

# Appeal Decision

Hearing Held on 28 September 2021

Site Visits made on 10 June 2021 and 28 September 2021

**by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB**

**an Inspector appointed by the Secretary of State**

**Decision date: 12<sup>th</sup> November 2021**

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**Appeal Ref: APP/Z1510/W/21/3267825**

**Land North of Station Road, Earls Colne CO6 2ER**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
  - The appeal is made by Heyhill Land Limited against the decision of Braintree District Council.
  - The application Ref 19/02257/OUT, dated 11 December 2019, was refused by notice dated 3 September 2020.
  - The development proposed is described as, 'outline planning permission with all matters reserved except access, for up to 53 residential dwellings, associated landscaping, public open space, SuDS and formation of new vehicle access off Station Road'.
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## Decision

1. The appeal is dismissed.

## Application for costs

2. An application for costs was made by Heyhill Land Limited against Braintree District Council. This application is the subject of a separate Decision.

## Preliminary Matters

3. The proposal was made in outline with approval sought only for access. During the hearing it was confirmed that the drawing detailing the access for which approval is sought is drawing number SK 01 Rev A. While this drawing is titled Indicative Access Arrangement, the main parties also confirmed that this drawing is not indicative. I have therefore had regard to the submitted plans on an indicative basis only in so far as they relate to the reserved matters.
4. While I acknowledge the Section 2 - Publication Draft Local Plan June 2017, since there is no certainty that it will be adopted in its current form, I attribute the Policies within limited weight.

## Main Issues

5. The main issues are:
  - The effect of the proposed development on the character and appearance of the area including the loss of trees and hedgerow; and
  - The effect of the proposed development on the setting of Earls Colne Conservation Area (CA), Meadowcroft and Station House.

## Reasons

### *Character and appearance*

6. The site is a triangular area of undeveloped land at the northern edge of Earls Colne to the east of Station Road. Given the more moderate spacing of the largely detached buildings on this side of Station Road, the area has a pleasant spacious semi-rural character. Given its green undeveloped nature, the site provides a pleasant open contribution to the character of this area and has a close relationship with the countryside further to the east notwithstanding the presence of the golf course.
7. The site is located within the wider Colne River Valley. The land slopes down to the north and east towards the valley such that the slope of the other side of the valley to the north east in particular is visible from the site.
8. The scheme would introduce a significant amount of built development, road and hardstanding to an undeveloped site. It would therefore urbanise and greatly alter the landscape character of the site. Since this side of Station Road has a more rural quality than the western side of the road, the urbanisation would appear incongruous, harmfully eroding the pleasant open character of the area. This urbanisation would be prominent not only in close views from Station Road, but also from the valley slope to the north east.
9. The wider views towards the site from across the valley to the east and north are partially screened by trees, vegetation and local topography. However, there are a number of points primarily to the north from Mill Lane where the site appears to be visible and the urbanisation of the site and harm to the character of the area would be apparent. In the long term, this harm may be partially mitigated by careful consideration of landscaping matters that would be assessed at reserved matters stage. However, there would be significant harm to the character of the area in the short and medium terms as any landscaping would take time to provide a substantial amount of screening.
10. While layout is a matter for future consideration, the number of proposed dwellings would appear incongruous given the moderate spacing and more rural feel of the east side of Station Road. I note the Townscape and Density Study provided by the appellant. However, the development at Hillie Bunnies and Willow Tree Way are located closer to High Street than the appeal site such that they have a closer relationship to more urban parts of the village. Therefore, these developments are not directly comparable to the site in terms of character and appearance. While the development at Atlas Road lies closer to the site, it is on the west of Station Road, and is a far larger development than the proposal. Therefore, these developments are not directly comparable to the site in terms of character and appearance.
11. Accordingly, while a form, type and density similar to those noted in the Study may be achieved and layout is a matter for future consideration, given the less developed nature of the east side of Station Road, and the location of the site at the edge of the village, the proposal would not appear as a natural extension of the settlement. It would instead unacceptably urbanise the site, appearing incongruous in this semi-rural part of the village and would harmfully intrude into the countryside. Moreover, this effect would be apparent not only from along Station Road, but also from certain points on the valley slope to the north east.

