The Planning Inspectorate

Appeal Decision

Site visit made on 31 January 2022

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 9th May 2022

Appeal Ref: APP/Z1510/W/21/3278254
Land Adjacent to 'Fairacres', 76 Church Lane, Braintree, Essex CM7 5SD

- 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 Three Conkers Limited against the decision of Braintree District Council.
- The application Ref 19/02207/FUL, dated 4 November 2019, was refused by notice dated 16 April 2021.
- The development proposed is the erection of 14 residential dwelling houses.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 14 residential dwelling houses on land adjacent to 'Fairacres', 76 Church Lane, Braintree, Essex CM7 5SD, in accordance with the terms of the application, Ref 19/02207/FUL, dated 4 November 2019, subject to the conditions in the attached schedule.

Preliminary matters

2. On 14 April 2022, the appellants entered into a Section 106 agreement with the Council. The agreement provides for 30% affordable housing, financial contributions to public open space and ecological mitigation, and arrangements relating to refuse collection. As a result, Refusal Reasons Nos 4 and 5 (RRs 4 and 5), relating to affordable housing, open space and recreational disturbance are no longer in dispute.

3. During the course of the negotiations regarding the agreement, it emerged that the ownership certificate submitted at the application stage was incorrect, as no notice had been served on Mrs Kazuko Okamoto, who was the registered owner of the land at that time. However it has subsequently been confirmed that Mrs Okamoto is a Director of the appellant company, Three Conkers Limited, to which the site has since been transferred. On the evidence before me, I am satisfied that no prejudice is likely to have arisen from the defect in the certificate, or the failure to serve notice.

4. Also during the course of the same negotiations, it was established that a small strip of land originally included within the application site is outside the appellants' control. A revised site boundary plan and Master Plan, excluding this part of the site, have subsequently been submitted and included in the S.106 agreement. Given the small extent of the amendment, I am satisfied that no party could be disadvantaged by it, and I have therefore determined the appeal on this basis.

Planning context

5. The development plan for the District includes the saved policies of the Braintree Local Plan Review adopted in July 2005 (the BLPR), together with the Braintree Core Strategy adopted in September 2011 (the BCS), and the Braintree District Local Plan Part 1 adopted in February 2021 (the BDLP1).

6. On the Policies Map, the appeal site lies outside the development boundary defined for Braintree town. Policy RLP2 of the BLPR states that development will be confined to land within the development boundaries and village envelopes. Policy CS5 of the BCS states that outside these boundaries, development will be strictly controlled. It is not disputed that the appeal proposal conflicts with these policies.

7. Part 2 of the BDLP (BDLP2) is well advanced, but is not yet adopted. The plan has therefore reached the stage where its policies are capable of carrying some weight. Nevertheless, the BDLP2 policies relevant to the present appeal do not appear to significantly depart from, or add to, those of the adopted BLPR, BCS and BDLP1. I have therefore based my decision on the policies of these extant plans.

8. In the Council's report on the application, in April 2021, the District's housing land supply was stated to be 3.73 years. Since then, the Council has not commented further on the matter. The appellants have drawn my attention to an appeal decision dated 12 November 2021, in which the Inspector found the supply to be between 4.7 – 4.9 years[1]. It is therefore not in dispute that the land supply in the District is less than 5 years. Consequently the provisions of paragraph 11(d) and Footnote 8 of the National Planning Policy Framework (the NPPF) are engaged.

Main issues

9. In the light of all the submissions made, I find that the main issues in the appeal are:

   - the effects of the proposed development on the character and appearance of the area;
   - and the effects on highway safety.

Reasons for decision

Character and appearance

Loss of openness and countryside views

10. Church Lane lies within the town of Braintree. On its west side, there is continuous housing for the entire length, from Bradford Street to the junction with Deanery Hill and beyond. Behind this frontage, there is residential estate development. On the east side of Church Lane, there is housing along most of the frontage, interspersed with a further education college campus, a health centre, a retirement housing/'care village' complex, and a cemetery. The character of the street is therefore primarily urban.

11. The appeal site comprises a gently sloping, rectangular grass paddock, bounded by trees and hedges to the front and side boundaries. Immediately to

[1] APP/Z1510/W/21/3267825: Land North of Station Road, Earls Colne

the south, is a row of houses, including former farm buildings, and then the college site. To the north is the dwelling Fairacres, and the care village. These existing land uses enclose the appeal site on two and a half sides. The site therefore relates well to the surrounding urban context.

