



Appeal Decision

Site visit made on 10 January 2022

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 28 April 2022

Appeal Ref: APP/Z1510/W/21/3275976

Land off of Highfield Stile Road, Braintree, CM7 9SD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Robert Crow against the decision of Braintree District Council.
 - The application Ref 20/02126/FUL, dated 14 December 2020, was refused by notice dated 31 March 2021.
 - The development proposed is the erection of 10 detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An emerging Local Plan Section 2 is moving towards the process of being examined. However, as the emerging policies are yet to be found sound and adopted, I therefore attach limited weight to its policies in my overall consideration of the appeal.
3. Since determination of the application, the Council have undertaken a review of its housing land supply position and it is of the view that it can presently demonstrate a supply in the region of 5.34 years. The appellant disagrees. I consider this matter further below.

Main Issues

4. The main issues are:-
 - i) the effect of the proposed development on the character or appearance of the surrounding area including its effect on trees;
 - ii) the effect of the proposed development on a non-designated heritage asset;
 - iii) whether the proposed development provides adequate living conditions for existing occupants of neighbouring dwellings and the future occupants of the proposed dwellings with regards to privacy, outlook and light;
 - iv) whether the proposed development provides an adequate mix of housing types and sizes to meet local need; and
 - v) whether the proposed development makes adequate provision for open space and affordable housing.

Reasons

Character and appearance

5. The appeal site is a large and open rectangular area of undeveloped land consisting of rough scrubland punctuated with occasional mature trees, some groups of trees and hedgerow. It lies to the rear of properties fronting Broad Road and Highfield Stile Road, with large expanses of agricultural land situated beyond its eastern boundary. Overall, the site displays a pleasantly open and spacious rural appearance that is commensurate with its edge of settlement location bordering the open countryside.
6. Dwellings fronting Broad Road generally comprise a mix of single and two-storey detached and semi-detached dwellings of varying ages, types and design. Despite this variety, dwellings are mainly of a modest scale and incorporate a simple traditionally proportioned design whilst being set within large plots with long narrow rear gardens that provide a spacious arrangement. This rhythm and pattern along Broad Road is an intrinsic part of the attractive residential character of the area. Dwellings along Highfield Stile Road also provide a spacious layout as a result of their reasonable degree of separation in between the properties albeit their plots are smaller in size and notably shorter in length. Whilst there are some limited examples of large dwellings within the area, they are mostly set back from the road and retain large plots that preserve the prevailing spacious characteristics of the area.
7. Whilst I note that the appeal scheme has been revised in an attempt to overcome the Council's previous reasons for refusal of an alternative scheme, the proposed dwellings would each occupy a considerable sized footprint that would exceed by a far greater extent those of the built form nearby. Taken together with their substantial scale, bulk and mass they would appear disproportionately large in comparison to the existing dwellings of Broad Road and Highfield Stile Road.
8. In the absence of any notable degree of separation between the properties, there would be insufficient visual separation between the dwellings to prevent them from being perceived as a continuous mass and a cramped overdevelopment of the site which would erode the spacious and open feel of the area. Consequently, as a result of their scale, siting and appearance they would appear obtrusive and overly dominant in the streetscene, particularly when viewed from the front of the dwellings and on approach towards the appeal site along the nearby public footpath together with views from the wider countryside and neighbouring dwellings.
9. This effect would be worsened by the inclusion of large and bulky roof dormer windows, vast quantities of glazing, hardstanding and large integral double garages which add to the overall bulk and mass of the dwellings. Overall, I find that the proposed development would fail to relate well to the established built environment. The proposed gable elevation at the entrance of the estate road would further compromise the appearance of the development and does not represent good design.
10. In addition, the appeal scheme proposes the removal of a considerable number of trees including several protected trees and other vegetation. The appellant's Arboricultural Impact Assessment considers these trees to be predominantly of a low to poor quality although a number are identified as being moderate

quality. Collectively I find that these trees make a positive contribution to the overall visual amenity of the area and its spacious and verdant setting. Their premature loss would therefore be particularly regrettable and whilst additional and replacement planting is proposed, this would be likely to take a significant amount of time to become established.

11. The use of a similar palette of materials, the retention of some vegetation and trees together with additional planting within the site would assist to some degree to mitigate the impact of the proposed dwellings. However, to my mind, this would not be sufficient to overcome the unacceptable increase in the built form within the appeal site resulting in an overdevelopment. The appeal scheme would be at odds with the spacious character of the surrounding area and have an unsympathetic relationship with the established built environment thus failing to respond to local distinctiveness.
12. My attention is also drawn to the consented masterplanned strategic site at Straits Mill which, taking account of the submitted extract of the illustrative masterplan proposes a spacious layout of dwellings with modestly sized footprints with which the proposed development would also fail to relate well to.
13. Accordingly, I consider that the proposed development would unacceptably harm the character and appearance of the area. It would conflict with Policies RLP 80, RLP 81 and RLP 90 of the Braintree District Local Plan Review (2005)(LP), Policy CS8 of the Braintree District Council Core Strategy (2011)(CS) Among other things these policies require high quality development that reflects or enhances local distinctiveness, is in harmony with the character and appearance of the surrounding area and seeks to retain, maintain and plant locally native trees, woodlands, grasslands and hedgerows in order to successfully integrate the new development into the local landscape.
14. The Council's reason for refusal also cites a conflict with LP Policy RLP 49 and Policy SP6 of the Braintree District Shared Strategic Section 1 Local Plan (2021)(SSLP). However, these policies concern infrastructure and connectivity and the inclusion of pedestrian networks. As no specific conflict with these policies has been referred to, the nature of any conflict is not apparent to me. Similarly, SSLP Policy SP1 simply reiterates the presumption in favour of sustainable development as set out within the National Planning Policy Framework (the Framework). Consequently, conflict with these policies is not determinative of this main issue.

