



Appeal Decision

Site visit made on 7 February 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2023

Appeal Ref: APP/Z1510/W/22/3300175

Land north of Butlers, Ulting Road, Hatfield Peverel, CM3 2LY

- 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 Mr Paul Hopkins against the decision of Braintree District Council.
 - The application Ref 21/03696/FUL, dated 17 December 2021, was refused by notice dated 2 April 2022.
 - The development proposed is the erection of 6 detached dwellings and access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 6 detached dwellings and access on land north of Butlers, Ulting Road, Hatfield Peverel, CM3 2LY in accordance with the terms of the application, Ref 21/03696/FUL, dated 17 December 2021, subject to the conditions set out in the schedule at the end of this decision.

Main Issues

2. The main issues in this case are: i) the suitability of the site's location for residential development; ii) the effect of the proposal on the character and appearance of the countryside location, including loss of hedges; and iii) the effects of the proposal on protected species.
3. The appeal site lies on the north-east side of Ulting Road, just to the south of the settlement of Hatfield Peverel and adjacent to the settlement boundary of Nounsley. The land is not in agricultural use and is part of an informal garden to 'Butlers', the adjacent residential property to the south. The site contains a number of trees, principally to the road frontage and on the northern boundary. To the rear of the site (east) are agricultural fields, and to the west are further residential properties that form the settlement of Nounsley. To the north is undeveloped land before a group of farm buildings and ribbon development leading to Hatfield Peverel.

The suitability of the site's location for residential development

4. The starting point is the policies of the development plan. At the time when the planning application was determined, the Development Plan for the Braintree District was made up of the Braintree District Council Local Plan Review & Proposals Map (Adopted 2005), Braintree District Council Core Strategy (Adopted 2011), and Braintree District Local Plan Section 1 (Adopted 2021).

Since then, on 25th July 2022, the Braintree District Local Plan Section 2 was adopted. Thus the development plan now comprises Section 1 and Section 2 of the Local Plan.

5. Since the 2 elements of the Local Plan have only recently been adopted, having been found sound by the examining Inspectors, it must follow that their policies generally comply with the National Planning Policy Framework (the Framework), against which they were tested. I consider that the most relevant policies of the Local Plan in respect of this issue are SP1 Presumption in Favour of Sustainable Development, SP3 Spatial Strategy for North Essex, LPP1 Development Boundaries, LPP16 Housing Provision and Delivery, and LPP67 Landscape Character and Features.
6. Policy SP1 effectively sets out the policy for sustainable development from the Framework, whilst Policy SP3 makes the existing settlements the principle focus for additional growth. In essence, Policy LPP1 is permissive of development within Development Boundaries, whilst outside these, development will be confined to uses appropriate to the countryside, whilst protecting and enhancing valued landscapes, sites of biodiversity value, etc. Uses appropriate to the countryside do not include market housing. If it was not the Plan's purpose to restrict housing in the countryside, there would be no reason to have a special policy for Affordable Housing in Rural Areas (LPP32).
7. There is a development boundary for Nounsley which is identified as a Third Tier settlement. Third Tier settlements are the smallest villages in the District and lack most of the facilities required to meet day to day needs. They often have very poor public transport links and travel by private vehicle is usually required. When considering the tests of sustainable development, these will not normally be met by development within a third tier village. The nearest part of the settlement boundary for Nounsley is immediately opposite the northwest part of the appeal site, across Ulting Road. The settlement boundary of Hatfield Peverel, which is a Key Service Village, is some 950m to the north of the site along Ulting Road.
8. Policy LPP16 sets out the minimum housing provision for delivery and the Strategic Growth Locations. Policy LPP67 requires that account will be taken of the different roles and character of the various landscape areas in the District, and recognition of the intrinsic character and beauty of the countryside. Reference is made to landscape features such as trees and hedges, and specifically, that development which would not successfully integrate into the local landscape will not be permitted.
9. The policies for the location of new housing development can be summed up as directing it to locations within Development Boundaries and resisting development beyond these boundaries which is identified as being within the countryside. Since the appeal site is outside any settlement boundary, the proposed development is contrary to these policies. Policy SP3 does make provision for development to be accommodated adjoining settlements, according to their scale, sustainability and existing role within the district. As I have noted, the appeal site is adjacent to the settlement of Nounsley, being separated only by Ulting Road. As I have also noted, Nounsley is a Third Tier Settlement, and I consider that it has the characteristics of such settlements of having poor public transport links and travel by private vehicle is usually required. Therefore, in my judgement this close relationship with the