12. In its present undeveloped state, the appeal site appears as a gap in the otherwise mainly built-up frontage. Although fairly pleasant in appearance, it possesses no particular visual qualities or features of any note. Looking across the site, from Church Lane itself, or from the bottom end of Boleyns Avenue, the view extends to the shallow valley of the River Blackwater, with the slope of the opposite bank visible in the middle distance. But although this view is reasonably attractive, it is unremarkable. And in any event, the view is heavily filtered by the trees along the site frontage. Consequently, the appeal site does not appear as a very significant feature in the street scene.

13. To my mind therefore, the appeal site as it currently exists makes only a limited contribution to its surroundings. The development now proposed would mean the loss of the site's openness, and of the glimpsed views of the countryside beyond, but that loss would not be of great significance to the area's character or appearance. Given the accepted shortfall in the District's housing land supply, and the need to rectify that situation, the limited harm resulting from the loss of the site would not justify a refusal of permission.

Design and layout

14. Church Lane contains some attractive older buildings, including some which are listed. However, these are a minority, and mostly grouped towards the southern end of the street, away from the appeal site. The college, health centre and care village all involve large, modern buildings, with non-traditional building forms. Along Church Lane as a whole, the predominant building type is mid-20th century semi-detached housing, mostly of indifferent quality. Overall, whilst there are some notable exceptions, the street's prevailing architectural character is undistinguished.

15. The proposed scheme would place eight new dwellings across the front part of the site, including two short terraces of three units each, and two detached dwellings. These would be served by a single access from Church Lane and a shared courtyard-style parking area, set behind the existing frontage tree line. To the rear, there would be a further six detached dwellings, served by a shared access road, with separate, on-plot parking provision for each.

16. I have considered carefully the Council's objections to this layout. However, whilst I agree that the established pattern of development on this side of Church Lane is broadly linear, it also seems to me that the existing relationships between the individual buildings and the street are highly varied. There is therefore no clear building line with which any new development could conform. In the present scheme, the eight units towards the front of the site would address the street and maintain the generally linear pattern. On the rear part of the site, the development would not extend any further back than that on the nearby college and retirement village sites. Limiting built development only to the front part would clearly be an inefficient use of the land which, in the light of my earlier findings, would not be justifiable. Overall, it seems to me that the proposed scheme would adequately respect the prevailing development pattern.

17. Likewise, I note and appreciate the criticisms made regarding the proposed house designs. The scheme would involve a mixture of styles and materials. Some of these, such as the metallic roofing and large, rectangular dormers on the terraced units, or the tall, vertical windows on the detached houses, would not be drawn directly from any existing examples in the area. But the range of building styles in the area is already wide. The area's character would not be unduly harmed by extending that variety. Although some of the proposed scheme's design features would be modern in nature, the underlying building forms would for the most part be fairly traditional. Seen together, in the context of the site and its surroundings, it seems to me that the combination of different house designs now proposed would form an interesting and attractive composition. As such, the development would have the potential to enhance the area.

18. I agree that in many cases it would be desirable for the buildings in the rear part of the site to enclose the space around the shared accessway more fully. But that does not mean that alternative approaches cannot be acceptable. In this case, the positioning of the proposed dwellings on Plots 5 and 6 would allow for the retention of glimpsed views through the site, which is evidently a response to the concern expressed by the Council. Seen from Church Lane, such views would be quite limited. But nevertheless this aspect of the scheme would retain a degree of visual connection with the countryside, especially from within the development itself. In this particular case, this seems to me a reasonable compromise, and one that would assist in giving the development a sense of place and identity.

19. I note all the other detailed points made by the Council, including the amount of hard surfacing, the prominence of the walled side boundaries adjacent to the access way, and the need for one or more refuse bin enclosures in visible positions. But the potential impacts of all these features are capable of being mitigated by means of detailed design and high-quality materials. All of these matters can therefore be dealt with adequately by conditions.

20. I therefore find no harm to the area's character or appearance arising from the development's design or layout.

Trees

21. The appellants propose to remove four trees. Those trees have been assessed as having moderate to high amenity value, and are protected by a Tree Preservation Order (TPO). But nonetheless, the two pines in Group G1 are relatively small trees, with poor form, and the two poplars in G2 have multiple defects and a short life expectancy. All four are set back into the site and partially concealed behind the trees on the site frontage. Consequently, having regard to their stature, condition and siting, it seems to me that these four trees are not ones which justify long-term protection, irrespective of any development proposals.

