



Appeal Decision

Inquiry held on 23,25,26,30 November and 1 December 2021

Site visit made on 23 November 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2021

Appeal Ref: APP/Z1510/W/21/3278620 **Land to the west of the A131, High Garrett**

- 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 Rainier Developments Limited, Samuel Gray and Robert Clarke against the decision of Braintree District Council.
 - The application Ref: 20/01813/OUT, dated 30 October 2020, was refused by notice dated 23 June 2021.
 - The development proposed is described as an outline planning application (some matters reserved) for the residential development of up to 37 dwellings (including 40% affordable housing), with vehicular access, areas of landscaping and public open space.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is in outline form with all matters reserved for future consideration apart from access. I have dealt with the appeal on this basis and treated any details not to be considered at this stage as being illustrative only. The main parties have confirmed that the Parameter Plan¹ is for my consideration.
3. The revised National Planning Policy Framework (Framework) has been published since the Council made its decision. Parties have made reference to the Framework in their evidence. I have considered it in my decision.
4. During the course of the appeal, the appellant submitted amended plans² that show a change in the site boundary to exclude a small area of land that is under the ownership of 105 High Garrett (No 105). This sought to rectify a small anomaly on the plans to reflect the land ownership and so has a limited bearing on the consideration of the proposal itself. The appellant's evidence also contained an amended version of the access plan³ in relation to the proposed footway. This resulted from the Thistle Field appeal decision⁴, the site of which lies directly to the south. Accordingly, I have considered these amended plans in my decision.

¹ Ref: 3501B

² Site Boundary Plan 1001D, Concept Masterplan 3202H and Parameter Plan 3501B

³ Proposed Vehicular Access 19350 SK T 001 Rev P6

⁴ Appeal ref: APP/Z1510/W/20/3264183

5. The Council's first reason for refusal includes reference to Policy RLP90 of the Braintree District Local Plan Review (2005) (BDLPR) and Policy LPP55 of the Section 2 - Publication Draft Local Plan (2017) (S2LP). The Council no longer consider there would be a conflict with these policies because they relate to detailed matters to be addressed at a reserved matters stage. I see no reason to disagree and so I have not considered these policies further.
6. The Bocking and High Garrett Residents' Action Group submitted a written representation prior to the opening of the Inquiry. I accepted this document and the appellant was afforded the opportunity to comment on it at the Inquiry.
7. The Inquiry was adjourned on the first day due to matters related to Covid-19. The Inquiry then resumed on 25 November 2021 on a 'virtual' basis. Interested parties who attended the Inquiry venue had the opportunity to participate via a virtual link that the Council had set up. Hence, there is no prejudice.
8. The Council stated that an agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) (S106 Agreement) would address the matters in its second reason for refusal relating to the provision of supporting infrastructure and services. The Inquiry proceeded on this basis and included the consideration of a final draft S106 Agreement. A completed and executed version was submitted after the close of the Inquiry.

Main Issues

9. The main issues are (i) whether the proposal would be in a suitable location for housing with regard to development plan policy and national planning policy; (ii) the accessibility to local services; (iii) the effect on the character and appearance of the area; (iv) housing land supply matters; and (v) if harm arises, whether this would be outweighed by the benefits of the proposal.

Reasons

Suitable Location for Housing

10. The appeal site comprises a field that is located on the west side of the A131. Its boundaries are formed for the most part by hedgerows and trees. The site extends around No 105, where there is also fencing on the boundaries. A Public Right of Way (PRoW) runs adjacent to the north boundary and in part extends in between this boundary and No 105. The site abuts further fields to the west and south. To the north is land associated with a domestic property. On the opposite side of the A131, there is a linear pattern of predominantly residential development. The bulk of the settlement of High Garrett lies on that side of the road.
11. The Braintree District Local Plan 2013-2033 North Essex Authorities' Shared Strategic Section 1 Plan (2021) (S1LP) concerns the effective delivery of planned strategic growth, particularly housing and employment, with the associated infrastructure across the North Essex Authorities, including Braintree District Council.
12. Policy SP3 of S1LP sets out that existing settlements will be the principal focus for additional growth. Development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role both within

- each individual district and, where relevant, across the wider strategic area. This policy goes on to state that it will be for Section 2 of the Local Plan for each constituent local planning authority to identify a hierarchy of settlements where new development will be accommodated according to the role of the settlement, sustainability, its physical capacity and local needs.
13. Policy SP3 does not define settlement boundaries. That function is performed by the BDLPR Proposals Map, including by way of village envelopes. Whilst the proposal would effectively lie adjacent to the village envelope for High Garrett, it would lie outside of it. Policy RLP2 of the BDLP sets out that new development will be confined to within these boundaries. Outside these areas countryside policies will apply.
 14. Policy CS5 of the Council's Local Development Framework Core Strategy (2011) (CS) asserts that development outside village envelopes will be strictly controlled to uses appropriate to the countryside, in order to protect and enhance the landscape character and biodiversity, geodiversity and amenity of the countryside. The supporting text gives examples of what is meant by uses appropriate to the countryside and which are those which are most typically found in such areas. This does not reasonably include the proposal as a housing site of up to 37 dwellings.
 15. The main parties disagree over the application of Policy SP3. In essence, the appellant's case lies on where this policy refers to development adjoining settlements, whereas the Council point to where it refers to the role of Section 2 of the Local Plan in establishing a hierarchy of settlements and accommodating new development. In this regard, the proposed development boundary for High Garrett under S2LP would also not include the appeal site.
 16. The Gilda Terrace appeal decision⁵ points to a tension between Policy SP3, where it refers to development adjoining settlements, and Policies RLP2 and CS5 where they are concerned with development inside boundaries. That appeal decision concerned a site adjoining Braintree itself, which is the principal focus for growth in the Council area under S1LP. The tension in that case was therefore more apparent because of the standing of Braintree in respect of growth. This does not apply to High Garrett. As a modest sized settlement, it is not such a location.
 17. That being said, where Policy SP3 refers to development adjoining settlements cannot simply be ignored, notwithstanding that S1LP is centred on strategic cross boundary matters. The Council clearly refer to this policy in its remaining reason for refusal. Whilst I acknowledge the role of S2LP in this regard, this does not in itself exclude the consideration of Policy SP3 for more modest sized settlements. Policy SP3 is therefore of relevance to my decision. Nor however is Policy SP3 unqualified and this includes a consideration of sustainability. Accessibility to local services is an aspect of such a term which I consider later in my decision, as well as character which also features in Policy SP3.
 18. Emerging Policy LPP1 of S2LP sets out the Council's intended approach as regards development and development boundaries. It states that development outside such boundaries will be confined to uses appropriate to the countryside whilst also protecting and enhancing valued landscapes, sites of biodiversity or

⁵ Appeal ref: APP/Z1510/W/20/3265895

geological value and soils⁶. This is not dissimilar to Policies RLP2 and CS5. Likewise, the proposal would not constitute a use appropriate to the countryside for the purposes of Policy LPP1.

