



Appeal Decision

Site Visit made on 3 February 2021

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2021

Appeal Ref: APP/Z1510/W/20/3262022

Land south of Tey Road, Earls Colne CO6 2LH

- 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 Prestney against the decision of Braintree District Council.
 - The application Ref 20/00356/OUT, dated 24 February 2020, was refused by notice dated 27 April 2020.
 - The development proposed is construction of nine dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Outline planning permission is sought for nine dwellings but with details of appearance, landscaping, layout, and scale reserved for future consideration. I have therefore determined the appeal on the basis of the access arrangements shown on the application drawings and dealt with the other details shown on the drawings as indicative when considering the likely impact of the proposal on the matters set out in the main issue below.
3. The Officer Report referred to the location of the appeal site outside the development envelope of East Colne, which the Council suggests conflicts with the development plan. As the appellant has had an opportunity to consider the relevance of this matter to the appeal proposal, I have dealt with this as a substantive matter, as set out in the main issue below.
4. The main parties have referred to Section 2 of the Publication Draft Local Plan June 2017 (DLP) but I understand that the Examination is not yet complete. Emerging policies and site allocations are not therefore matters that have a significant bearing on my consideration of the merits of this appeal, particularly as there may be unresolved objections to contend with. In accordance with the requirements of Paragraph 48 of the National Planning Policy Framework (the Framework), the policies of the DLP attract only limited weight in my determination of the appeal.
5. The 2020 Housing Delivery Test (HDT) results were published on 19 January 2021. In light of this, the main parties were invited to comment on its implications for the appeal and I have had regard to the responses received.

Main Issue

6. The main issue is whether the site would be a suitable location for housing, having regard to the development plan, with particular regard to its effect on the character and appearance of the countryside.

Reasons

7. The appeal site is roughly rectangular in shape and forms part of a larger agricultural field, adjacent to but beyond the eastern edge of the village envelope of Earls Colne. The north, east and south boundaries are relatively open, so the site is indistinguishable from the remainder of the field. It therefore shares common characteristics with the varied pattern of undeveloped fields within the countryside surrounding the village.
8. The backdrop to the west of the site is of the bungalows and chalet bungalows situated in the development at Lowefields, which is arranged in depth, contrary to the primarily frontage character of housing in Tey Road. Together with other housing nearby, Lowefields provides a clear distinction between what is more urban and rural in form to this built edge of the village. However, the transition to the agricultural fields beyond is softened by the generally spacious arrangement of properties with reasonably sized front and rear gardens.
9. Taken together these stated features, particularly the generally spacious arrangement of properties and undeveloped nature of the site, give rise to a clear and distinct pattern of development. This makes a significantly positive contribution to the character and appearance of the area, including the surrounding countryside.
10. While the Council's landscape analysis for Earls Colne¹ does not appear to form part of the development plan or adopted guidance it, nevertheless, provides detailed analysis of the landscape surrounding the village, so I have afforded it some weight. The analysis suggests that land to the southeast edge of the village has low to medium capacity to accommodate residential development. This should be directed toward adjoining development in Coggleshall Road and Lowefields, where tree and shrub planting belts can be provided to enclose the development and link it with the adjacent landscape framework.
11. Clear views of the appeal site and its relationship with existing built edge of Lowefields are available from Tey Road, particularly on the approach to the village from the southeast. The proposal would be spatially distinct from Lowefields and the majority of its frontage with Tey Road, aside from the proposed access. Given the absence of a physical connection to Lowefields, it would appear as a standalone, insular, and segregated form of development. Although the submitted layout plan is only illustrative, it also demonstrates that a development of up to nine dwellings would be arranged to a comparatively high density of noticeable depth and prominence. The proposal would therefore be at odds with the established pattern of development to this edge of the village, which blends more naturally into the wider rural landscape.
12. The landscaping scheme for the site is also indicative and includes tree planting, much of which would be situated on other land owned by the appellant. Despite its close association with the area of frontage planting immediately east of the site, the indicative tree planting would not be reflective of the planting in situ, integral to the proposed indicative layout or provide enhancement to the rural landscape. Moreover, it would appear as a visually distinct form of screening to the proposed development, which would be alien within its more open surroundings and detached from the planting of field boundaries further south, referred to in the Council's landscape analysis.

¹ Braintree Settlement Fringes Evaluation of Landscape Analysis Study of Earls Colne (June 2015).

13. Landscaping would also be unlikely to make a meaningful impact in softening the visual effects of the development for some time and would, in any event, be ephemeral. I also do not subscribe to the notions that development that would be visually harmful would be acceptable if it can be hidden from view or that additional development would be required in this location to soften the impact of the existing built edge of the village on the landscape.
14. The appellant has suggested that the proposal could be restricted to single storey development, by way of a planning condition. While development of a lower height would reflect the form of existing development to the west, it would not address the harm that I have identified that would be caused by the presence of this built incursion.
15. I am mindful of the approved development of ninety homes to the east of Station Road². Whilst that site is also beyond the settlement, it would be flanked by built development to the east and a substantial retained tree belt to the west. It would also be set back from Station Road beyond an open area and the development will be physically connected to the east and west, so would have an integrated effect. There will also be significant benefits to education, healthcare, and housing supply, including affordable homes. That development would therefore not be comparable with appeal scheme. I have also been referred to proposed site allocations in the DLP. Although these may have similar qualities to the appeal site, particularly in relation to openness, there may be unresolved objections to these allocations to contend with, so they would not have a significant bearing on my consideration of the merits of this appeal.
16. The proposal is for market housing, beyond the village envelope, and would have a significantly detrimental effect on the character and appearance of the area. I therefore conclude that the appeal site would not be a suitable location for housing, having regard to development plan. Hence, the proposal would not accord with the spatial principles and design aims of Policies CS5 and CS9 of the Core Strategy³ and Policies RLP2, RLP9 and RLP90 of the Local Plan⁴; and Policies LPP1, LPP50, LPP55, and LPP71 of the DLP; and conflicts with the design aims of paragraphs 124 and 127 of the Framework.
17. I have not found against Policies RLP3 and RLP56 of the Local Plan as they respectively relate to development within Village Envelopes and to vehicle parking. Moreover, the proposal is for development beyond the envelope and the Council has not raised any concerns in respect of parking. For similar reasons, I have not found against Policy CS7 of the Core Strategy, which refers to the accessibility of developments, as the Council has not found harm in this respect. I have also not found against Policies SP1 and SP3 of DLP, in this main issue, as they are respectively related to the presumption in favour of sustainable development and how housing need will be met in the district in the future.