22. Based on the submitted plans, there is no clear evidence as to whether the four trees in question could be retained, if required. But I must base my decision on the proposals that are before me, which include their removal. For the reasons already stated it seems to me that these particular trees make only a limited contribution to public views, and in any event, that contribution is likely to be time-limited. In addition, the proposed development would afford the opportunity to secure replacement planting, and indeed other new planting, by

condition. Given the limitations of the existing trees, it seems to me that such new planting could potentially realise both a quantitative and qualitative enhancement in terms of trees, especially in the longer term. In these circumstances, the visual harm caused by the loss of the trees in Groups G1 and G2 would be, at most, minor.

23. The trees which have been assessed as having the greatest amount of public amenity value are those on the site frontage, including the individual trees T1 - T4, plus Group G3 and Area A2. Of these, all are proposed to be retained except for a small part of A2. To my mind, that small loss would be insignificant. So too would be the loss of part of the northern boundary hedge H1. There is no dispute that the remainder of the boundary trees and hedges can be adequately protected, during construction and afterwards, by some combination of barrier fencing, tree guards, ground protection, cellular confinement systems, hand excavation, and no-dig construction. The use of appropriate tree protection can be secured by condition.

24. I appreciate the Council's concern regarding future pressure to fell or reduce the trees that are proposed to be retained. But those trees, on the site's frontage and other boundaries, would be reasonably well spaced from any of the new dwellings. Future applications to fell or prune clearly cannot be ruled out, but any such works would be subject to planning control. Given the separation distances involved, it does not seem unrealistic to envisage that the retained trees could continue to be adequately protected.

25. I conclude on this matter that, despite the loss of some of the existing trees, the proposed development would otherwise be capable of adequately protecting and preserving those that would remain. Overall, the impact on trees would not cause significant harm to the area's character or appearance.

Heritage assets

26. Although the site lies on one of the approaches to the Braintree and Bocking Conservation Area (the CA), the CA boundary is some 300m or so away, and there is no intervisibility. The Council accepts that the settings of the CA, and those of the listed buildings in Church Lane, would be unharmed. I agree that all of these settings would be preserved, and that no harm would arise to any heritage asset.

Amended plans

27. For the reasons already stated, I have concluded that the amended plans incorporated into the S.106 agreement should be accepted.

28. The amended plans exclude a narrow strip of land on the site's southern side boundary, containing an existing tree belt. The exclusion of this land means that the retention and future management of the existing trees within this strip could not be secured by condition. However, there is sufficient space within the amended site area for adequate landscaping, including additional tree planting if considered necessary. And in any event, this southern boundary is not exposed to any significant public views, and I therefore see no particular need for extensive screening in this part of the site.

29. I therefore find that the exclusion of a small part of the original site, as shown in the amended plans, does not give rise to any significant adverse impacts on the area's character or appearance.

Overall effects on character and appearance

30. The proposed development would result in the loss of a relatively small greenfield site, and of a partial view towards open countryside. It would also involve the loss of a small number of relatively insignificant trees. However, these impacts would be minor.

31. On the other hand, the development would be of an acceptably high quality, and would thus raise the overall level of design in Church Lane. It would provide the opportunity for new tree planting, which would have the potential for longer-term benefits. In both respects, the scheme would add visual interest to the street scene.

32. On balance, I conclude that the effect on the area's character and appearance would be neutral. Consequently, I find no conflict with Policies RLP80 of the BLPR and CS8 of the BCS, which both seek to protect and enhance the character of the local landscape. Nor do I consider there would be any conflict with the relevant criteria of BLPR Policies RLP9, RLP10 and RLP90, which together require high standards of design, reflecting or enhancing the character and distinctiveness of the surrounding area.

Highway safety

33. It is agreed between the Council and the appellants that the visibility splays needed at the site entrance would be 2.4m x 43m in both directions. The submitted plan No 0080-MP07 suggests that, in the southward direction, a splay with these dimensions would cross not only the front garden of No 58 Church Lane, but also the excluded strip of land adjacent to the southern boundary.

34. As things stand, the appellants do not appear to have any legal rights or agreements in respect of these third-party land areas. However, there is no apparent reason to doubt that the necessary rights or agreements could be secured by negotiation; there is no evidence that such a prospect is unrealistic.

35. In these circumstances, it is not uncommon for permission to be granted subject to a 'Grampian-style' condition, preventing any other work from taking place on the development until the required splays have been provided. In the present case it seems to me that such a condition would meet the tests set out in NPPF paragraph 56, and would be an appropriate means of ensuring that the relevant visibility standards are complied with.

36. I note that no other safety issues relating to either vehicular or pedestrian movement have been raised by the Highway Authority.