19. I have also been referred to how S2LP proposes to deal with High Garrett in relation to its treatment as a third tier village in the proposed hierarchy of settlements and what this means by way of its ability to accommodate development. As the site would in any event lie outside of the proposed development boundary, this adds little further to my deliberations.
20. I conclude that the proposal would not be in a suitable location for housing with regard to development plan policy in as far as it would not comply with Policies RLP2 and CS5. As Policy LPP1 maintains a similar stance to these existing policies, the proposal would also not comply with this emerging policy. Whether the proposal would comply with Policy SP3 and the Framework in this regard is dependent on a consideration of the issues which follow.

Accessibility to Local Services

21. High Garrett contains a modest level of local services. These include a public house, a car repairs garage, a furnishings/gift shop and a hairdressers. Such services clearly would not cater for the day to day needs of the future occupiers of the proposal and so they would have to look further afield to access such services.
22. The settlement of Bocking contains a wider variety of services which include a primary school, nurseries, a takeaway, a restaurant and a club. These lie between approximately 1700 metres (m) to 2300 m from the appeal site. Braintree Hockey Club is also found in Bocking, approximately 1100 m from the site. Braintree and Halstead town centres lie around 4 and 5 kilometres (km) from the site, respectively. They both contain a wide variety of shops and services, including national retailers.
23. Policy RLP53 of the BDLPR, Policy CS7 of the CS and emerging Policy LPP44 of the S2LP seek essentially to ensure that development is provided in accessible locations, that it is well served by public transport, reduces the need to travel and that appropriate provision is made for walking and cycling, amidst other matters.
24. Paragraphs 105, 110 and 112 of the Framework similarly concern limiting the need to travel, a choice of transport modes, opportunities to promote sustainable transport, as well as referring to priority first to pedestrian and cycle movements and appropriate facilities that encourage public transport use. Whether or not the proposal can be considered to be significant for the purposes of paragraph 105, similar regard would apply to promoting sustainable transport. Where this paragraph refers to that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, this also needs to be considered in the context of the proposal which in this case would involve the transport movements of the occupiers of up to 37 dwellings. Paragraph 112 also concerns enabling charging of plug-in and other ultra-low emission vehicles.
25. There is nothing in development plan policy or the Framework which in itself seeks to prohibit the use of the car. However, it is fair to say that planning

⁶ As per the Main Modifications document, ref MM10.

policy overall seeks to encourage the use of modes of transport other than the car, including by way of walking, cycling and public transport, even with the rise of plug in and low emission vehicles. If this was not the case, it would remove locational considerations from deciding on whether a proposal would promote sustainable transport, which itself would be contrary to the Framework.

Walking

26. The route that the future occupiers of the proposal would take to the services in Bocking would be through the site, then utilising a proposed dropped kerb crossing across the A131, before then following the footway along the eastern side of this road. The Church Street junction would then have to be negotiated, crossing the A131 again, before the footway is then followed into the services in Bocking. The PRoW which crosses the site can also be utilised to reach Bocking, but this is more of a recreational route. It is circuitous and has varying underfoot conditions. Braintree is some distance on foot from the site, whilst walking is not obviously practical to Halstead.
27. The Institution of Highways & Transportation Guidelines for Providing for Journeys on Foot (2000) (IHT guidelines) sets out what it considers are suggested acceptable walking distances by way of desirable, acceptable and preferred maximum distances. Many of the uses in Bocking fall into the town centre category under the IHT guidelines because of the nature of the uses in providing retail related services. Apart from the primary school and the hockey club, the preferred maximum distances would be exceeded. The services in Bocking would also exceed the distance indicated in Manual for Streets (2007) (MfS) for facilities in a walkable neighbourhood.
28. The language used to describe distances in the IHT guidelines and MfS is far from precise and clearly allows some room for its application. It is not intended to be definitive. The preferred maximum distance of 2000 m for walking to school is a case in point under the IHT guidelines as it would seemingly expect that younger primary school children would be anticipated to undertake what is a not insignificant distance, twice a day. That MfS cites that walking offers the greatest potential to replace short car trips, particularly those under a 2 km distance, is perhaps obvious. Use of this guidance is not to replace a site assessment.
29. Similarly, the National Travel Survey extracts that I was referred to relate to reported trends rather than being directly applicable to a particular development proposal, notwithstanding that it was acknowledged at the Inquiry that the average distance given to school trips applies to all modes of transport, not just walking.
30. The experience of walking the route, or the qualitative aspect, is also of relevance, as well as the lengthy walking distances that the services in Bocking are from the site. Whilst the A131 may be the subject of not untypical levels of traffic for such a route and the speed limit is limited to 40 miles per hour, this does not account for having to cross the road twice, even before Church Street is reached and then following this road into Bocking. The footway route is fairly wide, but I am not persuaded that it would foster a great deal of use and even less so during inclement weather or outside of daylight hours with the distances involved, despite that it is lit. That the Council conceded a number of points on the qualitative aspects does not ultimately change my overall view.