settlement boundary carries only limited weight. The services and facilities in Hatfield Peverel are too far to mean that any regular trips would take place from the appeal site other than by car.

10. The site is not a suitable location for housing since it would not be in conformity with the policies, and the occupiers would very largely be reliant on private motor vehicles and therefore the development would not be sustainable in these terms.

The effect of the proposal on the character and appearance of the countryside location, including loss of hedges

11. Whilst the north of the site is opposite the south-eastern extremity of the Nounsley settlement boundary, and there is the large house 'Butlers' on its south-east boundary, Ulting Road in this vicinity is a very clear demarcation between built up area and the rural landscape, and it is some distance to the south before there anything other than very sporadic development. It appears that the site is currently used as amenity land associated with Butlers, but its character is not that of residential garden land. However, it is very well screened, particularly when the trees and hedges are in leaf, both from Ulting Road and from the lane that runs across the north-west boundary.
12. The trees and hedges are an important element in appreciating the character and appearance of this countryside location. However, the layout of the proposed dwellings sets them well back from the frontage so that, apart from a single entrance point, the screening would remain largely intact with new hedge planting where required. This would greatly assist in maintaining the character of this part of Ulting Road, and minimising the effect on the harm to the appearance of the countryside.
13. The fact that the screening trees and hedges would make the development less than prominent is not a good reason to allow development that is inappropriately sited. I therefore consider that the proposal would be harmful to the character and appearance of the countryside location, but this only carries moderate weight because of the screening effect.

The effects of the proposal on protected species

14. I am satisfied with the submitted Phase one ecology assessment, the reptile survey and the appellant's explanation about bat roost on tree T60 in the Statement of Case. Thus I am satisfied that there would be no harmful effects of the proposal on protected species (subject to conditions).

Conclusions

15. From my consideration above of the main issues in this case, it will be seen that I consider that the site is not a suitable location for housing since it would not be in conformity with the policies, and the occupiers would very largely be reliant on private motor vehicles. Therefore the development would not be sustainable in this regard. Furthermore, I consider that it would be harmful to the character and appearance of the countryside location, but this would be minor because of the screening effect. In relation to the third issue, I am satisfied with the submitted Phase one ecology assessment, and the reptile survey, etc, and I consider that there would be no harmful effects of the proposal on protected species. The balance of these conclusions indicates the refusal of planning permission.

16. However, it is necessary to consider the housing land supply position in the district. The latest position quoted in the council's statement of case is that, allowing for a 5% buffer, for the period 2022-2027 a supply of 4.86 years can be demonstrated. The appellant questions this on the basis that the buffer should be larger and that the strategic allocations are already included in the supply calculations. An appeal by written representations is not a suitable process to test a controversy of this sort, but it is clear, whatever the actual figure, that the supply is below 5 years; and that is sufficient to engage paragraph 11 d) of the Framework.
17. This is within the section of the Framework setting out the presumption in favour of sustainable development. It states (as relevant here):
 - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. (not relevant); or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
18. I have set out my conclusions on the adverse impacts in paragraph 15 above. Therefore the benefits of the proposed development need to be established so that a balanced judgement can be formed.
19. Sustainable development has 3 overarching objectives: economic, social, and environmental. The economic objective would be met by short term employment during the construction phase, the delivery of materials that would likely come from local suppliers, and the addition of 6 new households that would add to the viability of businesses in the area. The latter is of some significance since the site adjoins the settlement boundary of Nounsley, and is not far from the Hatfield Peverel. Whilst travel to Hatfield Peverel would generally involve motorised trips, it is a short journey and so beneficial. As Framework paragraph 79 makes clear, *"To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby"*.
20. The social objective would clearly include the gain of 6 new dwellings, which would contribute to the councils housing land supply position when, as advised in Framework paragraph 69, small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. In addition, support would likely be given to social activities in the nearby settlements. The environmental objective would probably only be met in terms of new housing being substantially more efficient in energy use, and biodiversity enhancement by way of a suggested condition.
21. Nevertheless, 6 addition dwellings would make only a marginal difference in bolstering housing numbers, but taken with the contribution to the objectives of sustainable development, when judged against the policies in the Framework taken as a whole, there is a fine balance to be struck. The negative aspects of the appeal proposal that I have found are the lack of conformity with

