



Appeal Decision

Site visit made on 18 October 2022

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Appeal Ref: APP/Z1510/W/22/3291572

The Garden House, Hollow Road, Kelvedon CO5 9DG

- 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 Ellis against the decision of Braintree District Council.
 - The application Ref 20/02186/OUT, dated 16 December 2020, was refused by notice dated 21 September 2021.
 - The development proposed is erection of two new dwellings including the provision of parking spaces and amenity space.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application form indicates that outline planning permission is sought, with all matters reserved. The parties are not in agreement as to whether the submitted plans should be treated as indicative in light of the advice in the Planning Practice Guidance¹. However, the planning statement intimates and the appellant has confirmed that the plans are indicative and I have considered the appeal on this basis.
3. Section 1 of the Braintree District Local Plan was adopted on 22 February 2021 and is referred to as the Shared Strategic Plan (SSP). Since the Council's decision was issued, Section 2 of the Braintree District Local Plan 2013-2033 (BLP) was adopted on 25 July 2022 and has replaced the Braintree District Local Plan Review 2005, the Braintree District Core Strategy 2011 and the Braintree District Publication Draft Local Plan 2017, which were cited in the Council's reason for refusal. The Kelvedon Neighbourhood Plan (KNP) was made on 25 July 2022 and now also forms part of the development plan. Further comments on this have been submitted by both parties and I have had regard to these when reaching my decision.

Main Issues

4. The main issues are:
 - whether the site is a suitable location for housing, with particular regard to the Council's spatial strategy and access to services, facilities and sustainable transport options; and
 - the effect of the proposal on the character and appearance of the area.

¹ Making an application Paragraph: 035 Reference ID: 14-035-20140306

Reasons

Whether the site is a suitable location for housing

5. The appeal site consists of the majority of a walled garden which serves the host property but forms only part of its garden. The appellant refers to the site as a contained brownfield site. This has not been contested by the Council and I have no compelling reasons to find otherwise.
6. SSP Policy SP 3 sets out that growth should be accommodated within or adjacent to settlements and highlights the importance of development locations being accessible by a choice of means of travel. BLP Policy LPP 1 confirms that development outside development boundaries will be confined to uses appropriate to the countryside. BLP Policy LPP 42 seeks to include sustainable modes of transport in new developments to promote accessibility and integration into the wider community and existing networks. KNP Policy DE 2 seeks where practical for safe and attractive cycle routes to be provided which link with existing cycling routes.
7. Additionally, paragraph 79 of the National Planning Policy Framework (the Framework) identifies that housing in rural areas should be located where it will enhance or maintain the vitality of rural communities. Paragraph 104 the Framework confirms that opportunities to promote walking, cycling and public transport are identified and pursued. The Framework does acknowledge this will vary between urban and rural areas, however it nonetheless expects patterns of growth to be managed in such a way as to support its objectives.
8. The Council's report sets out that the site is outside of any designated settlement boundary, and this is not disputed by the appellant. The BLP designates Kelvedon as a Key Service Village, where it is possible to meet day to day needs such as education, employment and convenience shopping. However, the site is not within or adjacent to Kelvedon or any other settlement due to intervening countryside, with the site 1.2km from the edge of the village according to the appellant. There is no evidence before me to demonstrate that market housing is a use appropriate to the countryside for the purposes of SSP Policy SP 3 and BLP Policy LPP1, or how the proposed development would support countryside uses.
9. The access road to the site does connect to a path which ultimately leads to Kelvedon. While this may form an attractive route in clement weather conditions, it is unlit, un-made and does not take a direct route to the settlement. It is unlikely to be attractive as a route in poor weather or into the evening. The identified cycle route would involve travelling for a section along Hollow Road which is narrow with sharp bends, does not have any footpath and is subject to the national speed limit. It is unlikely to form an attractive route for many cyclists, and particularly older and younger people who would be likely to live in the wheelchair accessible bungalow and family accommodation proposed. There is no evidence before me that there is access to public transport from the site other than the services accessed from within Kelvedon itself.
10. I acknowledge the proposal would make provision for electric vehicle charging points and that it may be that trips by private car would be short due to the services, including public transport links to higher tier settlements, available within Kelvedon. Notwithstanding the mode of transportation, due to the

proximity of the site to Kelvedon, it is likely that the occupier of the development would support its vitality. However, this would not overcome the lack of choice of means of travel.

11. In relation to this main matter, I therefore consider that the appeal proposal would not be a suitable location for housing with regard to the Council's spatial strategy and with regard to access to services, facilities and sustainable transport options. It would not be within or adjacent to a settlement or a use appropriate to the countryside contrary to SSP Policy SP 3 and BLP Policy LPP 1. It would not be accessible by a choice of means of travel contrary to SSP Policy SP 3, nor would it promote accessibility and integration into the wider community and existing network contrary to BLP Policy LPP 42. It would also be contrary to KNP Policy DE 2 which requires safe and attractive cycle routes to be provided.

