



Appeal Decision

Site visit made on 4 April 2023

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2023

Appeal Ref: APP/Z1510/W/22/3292123

Seven Seas Marble and Granite, Coggeshall Road, Kelvedon CO5 9PE

- 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 Ms Susan Chung against the decision of Braintree District Council.
 - The application Ref 21/02192/FUL, dated 9 July 2021, was refused by notice dated 8 December 2021.
 - The development proposed is residential development for five dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council has confirmed that the Development Plan now comprises the Shared Strategic Section 1 Local Plan (2021) and the Braintree District Local Plan (2022) (the Local Plan). The parties have had the opportunity to comment on these documents, I do not consider that it would cause prejudice to any party to determine this appeal with reference to these documents.

Main Issues

3. The main issues relevant to this appeal are:
 - the effect of the developments on the character and appearance of the surrounding area;
 - whether appropriate living conditions would be provided for the future occupiers of the development;
 - the effect of the development on the setting of the listed building of Moorings; and
 - the effect of the development upon flood risk.

Reasons

Character and appearance

4. The appeal site consists of a previously developed area of land. However, the site features a relatively limited number of existing buildings. These are located near to the rear boundary of the appeal site; however, the appeal site also features some less developed areas. The surrounding area is predominantly open in nature given that it falls outside of any allocated form of settlements. In addition, the topography of the facility is also relatively level in nature.

5. The proposed development would result in a removal of the existing commercial facility and the erection of up to five dwellings. Therefore, although the existing commercial facilities would be removed, there would be a notable increase in the overall level of built form at the appeal site. In addition, this built form would be arranged in a broadly linear form projecting close to the front and rear boundaries of the appeal site.
6. This is a concern as the proposed developments would therefore have a greater urbanising effect upon the surrounding area. This would comprise the new dwellings in addition to a local amount of hard standing arising from the provision of an access road, vehicle manoeuvring areas and car parking. In addition, the appeal site would be subdivided in order to provide boundary treatments to mark the individual curtilages of the proposed dwellings.
7. This is a concern given that the appeal site is near to substantial areas of open space. This means that the proposed development would result in a more suburbanising effect upon the surrounding area. This would occur irrespective of the fact that the proposed development would be near to some existing buildings.
8. In consequence, the proposed development would result in a more domestic form of development that would conflict with the predominantly existing rural character that is a feature of much of the appeal site's surroundings. Therefore, the form of the development would have an adverse effect upon the area's character and would appear incongruous.
9. This is a concern as owing to the general topography of the surrounding area the proposed development would be readily perceptible from several different vantage points in the surrounding area. In addition, views of the development would be possible from the surrounding area including the road network and neighbouring properties.
10. In addition, there is a public footpath that runs near to the rear of the appeal site and one of the side boundaries. This means that parts of the development would be readily experienced by users of the footpath. The amount of built form would therefore contrast with the more rural surroundings. Therefore, the proposed development would be potentially experienced by a great number of people, which would render it a strident addition to the local landscape.
11. Although the boundaries of the appeal site are marked by some mature trees, the screening effect offered by these is only partial and some views would remain from the road network and other vantage points nearby. Therefore, the presence of landscaping within the site does not allow me to disregard my previous concerns.
12. The proposed development would result in the reuse of some industrial buildings. However, these buildings by reason of their proportions and siting are not as prominent as the proposed dwellings would be. Therefore, the existing use of the site does not overcome my previous findings.
13. I therefore conclude that the proposed development would have an adverse effect upon the character and appearance of the surrounding area. The development, in this regard, would conflict with the requirements of Policies SP1 and SP3 of the Core Strategy and Policies LPP 1; LPP 52; LPP 67 of the Local Plan. Amongst other matters, these seek to protect the intrinsic character

and beauty of the countryside; reflector enhance the area's local distinctiveness; ensure that any development permitted is suitable for the local context; that developments are sustainable; and that settlements maintain their distinctive character and role, avoid coalescence, and to conserve their setting