31. In my mind, what ultimately is of importance is the convenience of the route for walking. When the distances to the services are taken with the crossings that need to be undertaken, it would not encourage walking as a mode of transport from the site. Such issues would be exacerbated for those with young children or elderly persons, where undertaking such distances and the crossings may be more problematic. Nor does the crossing point that is in operation near to the housing at Grove Field change my view because at least those occupiers have to walk a lesser distance to the services in Bocking than would the future occupiers of the proposal.

Cycling

32. Being able to cycle from the site towards Bocking or Braintree, or Halstead, would require usage of the A131. The A131 does not provide any form of delineated cycle route close to the site and so cyclists from the proposal would be forced to share road space with vehicular users. Whilst the distances to services would not itself deter cycling, it would need a proficiency due to the presence of other traffic on the road that would most likely lie with confident cyclists. This is not a particular matter of dispute. Cyclists that do not have this level of proficiency or children would be unlikely to use this mode of transport.

33. As a result, it remains simply a possibility of residents being able to cycle in order to access local services due to the location of the site. It would be unlikely to encourage broader use and so for most of the future occupiers, it would not offer a likely realistic alternative.

Public Transport

34. High Garrett benefits from a good level of bus services, relative to its size. There are bus stops in close proximity to the site along both carriageways of the A131 and these would be upgraded under the proposal. Bocking and Braintree in particular are served by regular services which take no more than a few minutes. The future occupiers of the proposal would be able to readily utilise bus transport to access local services.

35. The Council are concerned that utilising bus services southbound would necessitate crossing the A131. Due to the proximity of the southbound bus stop, this would not be a particular inconvenience. The short distance involved would not deter from the use of this method of transport.

36. The bus services also enable access to Braintree railway station. Whilst it would require a change in mode of transport, this is not unusual when utilising rail and so such services would also be accessible from the site.

Other Accessibility to Services Matters

37. The proposal would include electric vehicle charging points and this would have a bearing in as far as it would reduce the usage of cars that are wholly reliant on a traditional engine. A travel plan is intended in order to incentivise the use of public transport and encourage the use of car sharing, amongst other measures. The proposal would also include fibre broadband connection and so this would facilitate home working, and so have the potential to reduce vehicular movements.

38. The Highway Authority has not objected on these grounds, but this rests on a matter of planning judgment for the decision-maker in considering the relevant factors. This requires more than ensuring that as far as possible the proposal site is accessible by more sustainable modes of transport because the location of the site itself is of paramount importance in respect of the accessibility to services.
39. Both main parties have referred to the Thistle Field appeal decision on this issue. The appellant considers that I have more comprehensive evidence on the proposal before me, and I concur especially as it has been the subject of cross examination. The appellant has also referred to other planning decisions that the Council has made in High Garrett. Similarly though, I find it unlikely there would have been the same scrutiny of evidence. As such, these decisions attract limited weight on this issue.

Conclusion on Accessibility to Local Services

40. It is necessary to consider the measures that have been outlined as a whole in order to come to a view on the accessibility of services. I am mindful that in order to carry out their day to day needs, the future occupiers would be by and large limited to public transport in relation to the use of sustainable transport modes. Walking and cycling for this purpose would be restricted. Whilst this would be tempered somewhat by the inclusion of electric vehicle charging points, a travel plan and opportunities to work from home, these measures would not address the lack of accessibility of services for day to day needs. The locational shortcomings of the site are decisive on this issue.
41. I conclude that the proposal would be unacceptable as regards the accessibility to local services. Thus, it would not comply with Policies RLP53, CS7 and emerging Policy LPP44, and with paragraphs 105, 110 and 112 of the Framework where they are concerned with the location of development and sustainable transport modes. In addition, it would not comply with Policy SP3 where it is concerned with how development will be accommodated within or adjoining settlements in relation to sustainability.

Character and Appearance

42. High Garrett has a distinctively different townscape character on either side of the A131. On the eastern side, there is clearly more of an urban character defined by a continual row of dwellings that are positioned towards their site frontages. They are noticeable in view and effectively enclose this side of the road.
43. In contrast, the side of the A131 where the site is found has a considerably more open character. Open land is interspersed with more occasional built development. Such development is often set-back, even in the case of where there is the greatest concentration of such development at Grove Field. Whilst the site and the adjoining field to the south is bounded to the A131 by hedgerows and trees, this has a considerably less of an enclosing effect than the built development opposite because such vegetation contributes to an open undeveloped character. There are also gaps in the hedgerows and trees.
44. Policy RLP80 of the BDLPR sets out the development should not be detrimental to distinctive landscape features, and that development that would not successfully integrate into the local landscape will not normally be permitted,

whilst also referring to the use of additional landscaping to maintain and enhance these features. Policy CS8 of the CS states that development must have regard to the character of the landscape and its sensitivity to change and where development is permitted it will need to enhance the locally distinctive character of the landscape in accordance with the Landscape Character Assessment, amongst other matters.

45. Policy SP3 refers to the need to maintain the distinctive character, avoid coalescence and conserve setting, as well as the conservation and enhancement of the natural environment. Emerging Policy LPP71 of the S2LP also concerns landscape character and features, for development to be informed by Landscape Character Assessment and for it to have regard to additional landscaping, amidst other considerations.
46. Paragraph 174 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment. Under b), this includes by way of recognising the intrinsic character and beauty of the countryside.

Landscape Character

47. For the purposes of the Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Character Assessment (2006) (LCA), the site lies within the LCT F: Wooded Farmland Landscapes and LCA F2: High Garrett/Markshall Wooded Farmland⁷. The site and its immediate surroundings demonstrate some of the key characteristics including a flat to gently undulating landform, an open to enclosed character and mature field boundaries.
48. The LCA is of some age and the Council has more recently published the Evaluation of Landscape Analysis Study of Braintree and environs (2015) (Evaluation Study). The purpose of this document is to analyse the capacity of the landscape around Braintree to accommodate new development. The Council has also acknowledged that it provides an evidence base and assists in the landscape evaluation of applications. It categorises parcels of land in terms of their capacity to absorb new development. The site forms one such fairly small parcel with the field to the south. It is deemed to have a medium landscape capacity and forming a natural extension to High Garrett. A clear distinction is drawn with the large field to the west by way of the hedgerow on the shared boundary and as the land slopes away on that adjoining field.
49. The Evaluation Study does not mean that the site does not perform some role in respect of the rural setting of the village. Regardless of the delineation of this parcel of land, there is much open land to the west of the site, and this does allow land which is of a countryside character, including the site, to pervade up to the A131. These open landscape character aspects of the site would be diminished by the proposed up to 37 dwellings and the associated infrastructure, and in having regard to the extent of the area of development that is shown on the Parameter Plan.
50. However, the existing built form of High Garrett would lessen the sensitivity of the site to the proposal. Landscape features would be detrimentally affected only in as far as the reduction in open land within the site that would result. The most notable features are the mature hedgerows and trees. These would

⁷ As per the Landscape and Visual Appraisal (2020) that was submitted with the planning application.

be retained. It has also been indicated that tree planting and maintenance and management would occur. In drawing these factors together, there would be a limited adverse effect on landscape character.

