
Appeal Decision

Site visit made on 8 December 2020

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2021

Appeal Ref: APP/Z1510/W/20/3258154

Ivy Cottage, Long Green, Cressing CM77 8DL

- 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 Mr Gerry Dobbs, Brevan Homes Ltd against the decision of Braintree District Council.
 - The application Ref 17/01448/OUT, dated 4 August 2017, was refused by notice dated 26 February 2020.
 - The development proposed is described as “up to 10 dwelling houses”.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Outline planning permission is sought with the matter of access to be considered in detail and I have had regard to the access details provided and have determined the appeal on that basis. I have treated all other submitted information as illustrative.
3. The Council’s decision notice refers to the Braintree District Publication Draft Local Plan 2017 (the emerging Local Plan). Nonetheless, as it is not yet part of the development plan and may be subject to change, including in respect to the policies cited in the refusal reasons, it carries limited weight only at this stage.
4. A legal agreement by way of Unilateral Undertaking (UU), under Section 106 of the Town and Country Planning Act 1990, has been provided as part of the appeal. It includes obligations relating to the provision of a footway to connect the proposed development to the existing footways at Galleys Corner. The UU is signed and dated, and I have taken it into account in reaching my decision.
5. The Council’s third reason for refusal included a failure to secure delivery of 40% affordable housing. However, in its appeal evidence, the Council has accepted the appellant’s case that the proposal would result in a net increase of 9 dwellings and does not therefore trigger the requirement to provide affordable housing. Consequently, the Council now considers this matter to be addressed and I see no reason to take a different view.
6. My attention has been drawn to a previously allowed appeal decision for outline planning permission, for a 42 bedroom hotel, relating to the same site as the appeal before me. That permission was renewed but has subsequently lapsed. The previous appeal decision was, therefore, for a different form of

development from the appeal scheme before me. However, matters relating to the provision of a footpath from the appeal site to Galleys Corner have been carried forward from the lapsed permission and accepted by the Council as part of the appeal proposal. The previous decision therefore holds modest weight in my consideration of this appeal.

Main Issues

7. The main issues are (i) whether the appeal site is suitable for the development proposed having regard to local and national policies concerned with the location of new development and accessibility to services and facilities; (ii) whether the proposed development would provide satisfactory living conditions for future occupiers, with particular regard to noise; and (iii) the effect on character and appearance of the area.

Reasons

Location

8. The appeal site lies within the Galleys Corner Special Policy Area (GCSPA) where Policy RLP58 of the Braintree District Local Plan Review 2005 (LPR) exercises very strict control over development. Policy RLP58 restricts development within the GCSPA to transport related development (including motorists' cafe/restaurant, overnight accommodation and petrol filling station); the existing garden centre and ancillary uses; and the existing established haulage depots at Long Green. Further, the policy does not permit buildings to cover more than 20% of the site area and any permissions granted should improve the area by substantial planting and landscaping.
9. Although the site's existing use is residential, and the GCSPA also contains other residences, the area is nevertheless reserved under Policy RLP58 for transport related uses associated with the A120. The appeal scheme is not for any type of development supported and is therefore contrary to Policy RLP58. I have given limited weight to the emerging Local Plan Policy LPP44 and find that the proposal would conflict with the type of development it supports in this location.

Accessibility to services and facilities

10. The UU would secure a proposed new footway which has been agreed as acceptable by the Highway Authority (HA). The appeal site would be a reasonable walking and cycling distance from a number of services and facilities, including those within the GCSPA itself. It would be within 0.3 km of a bus service to Braintree and within 2.5 kms of Braintree railway station and the town centre, with Braintree Freeport railway station being even closer to the appeal site. However, distance to services is not the only determinant factor, it is relevant to also consider the nature of the walking and cycling routes that would be available.
11. The provision of the footway would improve the environment around the site itself, thereby benefiting other existing residents and nearby business users. It would provide future occupiers of the appeal scheme with a footway directly from the site that would link with the footways and cycle paths at Galley's Corner, thus providing a link to the nearest bus stop and other services and facilities. I acknowledge that the HA has not objected to the proposal,

nevertheless, I do not consider that the route would be an attractive alternative to the use of private motor vehicles.