Living conditions

14. The proposed development would include five dwellings which owing to the relatively narrow nature of the appeal sites would be located in close proximity to the side boundaries. As previously mentioned, parts of the site's boundaries are marked by mature trees.
15. These trees are an important factor in helping give the wider area its rural and more verdant character. Therefore, they are an important feature within the local landscape and their retention would be desirable.
16. However, owing to the proximity of the proposed dwellings to these trees it is likely that from several windows there would be a restricted level of outlook. The proposed development includes one dwelling, shown on the submitted plans as being Plot 5, which is located to the rear of the appeal site. Owing to the orientation of this dwelling, views from the windows of the living room would be significantly enclosed.
17. This means that the occupiers of the proposed dwelling would not benefit from appropriate levels of outlook. This is a particular concern as the living room is likely to be the room most used for recreation. Therefore, the lack of an appropriate level of outlook would be particularly significant.
18. In addition, one of the bedrooms of this dwelling (shown on the submitted plans as being Bedroom 4) has a window that would face the existing mature trees. Although this bedroom is likely to be less sensitive than the living room, the lack of outlook would still contribute to unsuitable living conditions.
19. Therefore, the proximity of the trees to the proposed dwellings would mean that the future occupiers of the development would not benefit from appropriate living conditions.
20. In result, there is a notable likelihood that the proposed development would give rise to increased pressure to remove the existing trees. Given their importance in defining the character and appearance of the surrounding area, this would not be desirable as it would lead to an urbanising effect in the countryside. However, a condition requiring the retention of the trees would, in turn prevent occupiers of the development from having appropriate living conditions. This would breach adopted planning policies.
21. I acknowledge that the proposed dwellings would feature appropriately sized gardens. However, this would not overcome the adverse effects arising from a lack of outlook for some occupiers of the proposed development.
22. Therefore, I conclude that the proposed development would not provide appropriate living conditions for all of the future occupiers of the development. The development, in this regard would conflict with Policies LLP52; and LLP 65 of the Local Plan. Amongst other matters, these seek to provide a high standard of accommodation and amenity for all prospective occupants; and where trees are to be retained on new development sites there must be a

suitable distance provided between the established tree and any new development.

Setting of the Listed Building

23. The proposed development is near to the Grade II listed building of Moorings. For the purposes of this appeal, the significance of this building is, in part, derived from its traditional architecture and it being surrounded by open space. This open space is important given that it is indicative of the former agricultural use of the listed building. Therefore, the setting of the listed building contributes to its overall significance as it highlights its original function.
24. The proposed development would result in a notable increase in built form in proximity to the listed building. In addition, the proposed development has a Notably more modern, and domestic style of architecture that is contrasting with the more functional style of architecture that is a feature of the listed building. Therefore, the proposed developments would result in a more modern incursion into the setting of the listed building.
25. In addition, the overall scale of the development is such that it would have a notably more urbanised form that would conflict with the existing, more rural character of the Listed building's setting. Therefore, the developments would have an adverse effect on the more rural setting off the listed building.
26. This would be exacerbated by the general proximity of the listed building to the proposed development and therefore the two contrasting forms of development would be readily viewed alongside one another. This matter would occur even though the appeal site has a relatively narrow frontage.
27. In considering this appeal my attention has been drawn to a previously permitted scheme elsewhere within the wider area. I do not have a full information regarding the planning circumstances of this development before me which means that I can only give it a limited amount of weight.
28. Nonetheless from the information before me it is apparent that the previously permitted scheme is located a comparatively larger distance away from the listed building when compared to the distance between the appeal site and Moorings. It therefore follows that the relative effects would be different. I therefore find that the presence of a previously permitted development elsewhere does not allow me to disregard my previous concerns.
29. Although the proposed development would be near to a ribbon of dwellings, these are separated from the Listed Building by the nearby road. In consequence, they are not readily viewed alongside the Listed Building. This means that they do not have the same effect on the setting of the heritage asset as the appeal scheme would have.
30. I understand that Moorings was made a listed building after the existing commercial use commenced. However, the proposed development, by reason of its scale and siting, would have a greater adverse effect upon the setting of the Listed Building. Therefore, the current use of the site does not mean that the proposed development would not have an adverse effect upon the setting of the Listed Building.
31. I therefore conclude that the proposed development would have an adverse effect upon the setting of a nearby listed building. The development, in this

regard, would conflict with the requirements of Local Plan Policy LPP 57. Amongst other matters, this requires that developments preserve and enhance the immediate settings of heritage assets.

