



Appeal Decision

Site visit made on 15 March 2022

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th May 2022

Appeal Ref: APP/Z1510/W/21/3273693

Park Place Bardfield Road, Finchingfield CM7 4LL

- 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 David Cleal against the decision of Braintree District Council.
 - The application Ref 20/00677/OUT, dated 17 April 2020, was refused by notice dated 3 November 2020.
 - The development proposed is described as “replacement proposed 7 no. units on land at Bardfield Road”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline form with all matters reserved for future consideration. The appellant provided a ‘sketch scheme’ layout¹ (the sketch scheme) which I have treated as illustrative for the purposes of this appeal.
3. Since the submission of the appellant’s appeal, the revised National Planning Policy Framework (the Framework) was published and came into force on 20 July 2021. In this instance, the issues most relevant to the appeal remain unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by such a course of action.

Main Issues

4. The main issues in this appeal are 1) whether the appeal site is within an appropriate location having regard to the development plan, and the effect of the development on 2) the character and appearance of the area 3) the living conditions of future occupiers with particular regard to noise and disturbance and the provision of private amenity space, 4) ecology, 5) trees, and 6) highway safety.

Reasons

Location

5. The appeal site lies close to, but outside of, the settlement boundary of Finchingfield as defined within the Braintree District Council Local Plan Review

¹ Drawing SK/03

2005 (the LPR). Consequently, for the purposes of planning policy, the appeal site lies within the countryside.

6. Policy RLP2 of the LPR and Policy CS5 of the Braintree District Council Core Strategy 2011 (the CS) state that developments will be confined to the areas that are within town development boundaries and village envelopes. Outside of such areas, countryside policies will apply. Exceptions to this are schemes for affordable housing which comply with Policy RLP6 of the LPR.
7. As the development before me does not propose affordable housing, it would be in conflict with Policy RLP2 of the RLP and Policy CS5 of the CS, the specific requirements of which are specified above.

Character and Appearance

8. The appeal site currently contains a single storey dwelling and a detached double garage that are sited behind a group of bungalows that form 1-4 Wincey Close. The site is roughly 'T' shaped and as the buildings within the site are set back some distance from the road, it contains large open, grassed and landscaped areas to the front and rear of the site.
9. Properties within the village are largely arranged in a linear manner along Bardfield Road. Although there is a variety of style and size of property in the area, those in the vicinity of the appeal site tend to be bungalows, some of which contain accommodation within the roof space. The area has a pleasant open quality with properties tending to be set back from the road and benefitting from decent sized gardens. The area also has extensive landscaping that contributes towards its largely rural character.
10. The sketch scheme indicates utilising the existing central access road into the site with four detached dwellings and a terrace of three properties arranged across the site. Garaging would be provided for three of the properties, along with parking for each property, and turning spaces. Notwithstanding that layout is a reserved matter, whatever its final form, it is clear that to accommodate seven dwellings on the site, along with appropriate levels of private amenity areas, parking, turning, pathways, cycle store and vehicular access, it would result in a somewhat contrived development that would appear cramped within the site.
11. Moreover, although it may be difficult to meet expected layout densities, it is clear that even at some 25 dwellings per hectare, the shape of the site means that the layout as depicted appears cramped and dominated by hard surfaced areas to create roads and parking areas, with dwellings nucleated as a dense cluster of properties. This would be at odds with the more spacious form of development that prevails in the vicinity of the appeal site. It would fail to reflect or respect the grain of the area and appear as a cramped and awkward development, quite out of keeping with its established, open character. The harm that I have identified would be visible through any access into the site and from those properties that surround it.
12. Thus, the development would result in harm to the character and appearance of the area. It would be in conflict with Policies RLP 10 and RLP 90 of the RLP, and paragraph 130 of the Framework which seek, amongst other things, to ensure that developments are of a high standard, scale and density that reflect or enhance local distinctiveness.