Non-designated heritage asset

15. Paragraph 197 of the Framework requires a decision maker to make a balanced judgement having regard to the scale of any harm or loss and the significance of the heritage asset.
16. The appeal site lies within the setting of the Braintree/Bradford Street Conservation Area and a number of Locally Listed buildings, however, by reason of the intervening distances and built form, I agree with the Council's view that there would be no adverse impact on the significance of these designated and non-designated heritage assets (NDHAs).
17. However, the Council's case also concerns the effect of the proposed development on a timber barn, Highfield Stile Barn, located in close proximity

to the appeal site, which it considers to be a NDHA by reason of its historic interest as part of a 19th century locally significant post-medieval farm complex. It appears that the appellant does not dispute this matter and I see no reason to take a different view on its status as a NDHA. The Council's assessment of its significance as a heritage asset is noted to be 'low' and I am also mindful that planning permission for conversion of the barn to residential use has recently been granted.

18. The proposed development would cause an element of change within the setting of the NDHA resulting from the introduction of properties together with the loss of vegetation and trees particularly in the position of the proposed access road. However, some vegetation along this boundary would be capable of being retained and together with additional planting, which would be capable of being implemented and controlled by an appropriately worded planning condition, the appeal proposal would not unduly alter the rural character of the farm track of Highfield Stile Road and it would therefore preserve the setting of the heritage asset.
19. Therefore, the appeal scheme accords with the provisions of paragraph 203 of the Framework (formerly paragraph 197 of the 2019 Framework) insofar as it relates to NDHAs.

Living conditions

20. The proposed dwellings would be set in a linear pattern beyond the rear boundaries of dwellings fronting Broad Road. Whilst the separation distance between the existing and proposed built forms would exceed the minimum distance of 25 metres set out within the Essex Design Guide (2005)(EDG), their close proximity to the rear boundary would fall short of the minimum distance set by the EDG. The EDG indicates that new development should be set back from a neighbouring boundary by a minimum of 15 metres in order to protect the privacy and amenity level of existing residents.
21. Notwithstanding this breach, the parts of the new dwellings that would encroach within this area would mainly comprise of single storey elements, with the two storey parts being positioned in accordance with the separation distances of the EDG. I recognise that the EDG does not differentiate between the upper floors and the whole building, however, when considering the impact of the development on neighbouring occupiers, by reason of the existing intervening boundary treatments and the limited height of those elements in conflict with the guidance requirements, there would be little opportunity for overlooking towards the neighbouring properties and their gardens. In addition, the long and substantial rear gardens of Broad Road properties would ensure there would be no unduly harmful effect experienced by those occupants. Consequently, I am satisfied that the living conditions of neighbouring occupiers would not be materially harmed as a result of the appeal scheme.
22. In terms of the living conditions of future occupants of the proposed dwellings, each dwelling would consist of a first floor ensuite bedroom incorporating a window facing the side elevation of the master bedroom dormer window and, in most cases, the flank elevation of a neighbouring dwelling. Given the close proximity of these solid features and an absence of any visual relief, the outlook from these bedroom windows would be limited and poor. Furthermore, in the absence of any compelling evidence detailing the likely level of light received within those rooms, for those windows which also face in a northerly

direction, the extent of daylight and sunlight is likely to be reduced. This would inevitably result in an unduly gloomy environment and, to my mind, it would create a substandard level of living conditions for future occupants.

23. Overall, taking everything into account, whilst I have concluded that the proposed development would not be unduly harmful to the living conditions of neighbouring occupiers, the proposed development fails to demonstrate that adequate living conditions would be achieved for future occupants of the proposed dwellings with particular regard to their outlook and light. Thus, the appeal scheme would be contrary to LP Policy RLP90 insofar as it requires a high standard of layout and design and the objectives of the Framework which requires, among other things, development to ensure a high standard of amenity for future users¹.

