



Appeal Decision

Site Visit made on 18 May 2021

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2021

Appeal Ref: APP/Z1510/W/21/3266390

Berwick Barns, Terling Hall Road, Hatfield Peverel, Chelmsford, Essex CM3 2EY

- 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 Mrs Caroline Konig against the decision of Braintree District Council.
 - The application Ref 20/00371/FUL, dated 24 February 2020, was refused by notice dated 18 September 2020.
 - The development proposed is New 4 Bedroom Detached House.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council has confirmed that the policies from the Shared Strategic Section 1 Local Plan (the S1LP) were adopted on 22 February 2021. Policies SP1 and SP3 referred to on the Council's Decision Notice (DN) were from the Publication Draft Local Plan June 2017 (DLP) and are included in the S1LP, but Policy SP3 has been renamed Policy SP4. The other policies of the adopted development plan referred to on the DN have not been superseded and the Examination into Policies LP1 and LP17 of the DLP has not yet concluded. Appeal decisions must be based on the policies from the development plan prevailing at the time of determination. Given the date of the adoption of the S1LP, the appellant has had opportunity to comment upon the relevance of the policies to the appeal.

Main Issues

3. The main issue is whether the site would be a suitable location for housing, with particular regard to its accessibility to local shops, services, and facilities.

Reasons

4. The appeal concerns a parcel of land situated within the countryside, beyond a village envelope. In such circumstances the development plan and DLP restricts development to uses appropriate to the countryside. The site is within a very loose grouping of several houses either side of Terling Hall Road. These are a short distance to the south and across fields and paddocks to the west and northeast. Given the existing spatial arrangement of housing, the proposed house would not fill a gap between existing houses, as a significant gap would remain to the houses northeast.
5. The main parties agree that the site is not situated within an isolated location. However, it would do little more than add to existing development in the open

countryside. Hatfield Peverel offers a good range of services and facilities, including a railway station, but the appeal site is some distance away from the village and poorly located in relation to it. The route to the village along Terling Hall Road lacks a dedicated footway, until the bridge over the A12, and there is a very limited amount of street lighting. I note that the Hatfield Peverel Neighbourhood Development Plan includes a map which identifies Terling Hall Road as a cycle route, but this continues south away from the village and the B1137 is fast flowing. Accordingly, the opportunities to walk or cycle to the shops, services, and facilities available nearby would not be convenient or realistic ones, particularly for occupants with young children or mobility issues, especially after dark or during inclement weather.

6. Future occupants of the proposed house would therefore be highly likely to be required to travel regularly by private motorised transport to access education, retail, employment, and healthcare. The proposal would not, of itself, generate a large number of traffic movements and I accept that many of these journeys may be shorter, to the village. A greater dependency on car use is also inevitable in more rural locations, but the cumulative effect of allowing developments in locations such as the proposal would be likely to increase the amount of unsustainable journeys made.
7. I appreciate that there are bus stops to either side of the B1137, east of Terling Hall Road, that offer services to Witham, Colchester, Maldon and Chelmsford, but their location may not necessarily be convenient having regard to the fast flowing nature of the road and absence of bus shelters. I am also not aware of the frequency of these services, so I am unable to conclude that the bus services available would sufficiently discourage further use of taxis or private motorised transport.
8. I have had regard to the numerous appeal and planning decisions, to which I have been referred, as far as they are relevant to the appeal before me. However, the proximity and nature of access from the rural housing identified therein to the shops, services and facilities available will inevitably differ in each context and is unlikely to be identical. In any event, based on the evidence before me, I have reached a different conclusion to those decisions, and these would not provide justification for a development that I consider would be harmful for the reasons set out above.
9. In light of the above, I conclude that the appeal site would not be a suitable location for housing, having regard to the Council's spatial strategy, and its accessibility to local shops, services, and facilities. Moreover, the proposal would be contrary to the spatial principles of Policies RLP2 and RLP16 of the Council's Local Plan¹; Policy CS5 of the Council's Core Strategy²; and Policy LPP1 of the DLP. The proposal would also conflict with the aims in respect of the location and accessibility of development, to reduce the need to travel, as outlined in Policy CS7 of the Council's Core Strategy and paragraphs 78 and 103 of National Planning Policy Framework (the Framework).
10. I have not been referred to any other countryside policies that would apply to the proposal and I have not found against Policy SP1 and SP4 of the S1LP and LPP17 of the DLP, as they respectively relate to the presumption in favour of

¹ Braintree District Local Plan Review (Adopted July 2005).