51. The site is not the subject of a protective landscape designation and it does not form a valued landscape for the purposes of paragraph 174 a) of the Framework. The Framework is still though concerned with conserving and enhancing the natural environment on a broader basis. Considering landscape character is also a separate matter from Central Government policy to significantly boost the supply of housing. If there is a conflict between such objectives, it is to be dealt with in the planning balance.

Visual Impacts

52. I have had regard to the photoviewpoints submitted in the Landscape and Visual Appraisal that was submitted with the planning application, together with the viewpoints that have been produced in evidence as photomontages. I have also considered photographs that the Council has submitted in evidence, appreciating that they are not produced to an equivalent standard as the photoviewpoints and montages, as well as what I observed on my site visit.
53. From the A131 there are filtered views through the trees and hedgerows, as is demonstrated by Photoviewpoint 1. Such views are more fleeting for motorists with the speed of traffic along the road, but are more apparent for pedestrians. The site is more open to the south, as is shown by the Council's photographic evidence and there is a greater propensity of views into the site here. Whilst the trees and hedgerows would likely soften views, there would be some presence of the proposal, in particular where the access would be formed. The splay and roadway would very likely permit views into the proposal.
54. As is shown on Photoviewpoint 2, there are clear views into the remainder of the site from the PRow as there is no demarcation. Users of the PRow would clearly experience a change from the current open character of the land to one of the proposed dwellings and the associated infrastructure, across the adjoining open area as is shown on the Parameter Plan.
55. In terms of the further viewpoints along this PRow, there is limited visibility of the site because of the hedgerow and trees along the west boundary. This would also apply when the proposal is considered, as is also shown by the photomontages. Other viewpoints are too distant, or would be screened by the built form of High Garrett itself, for the proposal to have a discernible effect.
56. In respect of residential receptors, the effect on the occupiers of No 105 would be likely similar to the users of the PRow. As an occupied dwelling, the change would be admittedly more marked but contained because of the hedgerows and trees along the west boundary of the site. Views from the residential properties on the opposite side of the A131 would be filtered by the roadside trees and vegetation on this boundary. Other properties are too far away for the proposal to have an appreciable effect, or else they would be separated from the proposal by No 105 and the PRow.
57. In taking the above matters together, it is evident that the visual impacts of the proposal would be localised. They would occur for pedestrians on the footway passing the site on the A131; users of the PRow through the site, but not beyond; the nearest residential receptors, especially No 105; and, to a

lesser degree, motorists using the A131. Overall, such an adverse effect would be of a limited nature.

Other Character and Appearance Matters

58. The role that the site plays as part of the undeveloped land maintaining the separation between High Garrett, with Bocking and Braintree is of a limited nature. Further down the A131 towards Bocking and Braintree there is already Grove Field, as well as a sporadic pattern of other dwellings. The site does not obviously perform a function of open land between the settlements. Coalescence would thus not occur to any appreciable degree. The Council is proposing green buffers to prevent such an effect through emerging Policy LPP72 of the S2LP. These are in locations as identified on the draft Policies Map and does not involve the site.
59. Any gap function that the site performs, as I have already set out, concerns how it allows the countryside to extend up to this part of the A131 and its contribution to the open character along this side of the road. Beyond this, whether or not the site has a purpose as a gap has a limited bearing.

Conclusion on Character and Appearance

60. The proposal would result in a limited adverse effect on landscape character. There would be a notable reduction in the undeveloped character of the site, but in a location that is in proximity to the existing built form in High Garrett. Such an effect would also result in a reduction of the site's contribution of open character on this side of the A131. There would also be a limited adverse effect on visual impact and that effect would be localised. Coalescence effects would not palpably occur.
61. As I have found a level of adverse effect, it cannot be said that harm would not arise from the proposal by way of the effect on the character and appearance of the area. It would not comply with Policy RLP80, Policy CS8 and emerging Policy LPP71 where they concern the effects on the local landscape and landscape character matters. It would also not comply with Policy SP3 on character and appearance grounds, although it would not be in conflict where this policy refers to avoiding coalescence. It would also not accord with paragraph 174 b) of the Framework where it concerns recognising the intrinsic character and beauty of the countryside.

Housing Land Supply

62. Policy SP4 of S1LP establishes the Council's total minimum housing requirement over the plan period (2013 to 2033), which is 14,320. This equates to 716 dwellings per year. It is agreed that for the purposes of paragraph 74 of the Framework this is the correct figure against which to assess 5 year supply and that the base 5 year requirement is 3,580 dwellings. When the shortfall against the requirement in the plan period and the correct buffer is applied, it is further agreed that the 5 year requirement rises to 5,352 dwellings.
63. The dispute between the main parties concerns the Council's ability to demonstrate an up to date 5 year housing land supply (HLS) due to the amount of deliverable supply from sites in the Council's trajectory. In some cases the deliverability of the site has been questioned by the appellant, in others it is on the basis of the delivery rates being too optimistic.