12. This is because the proposed footway along Long Green would be quite narrow and users would be in close proximity to fast moving traffic, including HGVs that pass frequently along this stretch of the road, going to and from the haulage yard. This section of the route is unlit and future occupiers would have to negotiate crossing busy dual carriageways, which are likely to present significant obstacles for pedestrians and cycle traffic and, as such, would be unattractive to non-motorised users. These arrangements, in addition to the lack of shelter at the bus stop, would be likely to further discourage use of the bus service, particularly for those with mobility difficulties, parents with young children or if travel is necessary during poor weather conditions or outside of daylight hours. Likewise, the proposed footway would not be suitable for cyclists who would have to use Long Green before joining the cycle path at Galleys Corner and also having to cross busy, un-signalised junctions to link with other parts of the cycle path network. This would not be likely to be a favourable route other than for very experienced and confident cyclists.
13. Therefore, even though the route to some services and facilities is physically within recommended walking and cycling distances, and some journeys could be made by non-motorised means or by public transport, given the location of the proposed development, I consider that future occupiers are likely to be largely reliant on private motor vehicles to access services and facilities, including those that would be required on a day to day basis. Although car journeys would be relatively short, the number of trips generated by the proposed development would be significant. As a consequence, the proposed development would not provide a suitable location for housing in respect of accessibility to services and facilities.
14. I acknowledge that the footway was considered acceptable by the Inspector in the appeal referred to earlier in this decision. However, I do not consider the transitory nature of users of a hotel to have a comparable level of need to access services and facilities as that of future occupiers of housing. Therefore, this matter does not alter my conclusions in respect of this appeal.
15. I therefore conclude that the appeal site would not be a suitable location for housing with regard to local and national policies concerned with the location of development and accessibility to services and facilities. Thus, it would conflict with Policies CS7 and CS9 of the CS, which together, and amongst other matters, seek to provide development in accessible locations and encourage sustainable transport. I have given limited weight to the emerging Local Plan Policy LPP44 and find that the proposal would conflict with its objective to promote accessibility and integration into the wider community and existing networks.
16. The proposal would also conflict with paragraphs 103, 110 and 127 of the National Planning Policy Framework (the Framework) which amongst other matters seek to actively manage patterns of growth to make the fullest use of public transport, walking and cycling.

Living Conditions

17. The Council are concerned that the living conditions of future occupiers of the proposed development would be adversely affected by noise generated by

traffic using Long Green and by the existing commercial uses situated within the GCSPA. The appellant recognises that there are some unneighbourly uses, including the haulage yard and waste management facility within close proximity of the site. However, it is argued that nearby residents co-exist happily and there is no historic evidence of noise complaints to indicate that future occupiers of the proposed development would be subject to unacceptable levels of noise.

18. In support of the proposal, the appellant has submitted an Environmental Noise and Vibration Assessment Report dated 2014, an Environmental Noise Assessment 2017 (NA 2017) and a Technical Note dated 2018 (TN 2018) all professionally undertaken by Three Spires Acoustics. An assessment was also carried out in 2008 in association with the hotel proposal; the more recent reports also make reference to the findings of that assessment. The dominant noise source is indicated to be that of traffic noise from Long Green and from the nearby A120.
19. The TN 2018 follows an additional 24 hour assessment being undertaken to address concerns about the short period of time over which the NA 2017 was carried out. The NA 2017 indicates that the site would be suitable for residential development subject to the provision of mitigation measures to include the installation of a 2 metre high acoustic fence along the frontage of the site. Although standard thermal glazing and standard façade construction is indicated to be sufficient to ensure acceptable noise levels inside the proposed dwellings, the assessment states that the acoustic integrity of the building envelope will also be compromised in the event windows are opened for ventilation purposes. To address this concern, the appellant has proposed whole house ventilation or mechanical ventilation with heat recovery to be provided to all properties. This is confirmed to be the case within the TN 2018.
20. In addition, although the TN 2018 survey covered a longer time period than the earlier assessments, this still only provides a snapshot of conditions at the site on one day of the year in early January. I am not satisfied that the recorded measurements are truly representative of typical background noise levels, including those at different times of the week or year when the potential for disturbance could be more likely, and any noise from local traffic and from the nearby commercial uses could be higher. Consequently, I cannot be certain that proposed mitigation measures would be adequate to ensure that the living conditions of future occupiers would not be unacceptably harmed by noise. Even if I were to accept that the survey results were sufficiently robust, I am not persuaded that the suggested form of mitigation relating to ventilation systems would result in favourable living conditions or would not have other potential negative impacts on living conditions.
21. I note the presence of existing nearby residential properties and acknowledge that the site's existing use is residential. I also note the lack of complaints received from the occupiers of the existing residential properties with regard to noise. However, the appeal site has not been occupied for several years and the site specific circumstances of the other residential uses are incomparable with the appeal proposal, given the differences in plot sizes, distances from noise generating uses and activities and, in one case, the direct association of the dwelling with a commercial undertaking.

22. I am directed towards a recent planning permission on an adjacent site for the erection of two buildings, for B8 storage and distribution purposes, where no objections were made by the Council in relation to potential noise impacts of that proposal on the existing residential uses in the vicinity of that site, including the appeal proposal. However, those buildings replace existing buildings, which appear to have had a similar use, and are located adjacent to existing commercial development. The manner in which the Council determined that proposal is beyond the remit of this appeal. In any event, I am dealing with this appeal on its own merits.
23. Overall, I conclude that it has not been demonstrated that the appeal proposal could be developed in such a manner that would adequately safeguard the living conditions of future occupiers, with regard to noise. Consequently, the appeal proposal would not accord with CS Policy CS9 which seeks to ensure the highest possible standards of design. It would also fail to accord with paragraph 127 of the Framework which requires development to ensure a high standard of amenity for future users. I have given limited weight to the emerging Local Plan Policies LPP50 and SP6 and find that the proposal would conflict with these policies in the same regard.