² Braintree District Council Local Development Framework Core Strategy (Adopted 19 September 2011).

sustainable development, housing needs and delivery, which are not relevant to this main issue.

Other Matters

11. The appeal site is situated within the Zone of Influence for the Blackwater Estuary Special Protection Area (SPA) and Ramsar Site and the Essex Estuaries Special Area of Conservation (SAC). These are respectively designated for their support of rare, vulnerable, and migratory birds; and high-quality habitats and species. The SAC overlaps the SPA and there is evidence to suggest that recreational activity is causing disturbance to these important sites and intensification of these activities could lead to further disturbance.
12. I am conscious of the requirement to undertake an 'Appropriate Assessment' of the effects of the development on the SPA and SAC. 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.
13. The site is within the setting of the Grade II listed 'Berwick Farmhouse' and I have had regard to the statutory duty referred to in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, due to the proximity and physical relationship of the proposal with this designated heritage asset, particularly the presence of intervening buildings, its setting would be preserved and the proposal would not detract from it.

Planning Balance

14. 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.
15. The 2020 Housing Delivery Test results indicate that delivery in the District over the previous three years is now 85% of the housing required. While the Council has been able to demonstrate increased delivery from 2019, they have suggested their supply of deliverable housing land within the District would not equate to anything greater than 3.73 years. Policy SP4 of the S1LP has only recently adopted, which sets out the housing need for the District, but the delivery of housing is addressed in Policy LPP17 of the DLP, the Examination of which has not yet concluded. There is therefore some uncertainty to the delivery of housing in the District.
16. Given that the Council cannot demonstrate five-years housing land supply (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 S1LP would apply. These 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 the Framework taken as a whole.
17. The development plan for the District currently comprises the Local Plan and Core Strategy, both of which predate the current Framework, and the S1LP. 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.

18. The conflict of the proposal with Policies RLP2 and RLP16 would only be afforded limited weight due to their approach to the location of housing being based on older housing requirements. I accept that the stated aim of Policy CS5 to protect and enhance landscape character, biodiversity, geodiversity 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.
19. While there are some inconsistencies of Policy CS7 of the Core Strategy with the Framework, as it does not distinguish between urban and rural contexts, it is generally consistent in other respects, particularly with regard to its aims for climate change, accessibility and sustainable transport. I therefore afford moderate weight to the conflict of the proposal with this policy.
20. Given the progress with the DLP, in accordance with the requirements of Paragraph 48 of the Framework, any conflict with Policy LPP1 of the DLP attracts only limited weight in my determination of the appeal, particularly as there may be unresolved objections to contend with.
21. The primary design input of self or custom build properties should be from an initial occupier and the appellant has suggested that she wishes to occupy the proposed dwelling. The proposal would therefore help the Council to meet its obligations imposed by the Self-Build and Custom Housebuilding Act 2015³ (the Act) for housing in the area and be supported by paragraphs 59 and 61 of the Framework. However, I have not been provided with a legal mechanism, such as a planning obligation, to ensure compliance with the provisions of the Act and provide certainty that the dwelling would be a self-build project, as promoted by the appellant.
22. The shortfall in the Council's 5YHLS is significant, but even if the proposal was implemented and a self-build property provided, given the scale of the proposed development the contribution to the supply of housing and self-build properties would only be minor so would be afforded limited weight.
23. Social and economic benefits would arise from the contribution made by future occupants to the vitality and vibrancy of the Hatfield Peverel. 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 limited weight.
24. There is agreement between the main parties that the proposal would be compliant with the policies of the development plan relevant to the rural character and appearance of the area and I note that the proposed house would utilise a palette of materials that would relate sensitively to the existing built development around Berwick Farm. This would align with the preferences in the Neighbourhood Plan for smaller, creatively designed developments, which have less impact than larger sites. There would also be no conflict in

³ As amended by the Housing and Planning Act 2016.

respect of the living conditions of occupants and neighbours, flood risk, and parking and highway safety would not lead to an unacceptable intensification of the existing access to the site. While there is no substantive evidence before me to lead me to another conclusion on these matters, they amount to neutral factors that would neither weigh in favour or against the appeal scheme.

25. In terms of harm, the proposed development would not comply with development plan policy in respect of the location and accessibility of the site for housing. Overall, I find that the adverse impacts of the proposal are matters of significant and overriding weight against the grant of planning permission.
26. 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 that the proposal should be determined other than in accordance with the development plan.

Conclusion

27. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding, including the Framework. Accordingly, for the reasons given, I conclude that the appeal should not succeed.

Paul Thompson

INSPECTOR