64. The Council's latest Housing Land Supply Statement for the period of 2021 to 2026 was published in May this year (HLS Statement). The Council produced more up to date evidence on the disputed sites prior to and during the Inquiry which I have had regard to in my decision, along with the appellant's evidence. My attention was also drawn to the Station Road appeal decision⁸ that was made prior to the Inquiry opening.
65. For sites to be deliverable under the Framework, they 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 5 years. The term "realistic prospect" does not infer there is certainty or that it is more than probable that a site will be delivered.
66. Thereafter, there are two limbs to the definition, although these do not necessarily exclude other types of site. Under a), sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within 5 years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites are therefore assumed to be deliverable unless there is "clear evidence" to the contrary.
67. Under b), 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. The position with b) is therefore somewhat different from a). "Clear evidence" of their deliverability is required.
68. The Planning Practice Guidance: *Housing Supply and Delivery* provides some examples of what clear evidence means. These include current planning status, firm progress being made towards the submission of an application and clear relevant information about site viability, ownership constraints or infrastructure provision. Clear evidence can reasonably include the proformas submitted by developers or their agents for sites, but such evidence needs to be considered in the round. Whether a site meets the definition is a matter of planning judgment based on the evidence available. The same applies to the application of lead in times because whilst Council averages can provide a useful benchmark, clearly site specific information also needs to be considered.
69. During the course of the Inquiry, there was agreement that one of the sites that was formerly in dispute, Land West of Bardfield Drive, was deliverable within the 5 year period. The Council's most up to date position is that it considers that it can demonstrate 5.27 year of deliverable supply, whilst the appellant's most up to date position is that the Council can deliver 4.58 years.
70. I now turn to the disputed sites and my conclusions regarding their delivery. All of the sites fall into limb b) for the purposes of the Framework, apart from one site in a), which I indicate below.

Land East of Broad Road, Strategic Growth Location

71. This large site benefits from an outline planning permission for 1000 dwellings. The Council is in receipt of a phasing plan and strategy for the site by way of

⁸ Appeal ref: APP/Z1510/W/21/3267825

- seeking to discharge the related condition. This shows Phase 1A which I am informed constitutes 306 dwellings. Associated highway infrastructure works comprise improvements to the Monks Farm roundabout linking the A120 to A131 and a new roundabout off the A131 to access the site. There are also highway works to the Broad Road/A131 roundabout to the north of the site.
72. No occupations are permitted under the associated Section 106 Agreement until the Monks Farm roundabout and the works to the Broad Road/A131 roundabout have been completed. No more than 100 dwellings can be occupied before the roundabout providing access is complete.
73. The main parties are some distance apart on the forecast supply on this site, with the appellant considering there will be no delivery, whilst the Council's position as was amended prior to the Inquiry opening is that 270 units would be delivered.
74. The Council's position reflects that of the developer's most up to date proforma, with delivery starting in 2023/24. Yet reserved matters have not been submitted and there is the necessary provision of the highway infrastructure works at the requisite time. Nor am I convinced that where the Section 106 Agreement refers to the occupation level restrictions and where the definition of deliverable under the Framework refers to completions, this is a particularly helpful distinction if a site is to be brought forward to contribute to housing land supply. There are also a number of planning conditions that would need attention prior to completions taking place.
75. On the other hand, the appellant's position that no completions at all are justified over the forecast period is not persuasive. Whilst it has been questioned whether the developer themselves will deliver some of the units, or would be reliant on other housebuilder(s), it would not be unusual for several different housebuilders to be involved due to the overall size of the site. The most recent proforma has also scaled back on its more ambitious previous trajectory. The site is moving forward with the application for the discharge of the phasing plan and strategy for the site, and agreement is in place for the infrastructure works by way of the Section 106 Agreement
76. There is clear evidence there will be some housing completions on site within 5 years. If the Council's delivery timetable was rolled back one year, that would be a realistic prospect, in considering all of the evidence before me.

Land Adjacent to Blamsters Farm, Mount Hill, Halstead

77. This site has outline permission and pre-application discussions have taken place over the future development. There is not though a clear indication of whether this would constitute the reserved matters relating to the outline or would require a new permission.
78. The Council considers that it has allowed a generous lead in time as regards the forecast supply. I find this reflects some degree of uncertainty, in particular as it is a small site and as I am told that it is greenfield and unconstrained. Ordinarily, delivery on a site with such characteristics would be likely to be more straightforward. This is telling and the evidence is lacking over whether firm progress would be made within the forecast period.
79. As such, it does not constitute a realistic prospect as there is not clear evidence that housing completions will begin on site within 5 years.

Land between Long Green and Braintree Road, Long Green

80. This site benefits from an outline planning permission and is the subject of reserved matters. There is also an identified housebuilder and it is not in dispute between the main parties that at least some units will be delivered within the forecast period. The Council has also pointed to the site being greenfield and unconstrained.
81. The Council has taken a more conservative approach than the developer's proforma. Reserved matters has not though been granted and I also understand that whilst a planning performance agreement is being finalised, it is not yet complete.
82. The appellant revised its position during the Inquiry on the deliverability of this site. The appellant's trajectory presents a more realistic prospect, given the outstanding matters there are on the site, including the need for the approval of the reserved matters.

Land South of Maltings Lane, Gershwin Park, Land North East of Reid Road

83. The site has been granted outline permission, and constitutes the last residential area that will come forward on a larger site. The permission concerned both a Use Class C2 care home and Use Class C3 dwellings. The developer's proforma, whilst proposing the same uses, sets out a considerably higher site capacity.
84. It is questionable whether the future proposal would constitute reserved matters, or require a new permission. This places some uncertainty over whether the site can be considered deliverable.
85. The developer has carried out a public consultation and it is reported that the associated material has stated that an application will be submitted by the end of the year. Whilst the Council has considered that it has taken a conservative approach compared to the developer, and does not forecast supply until 2024/25, there appears limited evidence to base this upon at present, in particular in relation to whether a further planning permission would be required. I favour the appellant's position that no housing completions will begin on site within 5 years.

