.

Other Matters

24. The site is located within Green Belt. The previous appeal decision concluded that the development would not be inappropriate in the Green Belt in terms of the LP and the 2012 version of the Framework, which was extant at that time. The Council thus does not contend that this proposal constitutes inappropriate development. There are few differences in the approach to development within Green Belts between the 2012 and the current version of the Framework. Compelling evidence has not been advanced which suggests that I should reach different findings to the previous appeal decision regarding this matter.

³ Reference ID: 30-005-20190722

⁴ Reference ID: 30-006-20190722

25. Interested parties have raised concerns regarding the effect of the proposal on the living conditions of the residents of the nearby properties, particularly in respect of noise. However, compelling evidence has not been provided which substantiates these concerns. Flooding is also raised as an issue. Although the appellant's Flood Risk Assessment (FRA) identifies the site is at a moderate risk of flooding from surface water, neither the Council nor the Lead Local Flood Authority raise concerns regarding the FRA, or the flood risk management and drainage strategies outlined therein. Moreover, no technical evidence which counters its findings has been presented.
26. Several other issues are raised, including the proposal's effect on highway safety, local infrastructure capacity, the community, carbon emissions and air quality. In addition, safety issues are raised due to the site's proximity to the railway. However, firm evidence has not been provided which indicates that the proposal would be harmful in respect of these matters.

Planning Balance

27. It has been established that paragraph 11d of the Framework applies in this case. Permission should therefore 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.
28. The proposal would contribute to the supply of housing in the borough. In addition, I have no reason to doubt that the proposed rear gardens would exceed the size requirements set out in the LP and a reduction in surface water runoff rates would be achieved as identified in the FRA. The appellant also puts forward that the proposal comprises previously developed land insofar as it involves the demolition of the dwelling and it would reduce pressure for housing elsewhere in the Green Belt. However, as a result of the small scale of the development, the benefits weighing in favour of the proposal are limited.
29. The proposal's failure to demonstrate its effects on biodiversity is a matter of substantial weight. I have also found that there would be harm arising from the residents' reliance on private motor vehicles. For these reasons the proposal is contrary to policies within the development plan and the policies are consistent with the aims of the Framework. Overall, the adverse impacts are substantial.
30. I therefore find that the adverse impacts of the development significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole. A decision should thus be taken in accordance with the development plan.

Conclusion

31. The proposal is contrary to the development plan. There are no material considerations which outweigh this finding. Accordingly, the appeal is dismissed.

Mark Philpott

INSPECTOR