Living Conditions

13. The Council state that the development would result in harm to the living conditions of future occupiers of plots 2 and 6 through noise and disturbance and light pollution caused by vehicles. Additionally, the garden sizes for plots 3, 4 and 5 would not meet expected standards and there would be overlooking between plots 1 and 2, and between plots 3 and 7. Doubt is also cast over the use of the garage to plot 7, which could lead to further harm through potential noise and disturbance.
14. Although layout is a reserved matter, given the shape of the site, I find it difficult to reason how it could be developed with the number of dwellings proposed and provide adequate levels of private amenity space for all of the properties. Although the appellant states that 25m² is a minimum advocated by the Essex Design Guide, it is clear that this size of garden area relates to flats and communal garden areas which are not proposed as part of the development before me. Therefore, the proposal would fail to provide adequate amenity space for each dwelling, further emphasising the cramped nature of the development.
15. Although the sketch scheme indicates a layout dominated by hardstanding required to provide parking and access roads for each property, boundary treatments have the potential to alleviate noise and light pollution arising from cars using the site. Furthermore, it is evident from the sketch scheme that there would be sufficient space within the site to allow a greater separation distance between plots 1 and 2 which would overcome any loss of privacy. The appellant could also clarify the use of the garage for plot 7 at reserved matters stage. As the dwellings are all to be single storey, overlooking and loss of privacy between properties is unlikely to arise.
16. However, the development would fail to provide adequate amenity space for at least three properties. It would be in conflict with Policy RLP90 of the RLP and paragraph 130 f) of the Framework which seek, amongst other things, to ensure that developments are of a high standard of amenity for existing and future users.

Ecology

17. Paragraph 99 of Circular 06/2005² (the Circular) makes it clear that the extent that protected species may be affected by a proposed development must be established before planning permission is granted. However, the Circular continues by stating that developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place before the permission is granted.
18. The appellant commissioned an ecological survey³ and a bat survey⁴ for the site. As the bat survey revealed bat droppings within the building, it is apparent that bats have been or are present at the site. Although the appellant argues

² ODPM Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System

³ Ecological Survey Assessment for Park Place, Finchingfield, John Dobson B.Sc., August 2020

⁴ Bat Survey for Park Place, Finchingfield, John Dobson B.Sc., September 2020

that any bat roost within the building appears to have been abandoned, the bat survey nonetheless confirmed the presence of a bat roost in the roof.

19. Consequently, there is a reasonable likelihood of bats being present and affected by the development. I am unable to determine whether the proposal would have an adverse effect on this protected species and, if so, whether such an adverse effect could be overcome by any proposed mitigation measures. I have considered whether a condition requiring further surveys at reserved matters stage could be imposed, mindful that such conditions should only be used in exceptional circumstances. However, the outline nature of the scheme does not provide an exception in itself, and a condition would not be an appropriate course of action in this case. No imperative reasons of overriding public interest have been identified that would justify the harm that could arise to bats were the proposed development to proceed.
20. The appellant has provided an email⁵ regarding ecological matters at the adjacent site (the adjacent site) which was granted planning permission at appeal⁶ for the erection of 50 dwellings. The email confirmed that surveys could be secured at reserved matters stage. However, the Inspector considering the development stated that there was a commitment to provide, and a significant opportunity for, net biodiversity gain from that which as an arable field currently has to offer. Moreover, it is clear that the landscape strategy for the adjacent site indicated that boundary features were to be retained, thus bat surveys could be secured at a later date. That is not the case before me.
21. Thus, in the absence of mitigation, the development would be in conflict with Policies RLP80 and RLP84 of the RLP, Policy CS5 and CS8 of the CS and paragraph 179 of the Framework which seek, amongst other things, to ensure that all developments provide measures for any necessary mitigation of their impact upon wildlife.

Trees

22. The development proposes the removal of several trees within the site, one of which is identified as a Category B⁷ tree. The Council argue that the loss of the trees would open up the site that would affect the setting of the village and the open countryside. Additionally, the removal of the trees may result in a loss of wildlife habitat.
23. However, notwithstanding that the trees may provide a habitat for wildlife, their loss within the site would not amount to significant harm as the vast majority of the trees to be removed are low value. Moreover, the development of the adjacent site with 50 dwellings will undoubtedly alter the edge of the village at this particular location, with the appeal site sitting between it and the existing village to the north.
24. Therefore, given the site specific nature of the development and that the majority of the trees to be removed are of poor quality, I am not persuaded that the loss of trees would amount to significant harm, subject to a scheme of additional landscaping at the site, replacing the Category B tree with a similar

⁵ Dated 12 September 2019

⁶ APP/Z1510/W/20/3251952

⁷ T13 – Norway Spruce

tree, as well as providing additional landscaping within and on the margins of the site.

25. Thus, the development would not be in conflict with Policy RLP80 of the RLP, Policies CS5 and CS8 of the CS and paragraph 131 of the Framework which seek, amongst other things, to ensure that developments successfully integrate into the local landscape.