37. Subject to the condition that I have outlined above, I am satisfied that the development would have no undue adverse impacts on highway safety. In this regard the scheme complies with the relevant criteria of BLPR Policies RLP10 and RLP90, relating to the provision of adequate access and safe environments.

Other matters

38. I have considered all the various matters raised by local residents at the application stage. But the concerns regarding traffic impacts, flooding and on-site wildlife are not borne out by the technical evidence that is before me. I note what is said by some objectors regarding the lack of bus services, but the

site is well within walking distance of the town centre and various other local facilities. Subject to relevant conditions where necessary, none of these matters justifies refusal of permission.

39. Amongst the planning policies cited in the Council's RR1 are BDLP1 Policies SP1, 'Presumption in Favour of Sustainable Development' and SP6, 'Infrastructure and Connectivity'. However, neither of these policies seems to me to be directly relevant to the subject matter of RR1, nor to any other aspect of the Council's case. I have dealt with the appeal on the basis of the policies that seem to me to be the most relevant, as identified elsewhere in this decision.

40. From the evidence provided, I am satisfied that the S.106 provisions, relating to affordable housing, public open space, ecological mitigation, and refuse collection, meet the relevant legal tests[2] for planning obligations, and I have therefore taken them into account in reaching my decision. Nevertheless, with the exception of the affordable housing, the obligations are needed to mitigate the development's own impacts, and therefore contribute only neutral weight in in the planning balance.

Conditions

41. I have considered the conditions suggested by the parties, having regard to the advice in the NPPF. In a number of cases, I have edited the wording, or combined the suggested conditions, in the interests of clarity and simplicity, and to avoid over-prescriptiveness.

42. I agree that a condition specifying the approved plans is necessary, to ensure certainty as to the nature of the development.

43. For the reasons already discussed above, a condition regarding visibility splays is necessary for reasons of highway safety, and conditions relating to landscaping, trees and materials are all needed to protect the character and appearance of the area.

44. In addition, a condition relating to archaeology is required, to ensure the proper protection of any remains, and another relating to surface water drainage is necessary to minimise any risks of flooding or pollution. Further requirements relating to biodiversity measures and lighting are also necessary, to safeguard wildlife.

45. However, the suggested conditions restricting permitted development rights are not justified in the absence of any specific evidence that they are necessary.

Planning balance and conclusion

46. The proposed development would conflict with Policy RLP2 of the BLPR and Policy CS5 of the BCS, due to being located outside the development boundary. In the light of my findings on the issues relating to character and appearance and highway safety, the scheme would broadly accord with all of the other relevant policies, including BLPR Policies RLP9, RLP10, RLP80 and RLP90, and BCS Policy CS8. But nevertheless, in view of the conflict that I have identified with Policies RLP2 and CS5, the proposal fails to accord with the development plan as a whole.

[2] Regulation 122 of the Community Infrastructure Levy Regulations 2010

47. However, the District does not appear to have a 5-year supply of land for housing, and the rigid application of settlement boundary policies such as RLP2 and CS5 would hinder any attempt to remedy that situation. Consequently, in accordance with NPPF Footnote 8, these policies should be considered out of date for the purposes of this appeal. The conflict with Policies RLP2 and CS5 therefore carries limited weight.

48. NPPF paragraph 11(d) provides that, where the most important policies are out of date, permission should be granted, unless the adverse impacts of the development would outweigh the benefits significantly and demonstrably. In the present case, the development would boost housing provision in the District by 14 dwellings. Given the shortfall in the local land supply, this addition to the housing stock counts as a substantial public benefit. Four of those dwellings would be affordable, and the benefit of these affordable units carries added weight. There would also be some moderate economic benefits in terms of construction jobs, supply chain effects, and household expenditure. All of these benefits weigh in favour of the development.

49. On the other side of the balance, although there would be some minor adverse effects in terms of the loss of greenfield land and countryside views, and some loss of trees, in this case, for the reasons that I have explained, I consider that these impacts would be fully offset by the quality of the proposed scheme and the opportunity for new planting. As a result, the net impact on the area's character and appearance would be neutral. Any adverse effects on highway safety could be avoided by means of a condition. The other potential impacts identified by the Council would be adequately mitigated by the binding legal obligation that has been entered into. No other harmful effects have been substantiated.

50. Overall therefore, I find that the development would cause no significant harm of any kind. It follows that the scheme's benefits significantly exceed any adverse effects. The presumption in favour of sustainable development, as set out in NPPF paragraph 11, therefore applies.

51. Having taken account of all the matters raised, I conclude that in this case the conflict with the development plan is outweighed by the other material considerations that I have identified. The appeal is therefore allowed.