development plan policy (although this has less weight because of the housing land supply), and the fact that most journeys would be motorised (although many facilities would be little more than 1,000m away in Hatfield Peverel). The harm to the character and appearance of the countryside location would be minor because of the roadside screening.

22. On balance I conclude that the adverse impacts of allowing the proposed development would not significantly and demonstrably outweigh the benefits. Therefore I will allow the appeal.

Conditions

23. The statutory condition that provides a time limit on the start of development must be imposed. In addition, the council has suggested a number of conditions in the event that the appeal is upheld.
24. I have sought the views of the appellant on the suggested conditions, who considers them acceptable, subject to a number of caveats, as follows. With respect to the council's condition 5, ecology assessments and a reptile survey, which included mitigation, have been undertaken. Therefore, the need for the condition is questioned. Similarly, regarding the council's condition 8, an arboricultural report and a tree protection plan were included in the application/appeal submission, so the condition appears to be unnecessary. Furthermore, the council's condition 21 appears to repeat its condition 14.
25. I have considered the council's suggested conditions and the appellant's comments in the light of Planning Practice Guidance (PPG), and amended or deleted conditions as necessary. The council's suggested condition 21 effectively duplicates its condition 14, and therefore I have omitted it.
26. I consider that the conditions set out in the Schedule should be imposed for the following reasons: condition 2 is required for certainty and avoidance of doubt as to the development permitted; condition 3 is to ensure that the appearance of the development permitted integrates with the surroundings in a visually satisfactory manner; conditions 4 is to ensure that the local planning authority has control over development that would otherwise be permitted so as to protect the appearance of the rural locality.
27. Since the Preliminary Ecological Appraisal by Adonis Ecology Ltd was prepared more than 18 months ago, condition 5 is required to inform of any changes that may have occurred to the relevant conditions to enable the conservation and enhancement of Protected and Priority species and allow the council to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species) as updated by the Environment Act 2021. Conditions 6 and 7 are also required to conserve and enhance Protected and Priority species and allow the council to discharge those duties.
28. Condition 8 is to ensure the protection and retention of existing/remaining trees, shrubs and hedges; condition 9 to protect the amenities of the occupiers of nearby residential properties and the surrounding area, and the safety and convenience of road users; condition 10 is to ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological

systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors; condition 11 is to protect human health from any chemical contamination that may be present on the site from historically contaminative land uses; condition 12 is to protect the amenities of the occupiers of nearby residential properties and the surrounding area; condition 13 is to ensure that hard surfaced areas are designed to allow surface water to drain in a suitable manner and reduce the risk of surface water flooding; condition 14 is in the interests of reducing the need to travel by car and promoting sustainable development and transport; condition 15 is to protect the amenities of the occupiers of nearby residential properties and the surrounding area; condition 16 is to protect highway efficiency of movement and safety and to protect public access to the footpath; condition 17 is to provide adequate inter-visibility between vehicles using the access and those on the existing public highway in the interest of highway safety; condition 18 is to ensure that vehicles can enter and leave the highway in a controlled manner in the interest of highway safety; condition 19 is to ensure that loose material will not be displaced onto the highway in the interests of highway safety; condition 20 is to enable vehicles using the access to stand clear of the carriageway whilst gates are being opened and closed and to allow parking off street and clear from obstructing the adjacent carriageway in the interest of highway safety; and condition 21 is to enable full investigation as the site may be of archaeological interest.