Housing Need

24. LP Policy RLP8 sets out that the Council will require new residential development to meet the housing needs of local people by providing a range of market and affordable housing types and sizes that can reasonably meet the requirements and future needs of different households. The Council's Strategic Housing Market Assessment (2015)(SHMA) sets out that the district would require circa 75.72% of market dwellings to be 2 or 3 bedroom properties.
25. I acknowledge the appellant's point that the SHMA was undertaken in 2015 and there is not a more recent successor document. I accept that it is possible that housing requirements may have altered since 2015 however, there is no firm evidence before me to support a housing mix which excludes 2-bedroom dwellings in line with the identified need, nor that requires the provision of overly large sized accommodation rather than smaller units. Consequently, I find that the proposed development would be contrary to the requirements of LP Policy RLP8 insofar as it seeks a range of house types and sizes in order to meet the local needs of the different household types within the district.

Affordable housing and open space

26. CS Policy CS2 sets a requirement to provide 30% affordable housing. Given that the appeal site comprises an area in excess of 0.5 hectare, the proposed development would be required to make provision for 3 units of affordable housing on-site or, alternatively, a payment in lieu of this for provision of affordable housing elsewhere within the district.
27. In addition, LP Policy RLP 138 requires proposals for new residential development to make provision for open space for play areas and formal recreation. In the event that individual developments would not warrant a directly associated open space provision, but where cumulatively, and over time, there would be a requirement for open space, a commuted payment(s) to provide open space will be required. As such, the provision of on-site affordable housing and open space or, alternatively, a financial contribution towards each would be necessary to make the development acceptable in planning terms. It has not been put to me that these matters would be provided on-site, nor do the submitted plans make any specific provision for such within the site.

¹ Framework Paragraph 130(f)

28. Although the appellant suggests it is able to demonstrate a history of providing affordable homes at significant cost, a history of providing such homes or related payments does not obviate the need to provide affordable housing in this instance. Whilst it is suggested that there is a need for family sized homes, these are indicated to be open market dwellings and thus do not satisfy the requirements of affordable housing.
29. Whilst the appellant indicates a willingness to make payment of a financial contribution towards affordable housing and open space and has submitted a legal agreement under s.106 of the Town and Country Planning Act 1990, it is in draft format and is unsigned. In the absence of a completed planning obligation to secure their delivery and, given that conditions cannot be used to secure the positive payment of monies, I conclude that the effect of the proposal would be harmfully unacceptable and it would conflict with LP Policy RLP 138, CS Policies CS2 and CS10 and SSLP Policy SP5. Among other things, these policies seek the provision of payment for all facilities and matters directly related to the development. It would also fail to accord with the objectives of the Framework to deliver sufficient affordable housing and community facilities to meet local need.

Other Matters

30. It is the Council's case that it is able to demonstrate an adequate five-year housing land supply in the region of 5.34 years. The appellant disputes this matter and suggests that too much emphasis is placed upon the SHMA (2015) and provides generalised examples of sites not likely to be brought forward for development. However, there is little compelling evidence to support the appellant's view nor to lead me to a view that the Council are unable to demonstrate an adequate housing land supply. In these circumstances, the tilted balance is not engaged.
31. The appeal site is located outside of the settlement boundary for Braintree and in these circumstances, only development that is appropriate to the countryside will be permitted. It has not been put to me that the proposal would satisfy an exceptional category of development, however, notwithstanding a conflict with the development plan in this regard, I note that the site is allocated for housing within the emerging Local Plan and this matter weighs in favour of the appeal scheme.
32. The appeal site is located adjacent to the town boundary with good access to services, facilities and public modes of transport. The appeal scheme would contribute ten dwellings towards housing supply and there would be social benefits arising from the provision of these together with economic advantages from the construction and occupation of the dwellings. The proposed dwellings would be suitable for occupation by families and capable of allowing occupiers to work from home. In addition, there would be a greater choice of dwellings available within the locality. However, given the modest scale of the development any consequent benefits of the appeal scheme would be limited.
33. Reference is made to the manner in which the planning committee was conducted and the relationship between the Council and the appellant. These are not matters for me to determine as part of the appeal scheme. In any event, I have determined the appeal before me on its individual planning merits.

34. No adverse harm has been identified with regards to highway safety, parking, the size and useability of the accommodation and the safe and accessible scheme layout. However, the absence of harm is a neutral matter that weighs neither for nor against a proposal.
35. The appeal site is located within the zone of influence of the Blackwater Estuary Special Protection Area/Ramsar site (SPA) and the Essex Estuaries Special Area of Conservation (SAC). The proximity of these European sites means that determination of the application should be undertaken with regard to the requirements of the Habitats Regulations 2017. Mitigation would be required in respect of the increased recreational disturbance on the integrity of habitats sites. However, as the appeal is failing because of the harm which has been identified in relation to the other main issues, it is not necessary for me to come to a conclusion on any proposed mitigation. The development is not going ahead and therefore any harm to the SPA/Ramsar/SAC would not occur. Therefore, I do not need to give any further consideration to this matter in this appeal.

Conclusion

36. For the reasons given above, the appeal scheme would conflict with the development plan. Whilst I have had regard to the material considerations in favour of the scheme, these do not outweigh the conflict with the development plan and therefore I conclude that the appeal is dismissed.

E Brownless

INSPECTOR