12. I note the evidence relating to a scheme for 90 dwellings to the west of Station Road which appeared to near completion at the time of my site visit. However, since that development wraps around existing dwellings, its impact on views from Station Road appears limited. In addition, the west side of Station Road has a more close-knit pattern of development than the east of the road. Accordingly, that scheme is not directly comparable with this proposal and it appears to have had a limited effect on the character of the area surrounding the appeal site.
13. There is a modest industrial area to the north of the site. Given the agricultural appearance of the buildings, they are generally in keeping with the rural character of the surrounding area. Therefore, notwithstanding the presence of those buildings, the development of the site with 53 dwellings would appear to intrude into the countryside.
14. I also note a scheme for up to 56 units close to Colne House. However, while I note the contribution that development makes to the evolution of Earls Colne, since it is located closer to the centre of the village, it is not directly comparable with this scheme in terms of character and appearance. I also note the comments of the previous Inspector for a scheme that was dismissed in 2013. Since that decision was made some eight years ago and the proposal subject of this appeal is for a far greater number of dwellings, it is not directly comparable to this appeal which must be determined on its individual merits.
15. The proposal includes the removal of a significant length of hedgerow and a number of trees along Station Road to facilitate visibility splays for the access. It is also likely that some hedgerow south of the proposed access would need to be removed to allow the provision of footpath widening. However, the appellant has indicated that the hedgerow could be replanted a short distance into the site. Therefore, while I acknowledge the length of hedgerow to be removed, in my judgement new planting could largely mitigate the harm in this respect. Since Policy RLP Policy 81 of the Braintree District Local Plan Review Adopted Plan July 2005 (LPR) does not preclude the removal of trees and hedgerow, the development would not conflict with this Policy.
16. Consequently, the proposed development would harm the character and appearance of the area. Therefore, it would conflict with LPR Policies RLP2 and RLP3 which direct development to within Village Envelopes. It would also conflict with LPR Policy RLP9, which seeks, among other things, development that is in character with the site and relate to its surroundings.
17. In addition, the scheme would conflict with LPR Policy RLP80 which resists development that would not successfully integrate into the local landscape.
18. The proposal would also conflict with Policies CS5, and CS9, of the Braintree District Council Local Development Framework Core Strategy Adopted September 2011 (CS) which seek, among other things, to protect and enhance the landscape character of the countryside and development that respect and respond to the local context.
19. While LPR Policy RLP 10 relates to density, and LPR Policy RLP 90 relates to design, since layout, scale and appearance are matters for future consideration, they are not directly relevant to this main issue.

