



Appeal Decision

Site visit made on 30 November 2021

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 14th March 2022

Appeal Ref: APP/D3505/W/3275413

Ruseley, Hazel Shrub, Bentley IP9 2DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs G Price against the decision of Babergh District Council.
 - The application Ref DC/21/00989, dated 19 February 2021, was refused by notice dated 12 April 2021.
 - The development proposed is the erection of a detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the details before me that the development comprises the severance of garden and the erection of a detached dwelling. The Council dealt with the proposal on this basis and so shall I.
3. The proposal seeks outline planning permission, with all matters reserved except access. I have considered the appeal on this basis, and have treated any plans in relation to the reserved matters as illustrative.
4. The appellants have referred to the emerging Local Plan (eLP). The eLP has not yet been formally adopted by the Council and its proposed principle of settlement hierarchy and settlement boundaries are under review. The elements of the eLP referred to are consequently not at an advanced stage. Reference is additionally made to an emerging Bentley Neighbourhood Plan (eNP). This is currently at the early stages of examination, and a referendum has not been held.
5. Thus, in accordance with paragraph 48 of the National Planning Policy Framework (2021) (the Framework) and the Planning Practice Guidance on neighbourhood planning, whilst I have had regard to policies referred to in the eLP and the eNP, I attach only minimal weight to them in my consideration of this appeal.
6. The evidence before me suggests that the appeal site is likely to be within a zone of influence of a protected site designated under the Conservation of Habitats and Species Regulations 2017. As a competent authority I am required to assess the effects of the proposal on the protected site. I will return to the matter later in this decision.

7. The Council's decision notice finds that the proposal would harm the area's Special Landscape Area (SLA) designation but does not refer to development plan policy relied on in the matter. I therefore requested details of any policy relied on, including any comments on such a policy's relevance which the Council may wish to make. I then sought the views of the appellants on the Council's response.
8. In determining another appeal in the same district my attention has been drawn to another appeal decision¹. In that decision both parties considered that reduced weight should be attached to any identified conflict with Policy CS2 of the Babergh Core Strategy (2014) (the CS). This policy is relied on by the Council in refusing permission in this case. As a result, I sought the comments of the main parties on any relevance of the approach of the other decision in order to take account of all potentially relevant considerations.

Main Issues

9. The main issues are:

- The effect of the proposal on highway safety; and
- Whether the appeal site would be a suitable location for the scheme, having particular regard to the accessibility of services and facilities.

Reasons

Highway Safety

10. Hazel Shrub is a single-track rural lane which has a 30 mile per hour speed limit. It is signed as a "Quiet Lane" near Bentley. This appears to be a local designation which is intended to indicate a lane of a character which may be attractive to those using the route by non-vehicular means.
11. Vehicular and pedestrian access to the new property would be via an existing entrance, which currently provides access to the garden land which forms the appeal site. The addition of vehicles associated with the proposed development would materially increase the vehicular use of the access.
12. The highway authority objects to the proposal, partially on the basis that visibility splays of 2.4 x 90 metres in both directions have not been demonstrated. The authority for this requirement is unclear, particularly as the Manual for Streets² suggests that significantly lower main alignment distances are appropriate in such a location.
13. Nevertheless, visibility of the site's access to those travelling south along Hazel Shrub is compromised as a result of the road's alignment and the presence of roadside hedgerow. Whilst greater visibility is available to those travelling north, vehicle bonnets would need to protrude onto the carriageway before any intervisibility between emerging drivers and any road users travelling south would be possible. As a result of this factor and the restricted width of the lane, emerging vehicles would be in the path of oncoming road users, thus increasing the risk to both parties. The proposal would consequently cause harm to highway safety by increasing the vehicular use of an access for which