J Felgate

INSPECTOR

SCHEDULE OF CONDITIONS

The planning permission to which this decision relates is granted subject to the following conditions:

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development shall be carried out in accordance with the following approved plans:

0080-S01-i1	Site Boundaries Plan
0080-MP00-i2	Master Plan
0080-MP04-i2	Landscape Master Plan
0080-GA-01-i1	House Type 1 plans & elevations – plots 1 & 2
0080-GA-02-i1	House Type 1a plans & elevations – plots 3 & 4
0080-GA-03-i1	House Type 2 plans & elevations – plots 5 & 6
0080-GA-04-i1	House Type 2 garage plans & elevations – plots 5 & 6
0080-GA-05-i1	House Type 3 plans & elevations – plots 7 & 8
0080-GA-06-i1	House Type 4 plans & elevations – plots 9-14
0080-GE-01-i1	Site Elevations sheet 1
0080-GE-02-i1	Site Elevations sheet 2

3) No other development shall take place until visibility splays have been provided, measuring 2.4m x 43m in both directions along the nearside edge of the carriageway. Thereafter, the areas within these visibility splays shall be kept free from any obstruction above a height of 600mm at all times.

4) No development shall take place until a detailed scheme of surface water drainage has been submitted to the local planning authority and approved in writing. The drainage scheme shall be based on an assessment of the hydrological and hydro-geological context of the site, and a full consideration of the potential for infiltration. The scheme shall include:

- floodwater storage capacity for a '1 in 100 year + 40%' storm event, which shall also be capable of half-emptying within 24 hours after a '1 in 30 years +40%' storm event;
- measures to minimise offsite flood risks and pollution risks during construction;
- a maintenance plan including details of who is to be responsible for the on-going, long-term management of the system;
- and provision for an annual maintenance log, which is to be made available to the local planning authority upon request.

Thereafter, the development shall be carried out in accordance with the drainage scheme thus approved.

5) No development or preliminary groundworks shall take place until a programme of archaeological work has been implemented, in accordance with a written scheme of investigation which has been submitted to the local planning authority and approved in writing. The scheme shall include details of a mitigation strategy, including proposals for excavation, preservation and/or recording, and post-excavation assessment, together with an implementation programme and timetable.

6) No development or preliminary groundworks shall take place until a detailed arboricultural method statement has been submitted to the local planning authority and approved in writing. The arboricultural method statement shall identify all the existing trees and hedgerows on and adjacent to the site, and whether each is to be retained or removed. The statement shall also contain full details of measures for the protection of the trees and hedgerows to be retained, before and during the course of development. Thereafter, the protective measures thus approved shall be adhered to throughout the course of construction. At no time, either during construction or afterwards, shall any tree identified for retention be cut down, uprooted or destroyed, nor be topped, lopped or pruned, other than in accordance with the approved details in the arboricultural method statement. Notwithstanding the foregoing provisions, in the event that any retained tree is removed, uprooted or destroyed at any time, or dies within a period of five years from the date of the completion of the development, replacement planting shall be carried out, in accordance with details to be approved in writing by the local planning authority.

7) No development above ground floor slab level shall take place until details of the materials to be used on the external surfaces of the buildings have been submitted to the local planning authority and approved in writing. Thereafter, the development shall be carried out using the materials thus approved.

8) No new dwelling within the development shall be occupied until a detailed scheme of hard and soft landscaping has been implemented, in accordance with a detailed landscaping scheme to be submitted to the local planning authority and approved in writing. The scheme shall be based on the approved Landscape Master Plan (drawing No 0080-MP04-i2), and shall include a full specification for all proposed planting, seeding, turfing, soils, hard surfacing materials, and boundary treatments, together with an implementation programme and timetable. Within a period of 5 years from the date of the completion of the landscaping scheme, any tree, shrub or plant which dies, becomes seriously damaged or diseased, or is removed for any reason, shall be replaced in the next planting season with another of similar size and species.

9) No new dwelling within the development shall be occupied until a biodiversity enhancement plan has been submitted to the local planning authority and approved in writing. The biodiversity scheme shall include details of proposed enhancement measures, and their aftercare and long-term management and maintenance, together with an implementation programme and timetable. Thereafter, the biodiversity enhancement plan shall be implemented in accordance with the details thus approved.

10) No external lighting shall be installed in any of the roadways, parking areas, footways or landscaped areas of the development until a lighting scheme has been submitted to the local planning authority and approved in writing. The lighting scheme shall identify and minimise any potential impacts on wildlife including bats.

[END OF SCHEDULE]