*CA, Meadowcroft and Station House*

20. The site is adjacent to Earls Colne CA, the significance of which lies in the way its range of buildings of various ages and styles reflect the historic evolution of this rural settlement. The part of the CA which lies along Station Road is primarily characterised by detached buildings with moderate spacing such that this side of Station Road has a semi-rural character and appearance. Given the undeveloped rural nature of the site, it provides a pleasant spacious setting for the CA and contributes positively to its setting.
21. The proposal would introduce a significant amount of built development, road, driveways and hardstanding that would have a significantly urbanising effect on the landscape character of the area. While future consideration of landscape could partially mitigate the loss of openness, given the scale of the development, it would result in the loss of rural character of the CA thereby diminishing its significance.
22. Meadowcroft and Station House are non-designated heritage assets, the significance of which lie in the evidence of historic vernacular architecture. Given the proximity of the site to these buildings, it lies within their settings.
23. A number of buildings have been constructed between Meadowcroft and the site such that it has a closer relationship to the adjacent dwellings than to the undeveloped site. As such, Meadowcroft is currently experienced as part of a group of buildings, rather than as a partially isolated dwelling. As such, while the site lies within the setting of Meadowcroft, it provides little contribution to the significance of this non-designated heritage asset.
24. The proposal would include up to 53 dwellings and while it would urbanise the site, this would have little impact on the significance of Meadowcroft given the dwellings sited between it and the site. Accordingly, the proposal would not harm the significance of Meadowcroft.
25. Station House is located to the north of the site and is largely screened from the site by trees and vegetation along the boundary. To the rear of Station House lies commercial units such that the setting of this building has also been altered resulting in it being less isolated. The red line indicated on the location plan does not extend to the boundary with Station House but leaves a significant portion of land between the two sites. Therefore, the site provides a modest contribution to the significance of the building. As such, the proposal would not fully diminish the separation of the building and the development to the south and would not harm its significance.
26. While Meadowcroft and Station House may not have been mentioned in a previous application for development on the site, I have necessarily had regard to the evidence before me and this point has not altered my findings on this main issue.
27. I acknowledge that the village lies within an extensive rural landscape. While this development would affect an appreciation of the village primarily from close views, it would nonetheless diminish the appreciation of the historic rural settlement to some degree. Accordingly, it would cause less than substantial harm to its significance.
28. Consequently, the proposal would detract from the setting of Earls Colne CA and therefore would cause harm albeit less than substantial, to its significance.

## **Other Matters**

29. I acknowledge local concerns including those relating to land ownership. However, this is not a planning matter. While I also note the evidence regarding enforcement action on the site, this is a matter for the Council in the first instance and I have necessarily assessed the proposal before me. As such these matters have not altered my overall decision.
30. I also note local concerns regarding highway safety and congestion. I acknowledge that the scheme would increase the number of trips to and from the site and would add to that resulting from nearby developments. However, the proposal would result in adequate visibility splays from the proposed access such that motorists would have adequate time to react to oncoming vehicles and vice versa. As such, the proposed access would not have an unacceptable impact on highway safety.
31. I also note the evidence regarding the junction of Station Road with High Street. However, I have necessarily assessed the scheme before me and this matter has not altered my overall decision.
32. In addition, I recognise concerns regarding wildlife including reptiles and kingfishers. However, from the evidence before me, any harm in this respect could be adequately mitigated through the use of suitably worded conditions.
33. The effect on local services such as schools and doctors' surgeries has also been raised as a concern. However, there is little substantial evidence before me to indicate that the proposal would result in any undue harm in this respect. While I also acknowledge concerns regarding drainage, I see no reason why a condition could also not mitigate any harm resulting from the development in this respect.

## **Planning Obligations**

34. The appellant has completed a legal agreement under Section 106 of the Act (a S106) in conjunction with Braintree District Council which includes a number of obligations to come into effect if planning permission is granted. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. They relate to a number of matters.
35. CS Policy CS2 seeks a target of 40% affordable housing provision on sites in rural areas. The agreement makes for this provision and I consider it is fairly and reasonably related to the development proposed and as such passes the statutory tests.
36. The S106 makes provision for amenity areas and open space to be provided in accordance with plans and specifications to be provided to the Council prior to the commencement of development. I am satisfied that the obligation in this respect is related directly to the development and fairly related in scale and kind.
37. The S106 also makes provision for financial contributions towards a number of outdoor sports facilities, allotments and towards education in the area. The sums in respect of the financial contributions are undisputed and the terms related directly to the development and fairly related in scale and kind. As such

they would accord with the provisions of Regulation 122 of the CIL Regulations and the tests for planning obligations set out in the Framework.

38. The appeal scheme proposes up to 53 dwellings on a site that lies within the Zone of Influence (ZoI) of Blackwater Estuary Special Protection Area (SPA) and Ramsar. As such there would be a likely increase in the number of recreational visitors to the designated site, potentially resulting in disturbance to the integrity of the habitats of qualifying features. Therefore, in combination with other developments it is likely that the proposal would have significant effects on the site.
39. The Essex Coast (RAMS) sets out detailed mitigation measures that would be funded by S106 contributions at a specified tariff per dwelling. The submitted S106 makes for financial contributions in accordance with the RAMS. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the CIL Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.

