



Appeal Decision

Site visit made on 21 September 2022

by C Harding BA(Hons) PGDipTRP PGCert MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Appeal Ref: APP/Z1510/W/22/3294877

Land to the East Of Sloe Hill, Sloe Hill, Halstead CO9 1PA

- 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 Alistair Cock of Oak Home Developments Limited against the decision of Braintree District Council.
 - The application Ref 18/02313/OUT, dated 6 December 2018, was refused by notice dated 13 January 2022.
 - The development proposed is erection of nine dwellings and access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 25 July 2022, the Council adopted the Braintree District Plan 2013 – 2033 – Section 2 (BDP2). As a result, policies in the Braintree District Local Plan Review 2005 and Braintree District Local Development Framework Core Strategy 2011 referred to by the parties have been superseded.
3. Some policies within the BDP2 have been renumbered from those in the Submission Draft Braintree District Plan referred to by the parties, and I have used the BDP2 policy numbers within my decision. The parties have been provided opportunity to comment on the adopted policies during the course of the appeal.
4. The application was made in outline form, with all matters other than access being reserved for future consideration. As matters relating to landscaping, layout, scale and appearance have been reserved for future consideration, the submitted plans can only be taken as being indicative at this stage, other than where they relate to access.

Main Issues

5. The main issues are:
 - the effect of the proposed development upon the setting of heritage assets;
 - the effect of the proposed development upon protected species and habitats; and,
 - the effect of the proposed development upon the character and appearance of the local area.

Reasons

Heritage Assets

6. The appeal site relates to part of a currently undeveloped area of rough meadow and undergrowth located towards the top of Sloe Hill which rises towards the north-west of Halstead. Existing development on the north-eastern side of Sloe Hill, comprises residential dwellings with long and narrow rear gardens, with the exception of 52 Sloe Hill (No 52), which is separated from other existing development by the appeal site, and is of a noticeably different form. Residential dwellings continue on the opposite side of the road.
7. A public right of way follows the boundary of the open land of which the appeal site forms part. The site slopes gently downwards towards this footpath.
8. Sloe House is a Grade II listed property situated within its own parkland and located to the north-west of the appeal site. Slough Farmhouse (also referred to as Sloe Farm) is a Grade II listed building located several hundred metres to the south-east of the appeal site.
9. As required by Section 66 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990, in reaching my decision, I have had special regard to the desirability of preserving the listed buildings and their setting.
10. Despite the gradual expansion of Halstead, Sloe House remains in a location separated from the wider settlement. The incremental introduction of later development along Sloe Hill has eroded the degree of separation, but it nevertheless remains. The appeal site, in remaining undeveloped, contributes to this sense of separation and forms part of the setting of the listed building.
11. Sloe House is well-contained within its own parkland and is not afforded wide-ranging open views. The public right of way which effectively traces the edge of the woodland that comprises the extent of the parkland does not provide significant indications as to what might lie beyond. The immediate setting of the listed building within its own parkland, would be largely unaffected by the development.
12. Despite later alteration, the significance of Sloe House is derived from it being a good example of an early 19th century house set within parkland. It also exhibits significance due to the local status of former owners and occupiers, who include Robert Ellington Greenwood; a local banker, businessman and founder of Essex Agricultural Society, and its use during the Second World War by the Special Air Service Brigade.
13. The separation of the listed building and its associated parkland from other built development, with the exception of No 52, as currently afforded by the appeal site, forms a means of understanding the historic separation of the listed building from the wider settlement, and therefore contributes to its significance.
14. No 52 is of a later date than Sloe House and comprises a modest gatehouse-style cottage at the end of the drive to the main house. Although this property has been extended, its original form is clear. The Council have suggested that it has an historic association with Sloe House, however the extent or nature of any potential relationship is unclear. However, it is common ground that this building comprises a non-designated heritage asset (NDHA).

15. As with Sloe House, the situation of No 52 is characterised by its separation from other development. Whilst the extent of its formal association with Sloe House is unclear, it is of the form of a gatehouse lodge, and is located close to the driveway entrance for the larger property. Regardless of its status, when viewed from Sloe Hill, No 52 effectively appears as the only widely visible built element of the Sloe House estate and remains separated from development.
16. Whether intentional or not, by being the only widely visible element, and being obviously separated from other development, the character and situation of this property assists in highlighting the separated and insular character of Sloe House, and the significance of the NDHA is derived, in part, from this. By maintaining this sense of separation, the appeal site contributes significantly to the character and significance of this NDHA.
17. Although matters relating to layout are reserved for future consideration, I consider that the proposed development of nine dwellings, would erode much of the remaining sense of separation between the listed building and immediate parkland, No 52, and development on Sloe Hill, particularly when viewed from the road. In effect, No 52 would become the edge of development of Halstead, as opposed to being situated beyond the settlement. This erosion of the existing sense of separation would result in harm to the setting, and thus significance of the listed building, as well as the character and significance of the NDHA.
18. Paragraph 199 of the National Planning Policy Framework ('the Framework') advises that when considering the effect of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 200 goes on to advise that the significance of such assets can be harmed or lost by development within their setting. The proposal would lead to a loss of separation between the listed building and the limits of Halstead, and therefore harm to the setting of the listed building. However, as the parkland immediately surrounding Sloe House would remain unaffected, I find the harm to be less than substantial.
19. Slough Farmhouse is a Grade II listed late 17th century farmhouse, with later extension. Its significance is primarily derived from its historic interest as a good example of a timber framed house of the period, with a high-quality later addition. This listed building has now been largely surrounded by modern residential development, with only a limited visual relationship with farmland to the north providing an indication as to its historic setting and function. Whilst it is possible that the appeal site was associated with Slough Farm in the past, and that Slough Farm and Sloe House could have been connected by land ownership, no evidence has been presented to specifically confirm this. However, even if there were historical connections, intervening development and the distance involved has severed any obvious relationship between this listed building and the appeal site, as well as also Sloe House. Accordingly, the proposed development would not harm the significance of this heritage asset.
20. Halstead Conservation Area (HCA) is situated several hundred metres to the south-east of the appeal site, and is primarily focused around the town centre, and Holy Trinity Church which is situated on high ground. The significance of the HCA is derived from the historic street pattern and buildings, as well as the visual interest of the relationship of the town with the River Colne.

21. The immediate setting of the HCA largely comprises later development within the extent of the town. The appeal site lies beyond this, and although the proposed development would affect longer views towards the town, particularly from the public footpath which runs along the western and northern sides of the site, it is difficult within these views to currently discern the extent of the HCA. Furthermore, no adverse effects on specific views either into, or out of the HCA have been brought to my attention. I note that the Council's own Historic Buildings Consultant acknowledges that any effect on the HCA as a result of the proposed development would likely be negligible. Accordingly, I conclude that the proposed development would preserve the setting of the HCA.
22. It is common ground that the proposal would preserve the significance of other listed buildings in the local area which include the Grade II listed Crowbridge Cottages and Barn at Crowbridge Farmhouse. There is no evidence that would lead me to reach a different conclusion with regard to this, and I conclude that the proposed development would not harm the significance of these assets.

Having regard to my findings above, I conclude that the proposed development would fail to preserve the setting of Sloe House, a Grade II listed building, as well as lead to harm the setting of a NDHA. Accordingly, the development would be contrary to BDP2 Policies LPP47 and LPP57 which, amongst other criteria, require new development to respect and respond to local context, especially where development may affect the setting of listed buildings and other buildings of historic significance, and seek to enhance the settings of heritage assets by appropriate control over development, design and use of adjoining land.

Protected Species and Habitats

23. Section 40 of the Natural Environment and Rural Communities Act 2006 requires me to have regard to the purpose of conserving biodiversity. I have also had regard to the protection afforded to certain species under The Wildlife and Countryside Act 1981, The Protection of Badgers Act 1992, and The Conservation of Habitats and Species Regulations 2017.
24. The appeal site is an area of undeveloped grassland and has previously been designated as a Local Wildlife Site (LWS). The appeal site was surveyed by Adonis Ecology Ltd in August 2016 as part of correspondence with Essex Wildlife Trust in relation to the site's status as an LWS, and as a result, no longer forms an LWS. The 2016 survey provides an indication of the condition of the site at that time but is now of significant age. It is therefore of only minor relevance to the proposal before me.
25. I understand that a Preliminary Ecological Appraisal Report (PEA) was carried out in July 2019 with regards to the proposed development. However, I have not been provided with a copy of this document. In any event, the PEA would now be over three years old, and based upon the advice contained within British Standard BS 42020, it would likely require an update in order to form a sound basis on which to consider the potential effects of the proposal.
26. Although the appeal site is no longer part of a LWS, it retains an open meadow character, and as indicated by Essex Wildlife Trust, may still include habitats that would support protected species. Furthermore, much of the evidence provided by local residents refers to, and in some cases shows, a range of

species being present at, or at the very least making use of, the appeal site at various times. Accordingly, I consider that there is a reasonable likelihood that the site may contain protected species and habitats.

27. I have been provided with a reptile survey¹ carried out in 2020, and also a bat survey² carried out at the site in June 2022. However, these are specific documents that do not consider the suitability of the appeal site for the presence of other flora and fauna that could be affected by the proposed development. Therefore, they do not constitute a wider update to the PEA.
28. I am satisfied that the information provided with regards to reptiles and bats is sufficient to inform my consideration in relation to those species. Based on the content of the provided surveys, I conclude that the development would not result in harm to reptiles, and with adequate mitigation, which could be secured by means of a planning condition, that it would not adversely affect local bat populations.
29. However, I have been provided with no up-to-date information regarding other protected or priority species, priority habitats, or the current biodiversity status of the site. Accordingly, I am unable to conclude that the proposed development would not adversely affect protected or priority species and habitats.
30. Therefore, the proposed development would be contrary to BDP2 Policies LPP64 and LPP66, as well as Part 15 of the Framework, which together, state that where there is a reasonable likelihood of protected or priority species being present, or immediately adjacent to a development site, that ecological surveys are provided and demonstrate that an adequate mitigation plan is in place. They also require new development to avoid adverse impacts upon priority habitats and biodiversity, or where they can't be avoided be adequately mitigated. In all cases, it is stated that where insufficient information is provided, that a precautionary approach should be taken.

Character and Appearance

31. The indicative layout plan shows a development of nine dwellings which would be accommodated within the site, with a new access being formed from Sloe Hill. The limit of the site is contiguous with the limit of the rear gardens of existing properties on Sloe Hill.
32. The character of existing development on Sloe Hill is predominantly of single dwellings directly fronting the road. Nine dwellings are proposed within the site, which amounts to less than 1 hectare in area. Whilst I am satisfied that the quantum of development proposed could be accommodated within the site, I consider it unlikely that all would be able to be accommodated with frontages on to Sloe Hill. Accordingly, the development would inevitably result in properties set back from the road, and a greater density in comparison to nearby existing development. Therefore, it would not wholly reflect the context of the local area as a result.
33. When viewed from Sloe Hill itself, the development would be visible, and would appear as a continuation of existing linear development along the road. It would have an urbanising effect in this location and would largely fill the

¹ Sloe Hill, Halstead – Reptile Survey (EECOS, November 2020)

² Bat Survey of Two Trees at Sloe Hill, Halstead (Essex Mammal Surveys, June 2022)

- existing gap between 52 Sloe Hill and adjacent properties, and as a result, would erode the rural character of this edge of Halstead.
34. Parts of the development would be visible from the adjoining public right of way, and views from this footpath towards Halstead would be affected. However, the situation of the appeal site in relation to the footpath means that such views over the appeal site towards Halstead would only be experienced for a relatively short distance, and those views experienced when the path turns in a more easterly direction would be affected to a lesser extent.
35. The proposed development would be located on higher ground in relation to the public footpath after it turns and would be prominent to users of this path. Existing development on Sloe Hill is already evident at the crest of the slope and the proposal would appear as a continuation of this. However, in order to accommodate the quantum of development proposed, it is likely that dwellings would have to be situated further away from the main road than existing houses on Sloe Hill. This would result in development appearing to cascade down the slope towards the public footpath. Although development would not extend beyond the rear garden boundaries of adjacent existing dwellings, and a portion of the meadow that directly adjoins the footpath would remain, the character of this edge of Halstead would, nevertheless, become more urban.
36. The formation of the proposed access would result in the loss of a single Turkey Oak tree, which is assessed within the Arboricultural Impact Assessment as being of good visual value. However, as it exhibits defects which will likely limit its lifespan, is non-native and is a secondary host to pests that can affect native Oak species, the overall value of this tree is assessed as being low.
37. The loss of this tree would lead to visual harm. It is a large specimen, located close to the road and contributes to a verdant appearance to Sloe Hill which helps the edge of the settlement assimilate into the wider countryside. However, bearing in mind the condition of the tree, and the fact that any proposed landscaping is reserved for future consideration, it is possible that any harm could be mitigated through replacement planting.
38. The proposed development would also require the removal of a section of the existing roadside hedge in order to form the access. This hedge is well-established, and it is common ground that it would meet the criteria for consideration as an 'important hedgerow' for the purposes of the Hedgerow Regulations 1997.
39. The amount of hedgerow to be lost would be small relative to the overall size of the hedgerow. This would result in minor visual harm and would also accentuate the urbanising effect of the proposed development. Whilst any proposed landscaping scheme could potentially provide additional hedgerow planting within the site, as the hedgerow would need to be removed in order to provide a means of access, the visual harm would be permanent, and could not be fully mitigated.
40. Overall, and being mindful that matters relating to layout, scale, appearance and landscaping are reserved for future consideration, the development would have a harmful effect upon the character and appearance of the local area. In this respect, it would therefore be contrary to BDP2 Policies SP7, LPP35, LPP47, LPP52, LPP65 and LPP67, as well as Part 12 of the Framework. Together, amongst other criteria, these policies require new development to respond

positively to local character and context, consider existing vegetation and the retention of good quality trees, and be able to be successfully integrated into the local landscape.

41. The Council has also raised conflict with BDP2 Policies SP1, SP3, SP6 and LPP1 in relation to this main issue. These are strategic policies relating to the distribution of development, and I have not been made aware of any specific relevant provisions within these policies, or specific harm that would arise in relation to this main issue.
42. BDP2 Policies LPP57 and LPP64 are also referred to by the Council in relation to this main issue, however they do not relate directly to it, and I have considered whether the proposal is in accordance with these particular policies as part of the consideration of the other main issues that I have identified.

Other Matters

43. I have been provided with an appeal decision³ which relates to the construction of a new dwelling at a site to the north of Sloe House, where the Inspector considered that the proposal would not harm the setting of the listed building. However, as well as the proposal in that case comprising a smaller form of development, this site appears to be located to the north of Sloe House, and as a result does not exhibit the same value as the current appeal site in terms of preserving the separation of the listed building from the built extent of Halstead. Consequently, it is only of modest relevance to this current appeal, and I have considered the proposal now before me on the basis of the particular characteristics of the current appeal site and development proposed.

Planning Balance and Conclusion

44. The harm the proposed development would cause to the significance of the listed building would be less than substantial. Paragraph 202 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. LPP Policy 57 states that in relation to designated heritage assets, development must meet the tests set out in national policy.
45. The Council has stated that it can only demonstrate 4.86 years of housing land supply. Therefore, the provision of nine dwellings would make a positive contribution towards boosting housing supply in an area where there is currently a shortfall. Due to the extent of the shortfall and the scale of the proposed development, I afford this benefit moderate weight.
46. The proposed development would, in turn, provide employment during construction, although this would be time limited, and I afford this only modest weight as a result. I also acknowledge that it would be located such that it would be accessible to local services, facilities and local public transport links and would provide support to the vitality of a rural community. I afford these benefits moderate weight.
47. Although the proposed development would result in a New Homes Bonus payments to the Council, as these finance considerations are not intended to

³ APP/Z1510/W/19/3231094

make the development acceptable in planning terms, I have not afforded weight to such payments as a benefit of the proposed development.

48. The proposal would have a negative effect on the significance of a designated heritage asset and the Framework states that great weight should be given to the conservation of the asset. The public benefits identified, when taken together, would not outweigh this harm. Moreover, the proposal would also result in moderate harm to NDHAs within the vicinity of the appeal site, and also harm to the character and appearance of the area. In addition, I cannot be certain that there would not be harm to protected habitats and species. The benefits of the proposed development do not outweigh this.
49. Paragraph 11 d) of the Framework is relevant due to the Council's housing supply position. However, having regard to Paragraph 202 of the Framework, the harm to designated heritage assets would not be outweighed by the public benefits of the proposal, and so Paragraph 11 d) i) is relevant.
50. The application of policies in the Framework that protect assets of particular importance provide a clear reason for refusing the proposed development. Therefore, the presumption in favour sustainable development does not apply, and moreover, the Framework does not indicate in favour of the development.
51. In applying Paragraph 11 d) i), I have had regard to the findings of a previous Inspector, however the main issues in that appeal⁴ differed from those in the appeal before me. Therefore, the conclusions reached by that Inspector with respect to the application of Paragraph 11 of the Framework in that appeal are not directly applicable to this case.
52. The appellant contends that as the Local Plan has only been recently adopted, that the Council should have applied a 10% buffer in calculating its housing supply figure, and that as a result housing supply is lower than claimed. Even if I were to agree with the appellant on this point, the benefits of the proposal would still not outweigh the policy conflicts and harm that I have identified.
53. The proposed development would conflict with the development plan as whole, and there are no material considerations that would justify a decision other in accordance with it. Accordingly, the appeal is dismissed.

C Harding

INSPECTOR

⁴ APP/Z1510/W/22/3299178