¹ APP/D3505/W/19/3227519

² Department for Transport, 2007

- substantive evidence that acceptable levels of visibility could be achieved has not been submitted.
14. Whilst I accept that vehicles using Hazel Shrub are likely to be travelling at relatively low speeds due to its speed limit and character, the Quiet Lane designation does not demonstrate that the development would have a safe and suitable access because there is no evidence that it includes a reliable assessment of the safety of accesses onto the lane.
 15. I acknowledge submissions that no accidents have occurred at the access in the last 20 years. Nevertheless, this does not compel me to find the proposed access acceptable in highway safety terms. My concerns about the proposal's effect on highway safety are based on a judgment of the likelihood of such effects in the absence of substantive contradictory evidence.
 16. As my concerns regarding visibility relate primarily to that which is available looking north from the access, the potential for the suggested removal of hedgerow to improve this matter is minimal as the area concerned lies outside the appellants' control.
 17. I am referred to other appeal decisions which have considered the subject of highway visibility elsewhere. The first³ identifies that the alignment of the carriageway outside the site concerned, together with other considerations, would result in the proposal having a lack of harm to highway safety. The second⁴ decision took drawings showing sufficient visibility splays and the conditions at the site into account in finding a lack of harm to highway safety. These matters do not arise in this appeal and different considerations consequently apply. Moreover, even if the other developments and circumstances were similar, they would not inevitably provide an example that should be followed even if harm results. Accordingly, the other decisions do not alter my conclusions concerning the current scheme.
 18. Whilst there appears to be sufficient space to allow for a scheme which would enable vehicles to manoeuvre within the site, this does not overcome my concerns regarding visibility, which are set out above. Similarly, any compliance with the Suffolk Guidance for Parking Technical Guidance (2014) would be a neutral matter which would not lend weight in favour of the proposal.
 19. Thus, the proposal would cause unacceptable harm to highway safety. It would consequently conflict with Policy HS28 of the Babergh Local Plan (2006) (the BLP), which sets out that planning applications for infilling will be refused where they would cause harm to highway safety. Further conflict exists with the sustainable transport provisions of the Framework.

Location of development

20. Policy CS2 of the CS states that development in the countryside will only be permitted in exceptional circumstances, subject to a proven justifiable need. The appellants submit that the eNP identifies a need for smaller properties in Bentley. Nevertheless, for the reasons given above I attach only minimal weight to policies within the eNP. In any case, as the layout and scale of the proposed dwelling are matters reserved for subsequent consideration, the

³ APP/D3505/W/17/3191313

⁴ APP/D3505/18/3214989

ability of the proposal to meet such needs is unclear at this stage. Thus, the proposal conflicts with Policy CS2 of the CS. However, I consider the status of this policy further later in this decision.

21. The appeal site comprises an area of garden land associated with the host dwelling. The site is bounded to the west by Hazel Shrub, and lies outside any settlement boundary set by local policy.
22. The village of Bentley lies a short distance away and has a number of services and facilities, including a village store, church, village hall, hairdressers, play area, public house and primary school (the route to the school and village bus stops being generally accessible via footways where it follows the busier roads). The appellants submit that regular bus services from the village provide access to Colchester throughout the day. The Council considers that the bus service runs infrequently.
23. Whilst there is minimal evidence to support either position, I am referred to another recent appeal decision⁵ relating to proposed development off Hazel Shrub which found that the location offers realistic opportunities to access public transport as an alternative to the private car. An earlier appeal decision⁶ also relating to a scheme off Hazel Shrub found that the development concerned would result in a heavy reliance on transport by private car.
24. In common with the findings of both decisions, I have reservations about the potential for use of the public right of way connecting Hazel Shrub with Bentley by all users in all conditions. Nevertheless, it provides a relatively direct and quick route for occupiers of the proposed development to access services and public transport opportunities in Bentley. It is consequently likely to be subject to some use in preference to travel via private car, thus reducing the need to travel by that means. The evidence before my colleagues will have differed, however I have no evidential basis to reach a different conclusion from that of the more recent decision on the matter of the accessibility of public transport in the vicinity. Furthermore, occupiers of the proposed dwelling would be likely to support local services, in accordance with paragraph 79 of the Framework.
25. Thus, although there is a breach of Policy CS2, there is overall compliance with the development plan on the issue of location. The appeal site would consequently be a suitable location for the scheme, having particular regard to the accessibility of services and facilities. As a result, the proposal complies with Policy CS15 of the CS, which states that proposals should ensure that an appropriate level of services and facilities are available to serve the development and should seek to minimise the need to travel by car.

Other Matters

26. In refusing permission on highway safety grounds the Council relies partially on Policy TP15 of the BLP. This policy mainly concerns car parking. Nevertheless, I have identified no harm which would arise from the potential level of parking within the development. Thus, the policy has only minimal relevance to the main issues of the appeal.