### **Other Considerations**

40. I have found development plan conflict in respect of character and appearance and the CA. S38(6) of the Act says the development should be determined in accordance with the development plan unless material considerations indicate otherwise, and in this regard my attention has been drawn to the five-year housing land supply situation.
41. It is agreed between the main parties that the current housing target for Braintree District for the period 2021 – 2026 is some 5,352 dwellings on the basis that the cumulative shortfall is to be made up within the five-year period.
42. During the Hearing, the Council updated their position as set out in the Statement of Common Ground and confirmed that they consider there to be a deliverable supply of some 5,703 dwellings within the five-year period resulting in a five-year housing land supply position of around 5.33 years. The appellant disputed the deliverability of a number of the sites included in the supply and consider a five-year housing land supply position of around 4.44 years.
43. The Glossary to the Framework states that to be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. Where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. I also note the advice within the Planning Practice Guidance (PPG) on what may be considered 'clear evidence'.
44. I acknowledge that a number of the disputed sites were granted outline planning permission a considerable time after the submission of the application. I also note that in some cases this period included agreement of S106 legal agreements and were affected by the Covid-19 pandemic. Furthermore, while a number of sites were granted outline planning permission after the base date of

1 April 2021, case law indicates that the definition of deliverable is not a closed list.

Phases 3B, 4 – 216 dwellings

45. A number of the disputed sites have outline permission and reserved matters application submitted to the Council. Of these one of the largest is Phases 3B, 4 South West Witham Growth Location, off Hatfield Road and the earlier phases are either under construction or have been completed. I note the comments of the Inspector for the case at Rayne. However, since that appeal the reserved matters application was submitted to the Council and is currently anticipated to be determined by the Planning Committee in the near future. In addition, the developer has provided a forecast of completions which are roughly in line with the Council's trajectory and is more conservative than the rate of completions of the earlier phases.
46. Therefore, notwithstanding the time it has taken for the application to be considered by the Planning Committee and that the agenda for the meeting has not been published, there is clear evidence that the housing completions will begin on site within five years.

Land North of Colchester Road – 175 dwellings

47. While I note that there are a number of pre-commencement conditions to be discharged, there is no clear evidence before me to indicate why the sites such as this which benefit from both outline and reserved matters planning permissions could not be delivered in accordance with the Council's trajectory within five years.
48. Including the above two sites and two small sites where reserved matters permission have been granted in the housing land supply position, and removing a couple of small sites where outline planning permission has lapsed, the Council are able to demonstrate a supply in the region of at least 4.7 years

Land east of Broad Road – 160 dwellings

49. A reserved matters application had not been submitted for the site at Land east of Broad Road and a developer was in the process of purchasing the site. However, there was no clear evidence regarding the timing of the completion of the purchase, or the submission of a reserved matters application. Moreover, given the size of the scheme, for around 1,000 dwellings, the reserved matters application would be likely to be submitted in phases. In addition, it is likely that the delivery of housing would be dependent on infrastructure, the details of which have not been provided.
50. I acknowledge the forecast of housing completions from a site promoter. However, this was not completed by the developer currently purchasing the site. Furthermore, I note that a phasing strategy was submitted to the Council, and that the Council's trajectory reflects national and local data. However, notwithstanding ongoing pre-application discussions, there is no clear evidence that housing completions would begin on site within five years.

Towerlands Park – 155 dwellings

51. The scheme at Towerlands Park is also a large development which benefits from outline planning permission. A projection of housing completions has been

provided by the developer which is significantly more ambitious than the Council's estimate based on national and local data for build out rates. Accordingly, the indication of site opening on the developer's website does not provide clear indication of housing completions within five years. The Council has also indicated that a reserved matters application is due to be submitted following extensive pre-application discussions and a planning performance agreement.

52. I also acknowledge the evidence regarding the Link Road provided as part of an adjacent scheme. However, given the lack of a reserved matters application, it is unclear whether the Council's housing trajectory could be delivered as a realistic prospect.