Land off Church Street, North of Grove Field, High Garrett

86. This site has been granted outline planning permission. A housebuilder has come forward and submitted an application to discharge details required by condition in relation to a site design guide. This application was refused and whilst discussions are said to be taking place in relation to the reserved matters, an application has not yet come forward. It is not in dispute that at least some units will be delivered within the forecast period.
87. The Council has pointed to that the site is greenfield and that there are no major constraints. I also understand that archaeological investigation conditions have been discharged, pre-application discussions have taken place, a planning performance agreement has been entered into and an initial service notice has been submitted. However, the refusal of the site design guide creates some uncertainty as regards the trajectory. Whilst the Council has used a more conservative timetable compared to the developer's proforma, it is still showing completions in 2023/24.

88. With the refusal of the site design guide and the need for a resubmission, and the reserved matters, there is not clear evidence to support the Council's trajectory. I also find though the appellant's revised position as was presented at the Inquiry to be on the pessimistic side, because the developer does seem to be in a fairly advanced stage of preparation and engaged with the Council, even with the refusal of the site design guide.
89. It is the trajectory that was set out by the appellant in evidence prior to the Inquiry that I find most convincing, but for the reasons that I have set out above.

Land West of Panfield Lane (Phase 1)

90. This site benefits from a hybrid planning permission. Under Phase 1, 189 homes have full permission and so is to be considered under limb a). Infrastructure requirements relate to provision of a link road and a roundabout.
91. The link road itself has permission under Phase 1. Construction of this phase is not in itself dependent on the road, albeit the number of occupations are limited to 50 under the associated Section 106 agreement. The developers' agent has informed the Council that they will start work on the link road in early 2022. I see no substantive reason why the link road should be an impediment to the delivery of the Council's trajectory.
92. As regards the roundabout, the developers have either the option of making improvements to the roundabout, or making a financial contribution to a larger scheme that the County Council wish to progress. Occupation of the dwellings is limited to 50 if improvements are to be made. If the financial contribution route is chosen, then the 50 limit is dependent only on making the contribution, rather than the completion of the roundabout.
93. The appellant has raised matters in relation to viability, although the Council has informed that a lower affordable housing requirement was accepted. With the explanation given concerning the provision of the link road and the roundabout, I also do not see why viability should act as a burden that would delay delivery.
94. The Council has also taken a slightly more cautious approach than the proforma that was received from the developers' agent and does not include all of the 189 units. There is not clear evidence to the contrary that the 175 units in the Council's trajectory would not be deliverable.

Towerlands Park

95. The Towerlands Park site adjoins the Panfield Lane site and has gained outline planning permission. The relevant infrastructure requirements relate in a similar fashion to the link road and the roundabout. A reserved matters planning application for a housebuilder has now been submitted for phase 1 (167 dwellings) and whilst the Council has stated that it is the intention that it will be determined in January 2022, this is of yet to be realised.
96. The Council has also referred to where the reserved matters application is intending to access from a different section of Panfield Lane and so is not reliant on the link road. It is not however clear how this relates to the associated Section 106 Agreement concerning the provision of the road. The appellant has pointed to where the developer's proforma raises varying the

obligation. This would add further uncertainty. Marketing by way of the advertisement consent sought and the site launch details on the developer's website are not robust evidence of delivery.

97. I acknowledge that pre-application discussions have taken place, a planning performance agreement has been entered into, a number of conditions have been discharged and that the Council is taking a more conservative approach to the trajectory than the developer. However, this site is to be treated differently from its neighbour at Panfield Lane because it is to be dealt with under limb b). With the uncertainties that I have set out, clear evidence of the deliverability as regards the Council's trajectory has not been adequately demonstrated. The appellant's position is more compelling in relation to that a small number of completions will come forward towards the end of the forecast period.

Windfall Allowance

98. The dispute over the windfall allowance concerns whether the Council's methodology results in double counting with small sites in 2023/24 (the third year) because of the standard 3 year implementation period that would apply to developments that have gained permission. The appellant considers that a windfall allowance as is set out in the Council's HLS Statement should not be applied to 2023/24, or else the small sites figure for that year should not be applied.
99. The Council has adequately explained the distinction. The windfall allowance reflects sites that have not been identified but instead will arise through the course of the submission of planning applications. None are prior to the base date. This sets the windfall allowance apart from the small sites that are found in the Council's HLS Statement. Therefore, it is appropriate to apply the windfall allowance in 2023/24, as well as the small sites figure.

Other Housing Land Supply Matters

100. The sites at Land off East of Broad Road; Land between Long Green and Braintree Road, Long Green; and Towerlands Park all feature in the Station Road appeal decision. That Inspector did not include any completions from the Land East of Broad Road site but did not consider information on the associated infrastructure, and the forecast of completions differed from what is before me. I am satisfied this represents a clear reason for me to take a different view.
101. With regard to the Land between Long Green and Braintree Road, Long Green site, that application is now the subject of reserved matters and which the appellant has acknowledged. This was not the case at the time of the Station Road decision and so I am justified in taking a different view. I take the same view as the appellant concerning Towerlands Park, based on the evidence before me.
102. With regard to the Thistle Field appeal decision, it is evident that HLS was not the subject of the same level of interrogation because it was dealt with simply by an exchange of correspondence. Decisions at Bures Hamlet⁹ in the Council area and elsewhere that I have been referred to concern the use of proformas, what constitutes clear evidence and the application of limbs a) and b). The approach that I have taken is not inconsistent with those decisions in

⁹ APP/Z1510/W/18/3207509

respect of where the main parties have pointed me to extracts, notwithstanding that clearly evidence and site circumstances will differ in each case. With the Gilda Terrace appeal, HLS was not in dispute.

103. The appellant has also referred to the Council's HLS position relying on schemes that were allowed at appeal. The Framework does not though make a distinction between sites approved at the planning application stage and those allowed on appeal. This has a limited bearing.

Conclusion on Housing Land Supply

104. In taking account of the above, I find that housing completions will not be made within 5 years at Land Adjacent to Blamsters Farm, Mount Hill, Halstead; and Land South of Maltings Lane, Gershwin Park, Land North East of Reid Road. The sites where I consider that housing completions will be made within 5 years but alterations need to be made to the Council's trajectory are Land East of Broad Road, Strategic Growth Location; Land between Long Green and Braintree Road, Long Green; Land off Church Street, North of Grove Field, High Garrett; and Towerlands Park. No alteration is to be made to Land West of Panfield Lane (Phase 1) and the windfall allowance.
105. This results in a reduction of 374 units from the Council's trajectory. This means that the Council supply of deliverable sites is 4.9 years.