Character and appearance

12. The site is part of an extensive domestic garden. There are other residential properties in the surrounding area forming a loose pattern of dwellings in substantial plots. Part of the garden wall would be removed to provide access to the site. However, the prevailing character of the surrounding area is rural due to the surrounding fields.
13. The addition of two further dwellings would change the pre-dominant character of the area. At present there are dispersed dwellings sat in expansive plots. The proposal, in increasing the number of dwellings, reducing the plot sizes and distance between the dwellings would result in a more concentrated form of development. While the proposal would be small scale and sited within the walled garden, it would nonetheless be harmful to the character and appearance of the surrounding area. While siting, scale and appearance are matters to be considered at the reserved matters stage, the development of two dwellings in the site would inevitably result in the harm identified regardless of where they are sited within the application site or their size.
14. The appellant has suggested the site has an infill nature, however given the dispersed nature of the surrounding dwellings, this would not mitigate the harm I have identified.
15. No concerns with regard to landscape character have been specifically raised, and I saw nothing at my site visit to lead me to a different conclusion.
16. In relation to this main matter, the proposed development would not have an acceptable effect on the character and appearance of the area. The proposal is contrary to BLP Policy LPP1 which requires proposals outside of development boundaries to protect the intrinsic character and beauty of the countryside and KNP Policies DE 1 and DE 2 which require development to respect and make a positive contribution to the local character and scale of the area.

Other Matters

17. It has been suggested that that a grant of permission (which has been subject to a recent application to vary the approved plans) at the nearby Felix Hall² set a precedent for this type of development. However, the Council's report refers

² 13/00811/FUL and 21/02630/VAR

to this as being a form of enabling development with respect to a fire damaged Listed Building. That distinguishes that decision from the appeal before me.

18. The Council has referred me to a number of policies in the KNP and where relevant I have referred to these in my decision. However no concerns have been raised with regard to any necessary infrastructure so there would be no conflict with KNP Policy HO 1. KNP Policies DE 3, MA 4 and BR 3 relate to matters that would be addressed through reserved matters were the appeal to be allowed.
19. The provision of a wheelchair accessible bungalow would address an issue identified in the supporting text to KNP Policy HO 4 and there is an inherent benefit in providing wheelchair accessible properties. I acknowledge the appellants would look to relocate in the future to the bungalow, however no additional information in relation to this has been provided which would justify attaching more than limited weight to this consideration.
20. The appellant has identified the dwellings could be self-build. The Planning Practice Guidance³ identifies additional benefits from self-build house building in diversifying the housing market and increasing consumer choice. However, this benefit would be limited given the proposal is for two dwellings and I note there is no mechanism before me to ensure the development would be self-build. I also acknowledge that ecological enhancements could be secured by condition, however this would also be a limited benefit given the small scale of the development.
21. The Council's report advises that the site is within the zone of influence for habitats sites and that there would be a likely significant effect arising from increased recreational disturbance due to the additional housing. There is a mitigation strategy in place which seeks a per dwelling financial contribution to fund off-site mitigation measures. If I were minded to allow the appeal, I would need to be satisfied that the proposal would have no adverse effects on the integrity of the habitats sites. However, even if that were the case, it would at most be a neutral factor in this appeal.
22. I acknowledge the appeal proposal could be designed to avoid harm to the trees on the site and that appropriate landscaping could be secured. However these factors would amount to a lack of harm and would therefore be neutral in the determination of the appeal.

Planning Balance

23. The Council has confirmed that it cannot demonstrate a five year supply of deliverable housing sites and states the current position is 4.86 years. They intimate this will be short-lived as delivery is increasing from strategic sites, however the appellant has demonstrated that the lack of a five year supply has been an ongoing issue. Paragraph 11d of the Framework is therefore engaged. As the KNP does not include policies and allocations to meet its identified housing requirement, paragraph 14 of the Framework does not apply.
24. The proposal conflicts with the spatial strategy which seeks to accommodate development within or adjacent to settlements, to ensure development is accessible by a choice of means of travel and limits the types of development that are acceptable outside development boundaries. SSP Policy SP 3 and BLP

³ Reference ID: 57-016a-20210208

Policies LPP 1 and LPP 42 are broadly consistent with the Framework in that they seek to locate housing where it will enhance or maintain the vitality of rural communities and be accessible by a range of modes of transport. However, they are not delivering housing to meet the Council's identified requirement and a rigid application of the Council's spatial strategy would further frustrate housing supply. I therefore attach moderate weight to the proposal's conflict with the Council's spatial strategy and its accessibility to services, facilities and sustainable transport options.

25. BLP Policy LPP1 is consistent with the Framework in how it recognises the importance of the intrinsic character and beauty of the countryside. KNP Policies DE 1 and DE 2, which seeks to ensure high quality design, are also consistent with the Framework. The proposal would be harmful to the character and appearance of the area for the reasons given above and I consider this harm would be significant.
26. Taken together, the adverse impacts of the development are significant.
27. The appeal proposal could deliver an additional two dwellings in the short term and could contribute to identified housing need for family and accessible dwellings. However this would only make a small contribution to the shortfall and as such there would only be limited benefits from this provision. There would be the associated economic benefits of development from both construction and during occupation. However these benefits would be limited given that the proposal would only be for two dwellings. Thus, the overall benefits of the scheme are limited.
28. I find that the adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. I therefore find that the proposal does not benefit from the presumption in favour of sustainable development.

Conclusion

29. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight, including the Framework, which indicate that a decision should be taken other than in accordance with the development plan. It is thus not necessary to assess the effects of the proposal on the habitats sites as the outcome of that assessment would not have any bearing on my decision.
30. Therefore for the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

J Downs

INSPECTOR