Land between Long Green and Braintree Road – 110 dwellings

53. While the Council indicated that clear progress had been made during pre-application discussions and towards the submission of a reserved matters application, no evidence regarding the timing of submission was provided. There also appears to be no information provided by the developer regarding build out rates. Therefore, notwithstanding the sustainability of the location, there is no clear evidence that housing completions would occur within five years.

Land North of Oak Road – 70 dwellings

54. A reserved matters application for the scheme at this site was expected imminently at the time of the hearing and there appears to be no specific constraints on the greenfield site. However, even if a reserved matters application had been submitted, since no substantial evidence regarding build out rates were provided by the developer, there is no clear evidence that housing completions would occur within five years.

Conclusions on this issue

55. For the foregoing reasons, the above sites cannot be included in the five-year housing trajectory and together they amount to around 495 dwellings which would demonstrate a housing supply position of around 4.9 years at most.
56. Consequently, the Council cannot demonstrate a five-year supply of housing land and I consider the Council's housing land supply position to lie in the region of between about 4.7 and 4.9 years.

**Planning Balance**

57. The Council are unable to demonstrate a five-year housing land supply. As discussed above, since there is only a slight housing shortfall, I attribute this matter modest weight. Paragraph 11(d)i of the Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
58. The development would result in less than substantial harm to the CA due to the urbanising effect on the rural setting of the village. In accordance with paragraph 202 of the Framework, this harm should be weighed against the

public benefits of the proposal including, where appropriate, securing its optimum viable use.

59. The public benefits of the proposal primarily lie in the provision of 53 dwellings including affordable housing to the local housing supply. This would include the social and economic contribution that future occupiers would provide to the local community and there would be temporary economic benefits during the construction phase. Given the limited nature of the shortfall, I consider it quite probable that this could be addressed elsewhere in the district and not in this location where there would be an adverse effect on the CA. Therefore, I attribute reduced weight to these benefits.
60. The Framework advises that great weight should be given to the asset's conservation irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. On this basis, the weight attributed to the benefit of the provision of 53 dwellings does not outweigh the less than substantial harm to the significance of the CA.
61. Therefore, the proposal would conflict with LPR Policies RLP90 and RLP95 which seek, among other things, designs that are sensitive to the need to conserve local features of historic and landscape importance and development adjacent to a Conservation Area and affecting its setting should not detract from its character and appearance. It would also conflict with the aims of CS Policy CS9 which seeks, among other things, developments that respect conservation areas.
62. I also acknowledge Policy SP3 of the North Essex Authorities' Shared Strategic Section 1 Plan which permits development adjoining settlements according to a number of factors. However, given my findings above, the proposal would conflict with the development plan as a whole.
63. The proposal would also result in harm to the character and appearance of the area. The harm would be primarily in short views from Station Road and some longer views from the north east across the valley. However, while the landscape harm may be partially mitigated over time by tree and hedgerow planting, the scheme would nevertheless unacceptably urbanise the site, harmfully departing from the spacious character of this area. Given the less developed nature of the east side of Station Road, the development would not appear as a natural extension of the settlement, rather it would unacceptably intrude into the countryside. I therefore attribute significant weight to the harm in this respect. Therefore, even if there was an absence of heritage harm, the adverse effects would nevertheless significantly and demonstrably outweigh the benefits.

## **Conclusion**

64. For the reasons given above, the proposed development would conflict with the development plan as a whole and in the absence of material considerations to indicate otherwise, the appeal is dismissed.

*R Sabu*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Ian Coward	Collins and Coward
Jacob Taylor	Heyhill Land
Barrie Whight	Heyhill Land

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mathew Wilde	Braintree District Council
Alex Evans	Braintree District Council
Catherine Carpenter	Braintree District Council

### **INTERESTED PARTIES:**

Terry Meecham	Local resident
Lyn Spurgeon	Local resident

## **DOCUMENTS**

Appellants closing notes

Two photographs of the site submitted by Mr Meecham