Other Matters

Housing Provision

106. The proposal would make a contribution of up to 37 units towards the Council's minimum housing requirement figure and it would support the Government's objective under the Framework of significantly boosting the supply of homes. It would assist in reducing the shortfall against the deficit in the Council's 5 year HLS position, whilst also accepting that the extent of the shortfall is marginal. The size of the site may ably support the role of small and medium sized housebuilders in bringing forward new housing. It would provide for a housing mix with the provision of both general market and affordable housing. Housing provision attracts significant weight as a benefit.

Affordable Housing

107. While the provision of 40% of the units as affordable housing would be required to ensure that the proposal would accord with Policy CS2 of the CS, it would also have the greater benefit of enabling provision for those who would not be able to obtain general market housing. There is a clear shortfall of provision against the Council's affordable housing need, notwithstanding the recent annual surplus and the intention to deal with the deficit through the approach to the overall requirement. A lack of recent provision specifically in High Garrett is unsurprising given the modest size of the settlement and the proposal would still make a valuable contribution to addressing the deficit across the Council area as a whole. This also attracts significant weight as a benefit.

Economic Benefits

108. The proposal would benefit the economy through construction, including employment. The future occupiers would also support the economy through

their expenditure and no doubt some of the future occupiers would be of working age which itself would bring economic benefit. The appellant also considers that the Council is not delivering the level of economic benefit that relates to the supply of housing, again pointing to the 5 year HLS position.

109. The effects of Covid-19 remain uncertain in order for any particular inference to be drawn from them in the longer term, whether in relation to housing and the economy, or indeed working from home and travel trends. Nor am I in receipt of substantive empirical evidence in this regard.

110. The weight to be attached to a specific proposal as regards supporting economic growth depends on its particular contribution within the broader ambit of where paragraph 81 of the Framework states that significant weight should be placed on the need to support economic growth and productivity. With the type and size of the proposal, economic benefits attract moderate weight in its favour.

Other Benefits that have been put forward

111. The proposal would bring a modest benefit for existing residents due to the upgrade of the bus stops, footways and crossing the A131, as well as public open space on site and the intended associated footpath connections. I am less persuaded that such matters can be seen as a benefit to the future occupiers of the proposal because they relate either to an attempt to mitigate against harm or to meet development plan requirements.

112. It is also intended there would be ecological enhancements, including damp grassland/occasional wet areas, meadow grassland and linear corridors that constitute biodiversity net gain. Even though the undeveloped open field nature of the site would be much diminished, these matters would be of benefit, albeit modest. The same holds true in relation to the provision of electric vehicle charging points because they would be of some wider benefit by way of combating climate change.

113. A number of landscape and visual locational benefits have been purported which relate to the site lying away from protected designations, but this is neutral matter. I also clearly do not agree that there is a particular benefit arising from whether or not the proposal would form a natural extension to High Garrett, due to the broader character and appearance harm that would arise. In relation to the design quality of the proposal, the Framework has in any event placed a greater emphasis on well-designed development as an integral part of national planning policy and so it does not add further to the benefits, setting aside that it would be largely dependent on reserved matters.

Obligations contained in the S106 Agreement

114. The obligations in the S106 Agreement bind the owner to covenants with the Council. They concern contributions for allotments, outdoor sport, library and education, as well as the Recreation Avoidance and Mitigation Strategy (RAMS) in relation to relevant protected designations. The obligations also concern affordable housing provision and on-site open space and amenity areas.

115. Having regard to the evidence before me, it has been demonstrated that they are all necessary to make the development acceptable in planning terms, directly related to the development, and reasonable in scale and kind. They accord with the tests that are set out in paragraph 57 of the Framework and

the Community Infrastructure Levy Regulations (as amended, 2019), where they apply to each of the obligations. As a result, I have taken them into account in my decision. They address the matters that are set out in the Council's second reason for refusal.

Listed Buildings

116. No 105 is also known as Mill Lodge and is a grade II listed building. It comprises an 18th century timber framed and plastered house. It has an unusual history in that it was taken down from a site at Courtauld's Mill and re-erected on the present site. Whilst it is a fine building in its own right, its special interest as a mill house has been somewhat diminished by the relocation. The significance now lies in its architectural interest.
117. Within this context, the role that the site plays in the significance of its setting is of a limited nature. In as far as the nearest part of the site lies within its setting, the Parameter Plan shows that this area would remain open. In having regard to the statutory duty that is set out in Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the proposal would have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
118. For the purposes of the Framework, the Council consider that no harm would occur to the significance of the asset, whereas the appellant considers that under paragraph 202 less than substantial harm would arise. Due to the limited role of the site in the significance of the setting, I agree with the Council. I am not therefore required to carry out a heritage asset balancing exercise with the public benefits.
119. Whilst there are a number of other listed buildings in the vicinity, with the separation and screening, the proposal would not impact on their significance.

Other Issues

120. The Highway Authority considered at the planning application stage that any additional trips associated with the proposal would not be detrimental to highway safety and capacity. The A131 is a busy road but as traffic does tend to travel in platoons along it, this would likely enable gaps for traffic to enter and leave the site safely at the proposed access point. In relation to pedestrian safety, there would be the crossing point and a new footway along part of the same side of the A131 as the site. I would agree that using the A131 is unlikely to be an attractive proposition to most cyclists, but this would more likely deter use rather than result in accidents. In highway safety terms, the proposal would not be unacceptable.
121. Noise from the A131 and other uses would be unlikely to cause an untoward effect on the living conditions of the future occupiers. In relation to the use of an acoustic fence, such a feature would be subject to control by the Council in the event that permission was granted. This would reasonably include a consideration of the visual impact.
122. In terms of air quality, the proposed electric vehicle charging points would assist. With regard to the effect on local services, the S106 Agreement provides for financial contributions, which include education, amongst other such services.