⁵ APP/D3505/W/21/3276691

⁶ APP/D3505/W/20/3249004

27. Likewise, Policy CS11 is referred to in the Council's decision notice but relates to development in core and hinterland villages, so is consequently not relevant to this proposal due to its location in the countryside.
28. The appeal site lies within a SLA. The Council considers that the scheme would harm the qualities for which the SLA is designated because of its cumulative effect on the landscape together with other approved development in the vicinity. It considers that Policy CR04 of the BLP provides support for this position.
29. Nevertheless, full details of the landscape qualities for which the SLA is designated, including the Landscape Character Assessment and Action Programme which is referred to in the supporting text to Policy CR04, are not before me. As a result, I have no evidential basis to agree with the submission that the proposal would conflict with Policy CR04 as a result of harm caused to the area's special landscape qualities due to the infilling of spaces between dwellings. Thus, the evidence fails to demonstrate the relevance of Policy CR04.
30. The Council's decision notice refers to concerns regarding the effect of the proposed development on the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (AONB). Whilst the proposal does not lie within the AONB, it lies nearby. The Planning Practice Guidance sets out that, in considering development proposals that lie outside an AONB but which might have an impact on its setting or protection, relevant authorities shall have regard to the purposes for which the AONB is designated. Furthermore, the Stour and Orwell Estuaries Special Protection Area (SPA) is referred to in some of the evidence, and may be affected if the appeal scheme were to go ahead.
31. If I had found the proposal to be acceptable in all other regards these are consequently matters on which I would have requested further information. However, it is not necessary for me to consider the scheme's implications for the AONB and the SPA, because the proposal is unacceptable for other reasons.

Planning Balance and Conclusion

32. It is submitted that the most important policies for determining the appeal should be considered out-of-date for the purposes of paragraph 11 of the Framework. Paragraph 219 of the Framework sets out that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
33. As the appeal site lies in the countryside for local policy purposes, locational matters are a primary consideration. Given that access is a matter for consideration in this outline planning application, highway safety matters are also important. I consequently consider that relevant policies in this case are Policies CS2 and CS15 of the CS, and Policy HS28 of the BLP. These are also the most important policies for determining the appeal, as they provide the most precise criteria for consideration of the proposed development.

34. A limited number of previous appeal decisions in the district⁷ have found two of these policies to be out-of-date or not wholly consistent with the Framework. In all three decisions Policy CS15 was found to be out-of-date because it was considered to fail to include aspects of the Framework's approach to the historic environment. Conflict with Policy CS2 was not given full weight in these and additional other decisions regarding proposals within the district. Furthermore, the Council's officer report sets out that less weight is afforded to conflict with Policy CS2 because its approach to development in the countryside is not considered to be consistent with the Framework.
35. Policy CS2 only permits development in the countryside in exceptional circumstances subject to a proven justifiable need. The Framework requires no such test in respect of development at such locations and consequently Policy CS2 is not consistent with the Framework in this regard. This finding broadly accords with those of all previous appeal decisions of which I have taken account, and with the views of the Council. Thus, I consider that Policy CS2 is out-of-date for the purposes of consideration of this application.
36. I concur with the finding of the previous inspector that Policy CS15 does not reflect the balancing exercise set out within paragraph 202 of the Framework with regard to harm to the historic environment. Nevertheless, whether a policy is out-of-date or not can be assessed against the way in which it operates in relation to the determination of a particular proposal rather than solely in a generic manner.
37. The Council's officer report and decision notice indicate that the sections of Policy CS15 on which it relies in refusing permission for the appeal proposal are (iv) and (xviii). The aims of these sections are set out above. I find that these aims are broadly consistent with those of the Framework. I have found compliance with Policy CS15 earlier in this decision.
38. The aims of Policy HS28 in respect of highway safety are consistent with those of the Framework. As a result, I attach full weight to the proposal's identified conflict with that policy.
39. Whilst I have found Policy CS2 to be out-of-date, it does not provide precise guidance for determining the application in the same way as Policies CS15 and HS28. I consequently consider that Policies CS15 and HS28 are more important than Policy CS2 in determining the appeal, because of the bearing they have on the decision to be made, and thus I attach greater weight to Policies CS15 and HS28. I have found both policies to be consistent with the Framework and therefore I do not regard the most important policies as out-of-date for the purpose of this decision.
40. Thus, as the appeal proposal is in conflict with a relevant policy in the development plan, and the policies which are most important for determining the application are not out-of-date, the proposal does not benefit from the presumption in favour of sustainable development.
41. The Government's objective is to significantly boost the supply of housing and the proposal would provide a modern home which appears deliverable according to the Framework definition. Occupiers of the development would be likely to use local services, as supported by paragraph 79 of the Framework.

⁷ APP/D3505/W/20/3246576, APP/D3505/W/19/3242769 and APP/D3505/W/20/3249004

There would be some economic uplift during construction through short-term employment and the purchase of building materials. Given the small scale of the proposal, these benefits attract modest weight.

42. There is minimal evidence concerning the potential of the proposal to bring about biodiversity or energy efficiency benefits and as a result these matters do not attract weight. Similarly, the appeal does not demonstrate that the site location offers a level of access to recreation for future occupiers which should be considered a benefit.
43. Conversely, the proposal would result in unacceptable harm to highway safety. This matter attracts significant weight and outweighs the benefits associated with the proposed development.
44. The proposal consequently conflicts with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.
45. Thus, for the reasons given above, I conclude that the appeal should be dismissed.

C Beeby

INSPECTOR