29. Conditions 5, 8, 9, 10, 16 and 21 are all 'pre-commencement' conditions. These need to be in this form because the matters they deal with could be compromised by any works that take place as part of the development. In accordance with Section 100ZA(5) of the Town and Country Planning Act 1990, if the decision maker is minded to grant planning permission subject to pre-commencement condition(s) he/she may only do so with the written agreement of the appellant to the terms of the condition(s). In this case the appellant's agent has clearly stated on the appellant's behalf that the conditions are acceptable.

Terrence Kemmann-Lane

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than [3] years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans, drawings and documents: Location Plan/Existing Site Plan Ref: 9145.001 rev.D; Topographical Survey Plan Ref: 9145.002 rev.D; Proposed Site Plan Ref: 9145.010 rev.D; Proposed Elevations and Floor Plans Plan Ref: 9145.011 Plot 1; Proposed Elevations and Floor Plans Plan Ref: 9145.012 Plot 2; Proposed Elevations and Floor Plans Plan Ref: 9145.013 Plot 3; Proposed Elevations and Floor Plans Plan Ref: 9145.014 Plot 4; Proposed Elevations and Floor Plans Plan Ref: 9145.015 Plot 5; Proposed Elevations and Floor Plans Plan Ref: 9145.016 Plot 6; Street elevation Plan Ref: 9145.017 rev.A; and the Arboricultural Report and Impact Assessment REV B by Moore Partners Ltd with Tree Plan Ref: HGN/UR/01 rev.C.
- 3) Construction of any buildings shall not be commenced until samples of the materials to be used on the external surfaces have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved samples.
- 4) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending, revoking and re-enacting that Order) no enlargement of the dwelling-house or provision of any building within the curtilage of the dwelling-house, as permitted by Classes A, AA, B, D and E of Part 1 of Schedule 2 of that Order shall be carried out without first obtaining planning permission from the local planning authority.
- 5) Development shall not be commenced until a survey of the application site has been carried out to establish the presence of any protected species or any other ecological implications which could be affected by the proposed development. Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority within one month of the completion of the survey. Should the results of the survey indicate that protected species are present within the application site, then details of the following shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development: -
 - (a) a scheme of mitigation/compensation works, including a method statement, to minimise the adverse effects of the development on protected species;
 - (b) reference on whether a licence issued by Natural England will be necessary to be obtained prior to commencement of development, pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended), authorizing the specified activity/development to go ahead;
 - (c) a programme of timings for the works referred to in a) above. Mitigation/compensation works shall be carried out in accordance with the scheme and programme approved in accordance with the above.

Where protected species are not present, details of the means of enhancing biodiversity of the site by mitigation / compensation works to include a method statement shall be submitted to and approved in writing prior to the commencement of development.

- 6) Prior to occupation of the development a Biodiversity Enhancement Layout providing the finalised details and locations of the proposed biodiversity enhancements shall be submitted to and approved in writing by the local planning authority. The enhancement measures shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter. Reason: To enhance Protected and Priority Species and allow the LPA to discharge its duties under S40 of the NERC Act 2006 (Priority habitats & species).
- 7) Prior to the installation of any external lighting at the site, a lighting design scheme to protect biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on, or immediately adjoining the site, that are particularly sensitive for bats including those areas where lighting could cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas of the development that are to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the approved scheme and retained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.
- 8) No development, including site clearance, preparatory works or construction, shall commence until details of the means of protecting all of the existing trees, shrubs and hedges to be retained on the site from damage during the carrying out of the development have been submitted to and approved in writing by the local planning authority. The approved means of protection shall be installed prior to the commencement of any building, engineering works or other activities on the site and shall remain in place until after the completion of the development. No materials, goods or articles of any description shall be stacked, stored or placed at any time within the limits of the spread of any of the existing trees, shrubs or hedges. No works involving alterations in ground levels, or the digging of trenches, or excavations of any kind, (including the laying or installation of drains, pipes, cables or other services) shall be carried out within the extent of the spread of any existing trees, shrubs and hedges. No machinery of any kind shall be used or operated within the extent of the spread of the existing trees, shrubs, hedges.
- 9) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) The parking of vehicles of site operatives and visitors;
 - ii) Loading and unloading of plant and materials;
 - iii) Storage of plant and materials used in constructing the development;