Highway Safety

26. The appeal site benefits from an existing vehicular access into the site. The Council state that as a single track access, which is sufficient for the existing dwelling, it would not be suitable for two cars to pass one another and would need to be widened. Moreover, parking spaces and garages do not appear to meet current standards and there is insufficient information to assess whether appropriate visibility splays would be provided at the access, where footpaths would be provided and whether disabled and visitor spaces would be located.
27. It is evident that the speed limit at the site is 30mph and Bardfield Road has a relatively straight alignment where it passes the appeal site. It is quite feasible that adequate visibility could be achieved for an access into the site to serve seven dwellings. Moreover, detailed matters relating to internal circulation arrangements and parking would be considered at reserved matters stage. It is also evident that the site has a layout with a degree of flexibility so that it could be designed to increase the size of parking spaces to meet expected standards and to allow manoeuvring within the site for private cars, service and emergency vehicles to enter the site safely.
28. The Council also state that insufficient space has been provided between plots 5 and 6 to allow cars to pass one another. However, given the very short length of road that would be constructed, it is unlikely that any vehicle waiting to pass would do so for a protracted period of time.
29. Thus, the development would not result in harm to highway safety and would provide adequate levels of parking. It would not be in conflict with Policy RLP56 of the RLP and paragraph 111 of the Framework which seek, amongst other things, to ensure that developments provide acceptable levels of parking.

Other Matters

30. I acknowledge that planning permission for 50 dwellings has been granted at appeal on the adjacent site and once developed, the site before me can no longer be considered as being on the edge of the village. However, I have not been provided with any details of the proposed layout of the adjacent site so that I am able to make a direct comparison to the development before me. In any event, I have considered this appeal on its own merits which is a fundamental principle that underpins the planning system.
31. Whilst I appreciate that the adjacent site also lies beyond the settlement boundary, the decision was made at a time when the Council could not demonstrate a five year supply of deliverable housing sites. In such circumstances, the tilted balance at paragraph 11 of the Framework was engaged which, for decision making, means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework's policies taken as a whole.

32. It is evident that the tilted balance was engaged at the adjacent appeal site and although harm was identified, the Inspector found that it was out-balanced by the far greater weight of other material considerations, such as the provision of affordable housing which was considered to be very significant. That is not the case before me.
33. I acknowledge that the development would provide smaller homes and that the site may constitute brownfield or previously developed land. Paragraph 119 of the Framework states that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses. It also states that strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or brownfield land.
34. However, footnote 47 clarifies that this is except where this would conflict with other policies in the Framework, which I have found as set out above. Furthermore, Annex 2 of the Framework states that whilst previously developed land includes the curtilage of the developed land, it should not be assumed that whole the curtilage should be developed.
35. I also accept that as the site lies within the village of Finchingfield, it cannot be considered to be isolated. Thus, the exceptions listed at paragraph 80 of the Framework do not apply to the scheme before me.
36. The Council also acknowledge that at the time it made its decision on the planning application that is the subject of this appeal, it could not demonstrate a five year supply of deliverable housing sites. However, that position changed during the submission and consideration of the appeal before me with the Council now arguing that it is able to meet its housing supply requirements. I fully appreciate the appellant's frustration on this particular matter.
37. I acknowledge that the development would help boost the supply and mix of housing and would provide social benefits. There is also likely to be economic benefits through the construction of the development, local taxation such as council tax and through additional spending from the occupants in the local area. I also accept that the living conditions of adjoining occupiers would not be harmed as a result of the development. As a small windfall site, it also has the ability to be developed-out quite quickly, further boosting the supply of housing in the area.
38. However, given that the development proposes an increase of six dwellings, the weight I would afford such matters is limited. Moreover, even if the Council could not demonstrate an adequate supply of housing and the tilted balance at paragraph 11 of the Framework was engaged, good design and its impact on the character and appearance of an area along with developments that provide a high standard of amenity for occupiers, is recognised by the Framework.
39. Accordingly, given my findings outlined above concerning the resultant harm to the character and appearance of the area, the living conditions of future occupiers and ecology, the proposal would fail to meet the environmental dimension of the Framework. Thus, the application of the tilted balance in paragraph 11 of the Framework would not have indicated, even if considered as an infill plot in this instance, that planning permission should be granted.

40. I note that representations were made by local residents, some of whom raise additional concerns. However, given my findings on the main issues, it is not necessary to consider these matters in detail.

Conclusion

41. The proposal would conflict with the development plan and there are no other considerations, including the Framework and its presumption in favour of sustainable development, that outweigh this conflict. For the reasons given above, I conclude that the appeal should be dismissed.

Graham Wyatt

INSPECTOR