Other Matters

18. The appeal site is situated within the Zone of Influence for the Blackwater Estuary Special Protection Area (SPA) and Ramsar Site and there is evidence to

² Planning References: 18/00214/OUT and 19/00802/REM.

³ Braintree District Council Local Development Framework Core Strategy (September 2011)

⁴ Braintree District Council Braintree District Local Plan Review (July 2005).

suggest that recreational activity is causing disturbance to the important biodiversity that this accommodates. Consequently, any intensification of these activities could lead to further disturbance.

19. I am conscious of the requirement to undertake an 'Appropriate Assessment' of the effects of the development on the SPA. However, Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates that the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposed development. Given that I have found harm in relation to the main issue, it is not necessary for me to consider this matter in any further detail.

Planning Balance

20. The Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise, which includes the Framework.
21. The development plan for the area currently comprises the Local Plan and Core Strategy, both of which predate the current Framework. However, the Framework makes it clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them according to their consistency with the Framework.
22. A period in excess of five years has passed since the adoption of the development plan. In such circumstances, the Framework suggests that the housing requirement used in assessing a Council's five-year supply of deliverable housing land will be based on the standard method for determining local housing needs for the local planning authority area. Accordingly, the Council's five-year housing land supply (5YHLS) position 2020-2025 had regard to the 2019 HDT results⁵ (67%) and included a 20 percent buffer. This resulted in 4.52 years supply of deliverable housing land within the District.
23. The 2020 HDT results indicate that delivery in the District over the previous three years is now 85% of the housing required. When applying paragraph 73 of the Framework, an action plan is required and a 5% buffer applies. While the Council has been able to demonstrate increased delivery from 2019, they have suggested their 5YHLS would not equate to anything greater than 4.59 years. Furthermore, they have confirmed this would be likely to drop if the shared Section 1 Strategic Plan is adopted by Council and 5YHLS needs to be calculated on the basis of the housing target within that part of the new Local Plan. The Council's concerns therefore align with the appellant's apprehension in relation to supply.
24. Given that the Council cannot demonstrate 5YHLS, as required by the Framework, the current development plan policies most important for determining the application are out-of-date, including for the supply of housing. In such circumstances, paragraph 11(d)(ii) of the Framework and Policy SP1 of the DLP would apply, which require 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 this Framework taken as a whole.

⁵ Issued in February 2020.

25. The Council has accepted that the conflict with Policy RLP2 should only be afforded limited weight due to its definition of village envelopes based on older housing policies. I accept that the stated aim of Policy CS5 to protect and enhance landscape character and biodiversity and the amenity of the countryside is broadly consistent with the aim of the Framework to recognise the intrinsic character and beauty of the countryside. Nevertheless, I also afford limited weight to the conflict with this policy based on the absence of a 5YHLS and the uncertainty surrounding Braintree's future housing delivery.
26. The other policies relevant to the consideration of this appeal referred to in the main issue, namely Policy CS9 of the Core Strategy and Policies RLP9 and RLP90 of the Local Plan are generally consistent with the Framework in terms of its aim to achieve well designed places. I have therefore afforded significant weight to the conflict of the proposal with these policies, as set out in the main issue.
27. While the most favourable position in terms of the shortfall in 5YHLS referred to above would not be significant, the appeal scheme could deliver up to nine dwellings, which would make a modest but nevertheless important contribution to 5YHLS in the District. I therefore afford this benefit moderate weight.
28. Earls Colne is identified as a Key Service Village in the development plan and DLP and is served by a range of local shops, services, and facilities that are capable of meeting the day-to-day needs of its residents. These are within a reasonable walking and cycling distance of the site and there are also bus services available from Upper Holt Street to Colchester and Halstead. The proposal would therefore be situated in an accessible location and social and economic benefits would arise from the contribution made by future occupants to the vitality and vibrancy of the village. The proposal would also contribute economically through the employment and procurement of materials during the construction period. Given the scale of development proposed, I afford these benefits moderate weight.
29. Although landscaping of the site and its extremities could be undertaken to enhance biodiversity, this would not be unique to the development proposed and could be carried out without it, so I afford this benefit limited weight.
30. There is agreement between the main parties that the proposal would be compliant with the policies of the development plan relevant to contamination, highway safety, flood risk and drainage, and the living conditions of neighbouring occupiers, subject to planning conditions. These matters would therefore neither weigh in favour or against the appeal scheme.
31. In terms of harm, the proposed development would not comply with development plan policy in respect of the location of housing and its effect on the character and appearance of the area. Overall, I find that the adverse impacts of the proposal are matters of significant and overriding weight against the grant of planning permission.
32. The adverse impacts of granting permission identified would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This does not indicate the proposal should be determined other than in accordance with the development plan.

Conclusion

33. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR