

Appeal Decision

Site visit made on 20 December 2022

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2023

Appeal Ref: APP/Z1510/W/22/3298836

Stables Retreat, Beslyns Road, Great Bardfield CM7 4TG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by C Smith against Braintree District Council.
 - The application Ref 21/01665/OUT is dated 19 May 2021.
 - The development proposed is 'outline planning application, with all matters reserved except scale and access, for the erection of up to 4 dwellings and associated work'.
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Decision

1. The appeal is dismissed and outline planning permission for the erection of up to 4 dwellings and associated work at Stables Retreat, Beslyns Road, Great Bardfield CM7 4TG in accordance with the terms of the application Ref 21/01665/OUT, dated 19 May 2021, is refused.

Preliminary Matters

2. The application is made in outline with all matters except for access and scale reserved for subsequent consideration. Accordingly, I have treated as illustrative the elements of the submitted plans that show the layout of the proposed dwellings and some landscaping. I have similarly treated the submitted plan that shows illustrative house types in terms of appearance.
3. The appellant refers to the possibility of alternative access arrangements to those originally proposed, to address the Council's concerns about the loss of hedgerow to the site frontage. While I have been provided with correspondence on this matter, I am not aware that it has been resolved in terms of any agreed revisions to the original access arrangements, including consultation with interested parties. Accordingly, I have determined the appeal on the basis of the access arrangements originally submitted as part of the application.
4. The draft Section 2 Local Plan referred to in the Council's draft committee report, subsequently was adopted in July 2022. The new plan supersedes the Local Plan Review (2005) and the Core Strategy (2011). Accordingly, I have had regard only to relevant policies from the adopted development plan, which now comprises the Braintree District Local Plan 2013-2033, Section 1 (2021) and Section 2 (2022).

Main Issues

5. The Council indicates that had it determined the application permission would have been refused. The reasons are that the proposal involves development in the countryside outside defined settlement boundaries in a location that is not accessible to services and facilities; that the proposal would cause harm to the character and appearance of the area, including harm to trees and hedgerows, and to the setting of the Great Bardfield Conservation Area; and that it has not been demonstrated that the proposal will not result in ecological harm.
6. Accordingly, the main issues are:
 - the suitability of the location for the proposed dwellings, having regard to development plan policy concerned with development in the countryside; and, related to this, whether future occupants would have adequate access to services and facilities without undue reliance on private vehicle use;
 - the effect on the character and appearance of the appeal site and surrounding area, including the effect on trees, hedgerows and the setting of the Great Bardfield Conservation Area; and
 - whether there is sufficient information to assess any effects of the proposal on local ecology and protected species, particularly with regard to the hedgerow to the site's northern boundary.

Reasons

Suitability of the Location

7. The appeal site is an area of open land formerly in equestrian use, to the north of the village of Great Bardfield. The site has a frontage on Beslyns Road, a rural lane, with access from this to the appeal site and two residential uses now comprising the former stables at this location. To the north and south of the appeal site is open countryside with a residential property immediately to the west. Beslyns Road joins the northernmost part of the village a short distance to the east.
8. The Local Plan Section 2 sets out the spatial strategy for the district, in which Great Bardfield is defined as a Second Tier village. Policy LPP1 concerns development boundaries and says that development outside defined boundaries will be confined to uses appropriate to the countryside. As the proposal involves market housing in a location outside the defined development boundary for Great Bardfield it is contrary to Policy LPP1.
9. The strategy indicates that Second Tier villages are those which may not serve a wider hinterland but provide the ability for some day to day needs to be met, which is apparent with regard to the services and facilities available within Great Bardfield. Given the proximity of the appeal site to the settlement boundary, it is within reasonable walking distance to services and facilities in the village centre and to local bus stop connections.
10. The Council's principal concern in this regard, however, is the suitability of physical conditions for access between the appeal site and settlement. I was able to observe these conditions during the site inspection. I accept that the rural lane is unlit, of limited width and includes some blind bends. However, the distance between the appeal site and settlement edge is relatively short and at the point where Beslyns Road joins the main road through the village

there is a footpath and good conditions for pedestrians. As such, these conditions do not preclude some journeys on foot particularly during daylight hours. Furthermore, I am mindful of the National Planning Policy Framework (the Framework) on this matter, which says that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making¹. Moreover, this is not a remote location, there are existing properties nearby from which journeys by private vehicle already occur and the proposal would not add significantly to these.

11. Therefore, taking these findings as a whole, while the site would not be inaccessible to services and facilities by means other than private vehicle, there is nonetheless a conflict resulting from the proposal in this location with Policy LPP1 of the Braintree District Local Plan 2013-2033, Section 2, as described above.

Character and Appearance

12. Beslyns Road is designated as a Protected Lane in the Local Plan. As such, Policy LPP69 is relevant, which says that the traditional landscape and nature conservation character of Protected Lanes will be conserved; and that any proposals that would have a materially adverse impact on their physical appearance will not be permitted.
13. The northern part of Great Bardfield is characterised by linear development with properties fronting onto the B1057 road running through the village. Behind this frontage, the first property on the south side of Beslyns Road is a large detached dwelling, Riverdale House, and beyond this the residential uses associated with the former stables. Immediately to the west is the appeal site and neighbouring this a single storey property, Brooklands, set within a generous curtilage. Beyond this, except for some farm buildings, the land is open countryside.
14. Within this setting, therefore, there is a rapid transition from relatively dense development within the settlement to much more limited, lower density development immediately beyond it to the west. As such, the appeal site marks part of the transition from the settlement edge to open countryside. The rural character and appearance of this setting, reflecting its Protected Lane status, is apparent from the single track lane with banked sides, with mature hedgerow and trees to the south side including along the site frontage, and open agricultural land to the north.
15. The most immediate effect of the proposal within this setting would be the access to the site frontage. This would result in substantive loss to the established planting fronting the site in terms of the access point itself and the removal of trees and hedgerow to accommodate the requisite visibility splays. This would have a materially harmful effect on the rural nature of the Protected Lane through the disruption to the established planting and urbanising effects of the access point.

¹ Paragraph 105.

16. I note that the same conclusion is drawn in the appellant's submitted Arboricultural Impacts Assessment² in terms of the effects of the proposal and that mitigation planting would be required. The report also concludes that the provisions of the 1997 Hedgerows Regulations would appear to apply to the hedgerow. As such, separate consent may be required for the removal of part of the hedgerow. Nonetheless, in the context of this appeal, while such planting could be required by condition, it is not clear that this would satisfactorily mitigate the harmful effects of the removal of a substantive part of the hedgerow and some trees. Moreover, such planting may not integrate effectively with such a well-established, mature hedgerow, which makes a positive contribution to the Protected Lane.
17. The submitted site plan shows the four dwellings positioned relatively close together on a conventional plot layout with long rear gardens and an internal access road to the front. While layout is a reserved matter, the configuration of the site and detailed access arrangements suggest that this is the most likely layout of the dwellings. As noted above, the appeal site marks a transition from the denser settlement edge to open countryside. The four dwellings would introduce a concentrated form of development that would contrast unfavourably with the lower density development either side. As such, the proposal would harmfully introduce a greater degree of urbanisation and density of development than is characteristic in this location.
18. There is some lack of clarity about the scale of the proposed dwellings which, despite being for consideration now, appears not to be quantified. The appellant refers to the proposal being for four bungalows, although the Council assessed it as involving two storey dwellings. Nonetheless, for either scale of dwelling, the extent of development would be seen in views from the lane through the access point and more generally when the vegetation is not in leaf, which was apparent at the inspection. Two storey dwellings would be more significant in their impact than bungalows. However, with either type of dwelling the uncharacteristic urbanising effects already described would not readily be overcome either due to differences in ground levels or further planting to the site frontage.
19. The appeal site lies a short distance from the boundary of the Great Bardfield Conservation Area, which is tightly drawn around the historic core of the village, as well as to the north around Bridge End. The Framework defines the setting of a heritage asset as the surroundings in which that asset is experienced. The rural setting to the village enables an understanding of its significance, providing historical context for the village as a rural settlement. Beslyns Road provides a link to the conservation area from the surrounding rural area, and its character, appearance and designation as a Protected Lane reflects its localised significance as part of the area's setting.
20. Therefore, based on the above findings in terms of the effects of the four dwellings in this location close to the conservation area and within its setting, I find that the proposal would fail to preserve the area's setting and so would result in material harm in this regard. The Framework advises that when considering the impact of development on the significance of designated

² OMC Associates, dated 7 July 2022.

heritage assets, great weight should be given to their conservation³; and any harm to the significance of a designated heritage asset, including from development within its setting, should require clear and convincing justification⁴. Based on the above findings, I consider the harm to be less than substantial in this instance, but nevertheless of considerable importance and weight.

21. Under such circumstances, the Framework advises that this harm should be weighed against the public benefits of the proposal⁵. The appellant refers to the provision of additional housing where the Council has a shortfall against the requisite five year supply; redevelopment of a previously-developed site in a sustainable location; the contribution that development could make to vitality of the village; employment generation through construction of the dwellings; and ecological enhancements to the site.
22. I acknowledge particularly the contribution that four dwellings would make to housing supply where there is a shortfall, but given the limited numbers involved I afford this moderate weight. The other matters would provide some limited public benefits, but I have found that the harm to the setting of the conservation area is of considerable weight. Consequently, the proposal would not provide sufficient public benefits that would outweigh the harm that has been found.
23. Accordingly, for all the above reasons, I conclude that the proposal would have an unacceptably harmful effect on the character and appearance of the appeal site and surrounding area, including on the setting of the Great Bardfield Conservation Area. Consequently, it is contrary to the following policies from the Braintree District Local Plan 2013-2033, Section 2: LPP69, concerning Protected Lanes, as described above; LPP47 and LPP52, concerning the built environment and design, both of which require a high standard of design in all new development; LPP65, concerning the protection of trees; and LPP67, concerning landscape character and features. It also contrary to section 16 of the Framework concerning the historic environment.

Local Ecology and Protected Species

24. A Preliminary Ecological Appraisal of the site was submitted with the planning application. However, the Council's principal concern is that the hedge to the northern boundary of the appeal site had not been surveyed in relation to its potential to provide habitat for protected or other species. In response, the appellant provides a further Ecology Report⁶, the main purpose of which appears to be to identify how many woody species are present in the relevant section of hedgerow in the context of the 1997 Hedgerows Regulations, particularly with regard to the implications for wildlife and landscape. The findings are that it is a reasonable assumption that the hedgerow could be considered as important under the Regulations.
25. The 1997 Regulations are a separate consent regime and, therefore, I make no conclusions on them with regard to this planning appeal. However, the

³ Paragraph 199.

⁴ Paragraph 200.

⁵ Paragraph 202.

⁶ T4 Ecology Ltd, dated 21 July 2022.

hedgerow is a species-rich, well-established feature, which would be materially affected by the proposed access, as found above. Neither the preliminary ecological appraisal nor the more recent update appear to assess these effects with regard to the habitat implications for protected or other species.

26. As a general principle, the presence or otherwise of protected species and the extent to which they might be affected by proposed development, must be established before planning permission is granted. Therefore, in the current circumstances, where there is uncertainty about the effects of the proposal with regard to possible habitat loss, it would not be appropriate to impose a condition requiring further investigation.
27. Accordingly, based on the available evidence, I must conclude that it has not been adequately demonstrated that the proposal would not be harmful to a protected or other species. Consequently, the proposal is contrary to Policies LPP63, LPP64 and LPP66 of the Braintree District Local Plan 2013-2033, Section 2, all of which concern the effect of development on the natural environment and include the requirement to provide protection for it.

Other Matters

28. The appellant draws my attention to a number of other appeal decisions within the district as well as development permitted within or close to Great Barfield. While I note these other developments, they do not raise issues directly comparable to the appeal proposal, particularly in relation to the effect on the character and appearance of the site and surrounding area. As such, I have considered the proposal on its individual merits.
29. I note also the appellant's concern about responding to matters raised during the course of the appeal process. However, I find nothing unusual in the Council's approach in this regard. In particular, the draft committee report included full details of the Council's reasons for refusals had it determined the application in time, including with regard to the effect of the proposed access and the effect of the proposal on the setting of the conservation area. While some of these issues might not have been raised with the appellant during discussion with the Council, this cannot have a bearing on my consideration of the proposed development on its planning merits.
30. I have had regard to the representations made by interested parties, which largely concern matters addressed under the main issues or which are more appropriately considered under the reserved matters. The exception is concerns about the levels of traffic generated by the proposal and the effect on highway safety. However, I note that the Highway Authority does not object in this regard and I have insufficient basis in terms of detailed evidence to find conclusively that the proposal would result in material harm with regard to traffic.
31. It is common ground between the main parties that the Council cannot identify a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing, as required by the Framework⁷. Consequently, the policies which are most important for determining the application are out-of-

⁷ Paragraph 74.

date⁸ and permission should be granted, subject to two exceptions. The first of these is that the application of the policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. This includes designated heritage assets⁹. Therefore, the above findings with regard to the effect of the proposal on the setting of the Great Bardfield Conservation Area provides a clear reason for refusing the proposal in accordance with the Framework. For this reason, the presumption in favour of sustainable development does not apply.

Conclusion

32. I have found that the proposed development would be accessible by sustainable means to services and facilities. However, I have also found that the proposal would have a materially harmful effect on character and appearance, including the setting of a designated heritage asset. Moreover, it has not been adequately demonstrated that the proposal would not result in ecological harm. Consequently, the proposal is contrary to the development plan and to the Framework. The presumption in favour of sustainable development does not apply and there are no other material considerations that outweigh the conflict with the development plan. Accordingly, it is concluded that the appeal should be dismissed and outline planning permission refused.

J Bell-Williamson

INSPECTOR

⁸ Footnote 8 to paragraph 11d)

⁹ Paragraph 11d)i. and footnote 7.