123. In relation to Habitat Regulations Assessment, it is not necessary for me to undertake an Appropriate Assessment as the Competent Authority because the circumstances that would lead to a grant of permission are not present. The RAMS contribution is not in itself a benefit because it is required with regard to the potential impact from the proposal on the related designated sites as the site itself lies within the zone of influence.

Planning Balance and Conclusion

124. With the conflict that I have identified with the development plan policies, the proposal conflicts with the development plan as a whole. Policies RLP2, CS5 and SP3 are central in such a judgment because they are the policies of most relevance that form the spatial strategy of the development plan. The proposal would be in conflict with these policies.

125. It is also apparent that Policies RLP2 and CS5 are based on former housing need. Whilst the use of development boundaries is not in itself inconsistent with the Framework, the rationale for such an approach must reflect the national policy. The current policies are restrictive as they apply a level of protection for the countryside that goes beyond what the Framework sets out by way of managing development. This does not alter the conflict with these policies. However, it does limit the weight to be given to the conflict. Such considerations do not though apply to Policy SP3 as it is consistent with the Framework.

126. The proposal would also not comply with Policies RLP53 and CS7 as regards accessibility to services. It would also not comply with Policy RLP80 and Policy CS8, although the conflict would be limited given the level of harm that would arise as regards character and appearance. These policies are consistent with the Framework.

127. The emerging planning policies under S2LP have been subject to hearings and are now the subject of a modification consultation. The proposal conflicts with Policy LPP1 in terms of the location, as well as with Policies LPP44 and LPP71. S2LP is at an advanced stage and the related consultation documents do not indicate that what is intended is a wholesale re-examination on the content and approach of S2LP. It is not though yet the subject of a published Inspectors Report. The policies within it attract moderate weight in my decision.

128. The Council cannot demonstrate a 5 year supply of deliverable housing sites and so the policies which are most important for determining the application, namely Policies RLP2, CS5 and SP3, are out-of-date. Even though the shortfall is marginal, it does mean that paragraph 11 d) ii. of the Framework applies. This means granting permission 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.

129. In relation to the adverse impacts, these concern that the proposal would not be in a suitable location for housing, would be unacceptable as regards the accessibility to local services and would have a limited adverse effect on the character and appearance of the area. It would not comply with the spatial strategy of the development plan. I have found conflict with the policies in the Framework. I find the harm, when taken together, to be very significant. Set against this would be the addition of up to 37 dwellings to housing provision,

the contribution to addressing the slight shortfall against the 5 year HLS, the provision of affordable housing and the economic benefits. When these are considered with the other more modest benefits, overall, they attract significant weight in my decision.

130. I have taken into account the relevant matters in relation to the economic, social and environmental objectives of the Framework, as set out above, notwithstanding these are not criteria against which every decision can or should be judged.
131. Taking these matters together, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As a result, the application of paragraph 11 does not indicate that permission should be granted. The proposal does not benefit from the presumption in favour of sustainable development. In an even balance, clearly the harm would not be outweighed by the benefits.
132. In coming to my conclusion, I have considered all relevant matters that have been raised. The proposal conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Accordingly, the appeal should be dismissed.

Darren Hendley

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Robert Williams

Of Counsel, instructed by Braintree
District Council

He called

Mr Alexander Evans, BSc (Hons), MSc
MRTPI

Planning Officer at Braintree
District Council

Mrs Natalie Banks BA (Hons), MSc,
LRTPI

Senior Planner at Braintree
District Council

FOR THE APPELLANT:

Mr Jonathan Easton

Of Counsel, instructed by Turley

He called

Mr Jonathan Dodd, BA (Hons), MPlan
MRTPI

Associate Director, Turley

Mr Matthew Grist BSc (Hons), Pg Dip,
MCILT, MCIHT

Director and Head of Transport
Planning, Jubb

Mrs Clare Brockhurst BSc (Hons),
Dip LA, FLI

Director, Leyton Place Limited

Mr David Murray-Cox, BA (Hons),
MPlan, MRTPI

Director, Turley

Paul Wakefield

Solicitor, Shakespeare Martineau LLP
(In attendance during the Planning
Obligations session)

INQUIRY DOCUMENTS

- 1 Braintree District Council, Council's Response and Update to Appeal Decision: Land North of Station Road, Earls Colne (APP/Z1510/W/21/3267825) dated 12 November 2021 in relation to Housing Land Supply
- 2 Opening Points on behalf of the Appellant
- 3 Opening Statement on behalf of Braintree District Council
- 4 Outline planning permission, Council ref: 18/01318/OUT Land East of Broad Road, Braintree, Essex, dated 31 March 2021
- 5 Counterpart Agreement under Section 106 of the Town and Country Planning Act 1990 relating to Land East of Broad Road, Braintree, Essex, dated 31 March 2021
- 6 Agreement under Section 106 of the Town and Country Planning Act 1990 relating to land between Springwood Drive and Panfield Lane, Braintree, Essex, dated 2 March 2020
- 7 Agreement under Section 106 of the Town and Country Planning Act 1990 relating to land at Towerlands Park, Panfield Road, Braintree CM7 5BJ Essex dated 9 April 2021
- 8 Braintree District Council - Affordable Housing Note: Current Supply Projections (monitoring year 2021/22 only), dated 26 November 2021
- 9 Canterbury City Council v Secretary of State for Communities and Local Government and another [2019] EWCA Civ 669
- 10 Bassetlaw District Council v Secretary of State for Housing [2019] EWHC 556 (Admin)
- 11 Braintree District Council, Council's Submission in relation to Inquiry Documents 4 – 7, dated November 2021
- 12 Appellant Supplemental 5YHLS Position, dated November 2021
- 13 High Garrett Conditions (dated 18.11)
- 14 Mordue v Secretary of State for Communities and Local Government and others [2015] EWCA Civ 1243
- 15 Closing Statement on behalf of Braintree District Council
- 16 Closing Submissions on behalf of the Appellant

DOCUMENTS RECEIVED FOLLOWING THE CLOSE OF THE INQUIRY

- 17 Agreement under Section 106 of the Town and Country Planning Act 1990 relating to land west of High Garrett (A131), Braintree, Essex (completed and executed version)