Character and appearance

24. The effect of the proposal on the character and appearance of the area is included within the Council's reasons for refusal. The concern relates to the provision of the proposed noise attenuation fence along the site frontage and the impact that could have on frontage landscaping and the appearance of the site. However, all matters except for access are reserved and detailed design is not, therefore, for consideration at this stage. Further, the Council, in its delegated officer report, concludes that on balance, and notwithstanding the proposed provision of the aforementioned fence, it would be possible to design a housing layout that would be appropriate to the character and appearance of the area. I see no compelling reason to disagree with this assessment, given the sites size and its position between other development.
25. Therefore, I conclude that the proposed development would not result in unacceptable harm to the character and appearance of the area. Thus, the proposal would not conflict with CS Policy CS9 insofar as it requires development to respect and respond to local context. Similarly, the proposal would not conflict in this regard with the emerging Local Plan Policy SP6, paragraph 127 of the Framework or the context section of the National Design Guide 2019.

Other Matters

26. The appellant has submitted evidence of marketing of the site by professional property consultants for uses that would comply with LPR Policy RLP58. The evidence has been updated in 2019 and indicates that there has been very limited interest for hotel or potential alternative roadside uses and that other commercial sites, with or without planning permission, are available in the area which could meet market requirements for the next 15 years. The appellant considers that this weighs in favour of the appeal proposal by demonstrating that the site is not required for its designated uses.
27. Nevertheless, I note from the evidence that the site appears to have been marketed without indication of a guide price. I, therefore, have no substantive

evidence before me to be certain that the purchase price or rent being asked is equitable to others in the area. It is not therefore possible to substantiate a robust conclusion that every reasonable attempt has been made to secure a policy compliant use on the site. Instead, I consider that the proposal falls short of a persuasive case to demonstrate that the site is not suitable or needed for development for roadside uses. Further, I also note that enquiries have been made, and continue to be made from interested parties seeking to purchase the property for owner/occupier refurbishment. Whilst such enquiries have not proved attractive to the landowner, they indicate that there is interest in the market for use of the site in a manner in which would be acceptable in planning policy terms. I therefore give the limited interest in the site for commercial roadside uses modest weight in the determination of this appeal.

Planning Balance

28. The Council cannot currently demonstrate a Framework compliant supply of deliverable housing land. The parties are in general agreement with the level of deficit, with the Council stating that its level of supply is 4.51 years, and the appellant making reference to 4.52 years. As a consequence, the fact that the appeal scheme would be at odds with the local strategy for the type of development considered to be acceptable within the GCSPA and therefore conflicts, in that regard, with the development plan, currently carries no more than moderate weight.
29. Small and medium sized sites can make an important contribution towards the housing requirement in an area, and the appeal proposal would likely be able to be built out quickly, after the approval of reserved matters. Whilst the proposal does not provide affordable housing, it would still help boost the supply of housing which is an important policy objective set out in the Framework. I therefore give significant weight to the provision of housing, but the actual contribution made by up to 10 houses to the Council's housing shortfall would be relatively modest. I therefore afford these benefits modest weight.
30. The proposal would provide physical improvements to the highway by the provision of a footway link from the site to Galleys Corner. This would have wider public benefits by improving the environment around the site for nearby potential pedestrian users of this stretch of the road. However, this benefit would be tempered by the narrow width of the proposed footpath, the unlit nature of the route and the practicalities and attractiveness of the routes to which it would link. I therefore afford this benefit limited weight.
31. The proposal would use previously developed land (PDL). Paragraph 118 (c) of the Framework states that substantial weight should be given to the value of using PDL for new homes. However, part (c) of this paragraph also identifies that this relates to PDL within settlements. In this case the site lies outside of an identified settlement boundary and within the designated GCSPA. However, in view of the reduced weight to be given to the conflict with the spatial strategy already identified, I afford the benefit of the use of PDL moderate weight.
32. Matters where no harm has been identified would be neutral in the planning balance.

33. However, I have found that the proposal would not provide satisfactory living conditions for future occupiers with regard to noise. The Framework expects development to ensure a high standard of amenity for future users. I afford this conflict significant weight. In addition, the development would not provide easy access to public transport or promote walking, cycling and public transport use, contrary to the aims of the Framework. I afford these conflicts considerable weight.
34. Overall, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. This is the case even when taking into account the housing land supply shortfall. As a result, the presumption in favour of sustainable development does not apply.
35. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding.
36. It is, therefore, not necessary that I consider the effect of the proposal on European sites, as such an assessment would have no bearing on my decision. The Council's officer report indicates that the appeal site is located within a zone of influence of a designated European site, although no detailed information has been provided in this respect. Should I have found no harm with regard to the main issues, it would have been necessary for me to seek additional information and to give further consideration to the impact upon the protected site or sites in accordance with the Habitats Regulations.

Conclusion

37. For the reasons above the appeal is dismissed.

S Tudhope
Inspector