iv) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
v) Wheel washing facilities;
vi) Measures to control the emission of dust and dirt during construction;
vii) A scheme for recycling/disposing of waste resulting from demolition and construction works;
viii) A scheme for any piling on site together with details of any associated noise and vibration levels;
ix) Delivery, demolition and construction working hours.
The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 10) Development shall not be commenced until an investigation and risk assessment, in addition to any assessment provided with the planning application, have been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme shall be submitted to and approved in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include:
- (i) A survey of the extent, scale and nature of contamination;
 - (ii) An assessment of the potential risks to:
 - Human health,
 - Property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - Adjoining land,
 - Groundwaters and surface waters,
 - Ecological systems,
 - Archaeological sites and ancient monuments;
 - (iii) An appraisal of remedial options, and proposal of the preferred option(s).
- This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.
- 11) Should contamination be found that was not previously identified or not considered in any remediation scheme agreed in writing with the local planning authority, that contamination shall be made safe and reported immediately to the local planning authority. The site shall be reassessed in accordance with the above and a separate remediation scheme shall be submitted to and agreed in writing with the local planning authority. Such agreed measures shall be implemented and completed prior to the first occupation of any parts of the development.
- 12) No site clearance, demolition or construction work shall take place on the site, including starting of machinery and delivery of materials, outside the following times: - Monday to Friday 0800 hours - 1800 hours - Saturday 0800 hours - 1300 hours - Sundays, Public and Bank Holidays - no work.
- 13) All areas of new hardstanding shall be constructed using porous materials laid on a permeable base unless provision is made to direct

- run-off water from the hard surface to a permeable or porous area within the application site.
- 14) The development shall not be occupied until the developer provides a Residential Travel Information Pack (to include six one-day vouchers for use with the relevant local public transport operator) for each dwelling, promoting the use of sustainable transport, details of which shall be submitted to and approved in writing by the local planning authority.
- 15) No piling shall be undertaken on the site in connection with the construction of the development until a system of piling and resultant noise and vibration levels has been submitted to and agreed in writing by the local planning authority and shall be adhered to throughout the construction process.
- 16) Prior to commencement of the development:
- a. A construction traffic management plan, to include but not be limited to details of vehicle/wheel cleaning facilities within the site and adjacent to the egress onto the highway, shall be submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the agreed plan
 - b. The public's rights and ease of passage over public footpath no 51 and 66 (Bradwell) shall be maintained free and unobstructed at all times.
- 17) Prior to occupation of the development, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2.4 metres by 77 metres to the north and 2.4 metres by 81 metres to the south, as shown on Drawing No. IT2253/TA/02. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction at all times.
- 18) Prior to occupation of the development the vehicular access shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall not be more than 6 metres and shall be provided with an appropriate dropped kerb vehicular crossing of the highway verge.
- 19) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 20) Any gates provided at the vehicular access shall be inward opening only and shall be set back as shown on Drawing No. 9145.010 Rev. D.
- 21) No development or preliminary groundworks of any kind shall take place until the applicant has secured and undertaken a programme of archaeological work in accordance with written scheme of investigation which has been submitted by the applicant and approved by the local planning authority.

End of Schedule