Flood risk

32. The appeal site is relatively level in nature. This is reflective of the topography of the wider area. The evidence before me is indicative that part of the appeal site is located within Flood Zones 2 and 3. This is regarded as land that is at the greatest risk of flooding. The National Planning Policy Framework (the Framework) and the Development Plan seek to ensure that new development is located in areas that are at the lowest risk of flooding.
33. The evidence before me does not include any evidence of a sequential assessment being carried out. This is a concern as the point of the sequential assessment is to analyse whether the proposed development could be located in areas that have a lower risk of flooding. In consequence, the absence of a satisfactory sequential assessment is concerning as it has not been demonstrated that the development needs to be located in this area. This matter is the case even though certain features can be included in the design of the development to reduce the risk to the future occupiers.
34. Furthermore, the Council have directed me towards adopted planning policies that are permissive of developments within the boundaries of existing settlements. It has also been demonstrated that several of these assessments are located in areas that are less prone to flooding than the appeal site. In addition, and notwithstanding the previously identified adverse effects, the proposal occupies a relatively small area. In result, there is a likelihood that the development could be accommodated elsewhere. Therefore, I must conclude that the proposed development could potentially be located in an area which does not have the same level of flood risk than the appeal site.
35. It has been suggested that I should invoke the provisions of the Exception Test. However, one of the requirements of applying the Exception Test is that it has to be demonstrated that the sequential assessment has been passed. This is outlined in Paragraph 164 of the Framework. In this instance it is not possible to reach this conclusion and so therefore I cannot apply the provisions of the exceptions test.
36. I am conscious that only a part of the appeal site is located within Flood Zones 2 and 3. However, it is necessary to take the proposed development as a totality. Therefore, the proposed development is located, in part, in a higher flood risk area. In consequence, it needs to be demonstrated that there are not suitable alternatives for the location of the development. For this reason, it is not possible to conclude that all alternative sites within a lower flood risk have been adequately assessed.
37. I have considered the fact that the appeal site represents previously developed land. However, Annex 3 of the Framework is clear that residential accommodation is regarded as being more sensitive than commercial or industrial land. Therefore, the absence of a satisfactory sequential assessment means that the current use of the site does not overcome my previous findings.
38. I therefore conclude that the proposed development would have an adverse effect upon flood risk. The development, in this regard, would conflict with the

requirements of Policy LPP74 of the Local Plan. Amongst other matters, this seeks to ensure that sufficient evidence is provided to assess whether the requirements of the sequential test and exception test have been satisfied.

Other Matters

39. There is some debate as to whether the Council can demonstrate a five-year housing land supply. However, even if I were to agree that the Council could not demonstrate such a supply, I would find that the large adverse effects that would arise from the development would significantly and demonstrably outweigh the benefits of granting planning permission. The benefits arising from the development would be limited by reason of the scale of the development.
40. Therefore, even if I were to apply the 'tilted balance' as detailed in Paragraph 11(d) of the Framework, I would find that the housing land supply position would not lead me to disregard my findings in respect of the main issues.
41. The proposed development would result in the removal of commercial property from the vicinity of the appeal site. However, the scale of the development is such that any benefits would be small and therefore do not overcome my findings in respect of the main issues.

Planning Balance

42. The harm that would occur to the setting of the listed building would not be severe and therefore it would be 'less than substantial' within the meaning of the Framework. Paragraph 202 of the Framework requires such harm to be weighed against the public benefits of the proposal.
43. In the instance, the benefits include an increase to the local housing supply. However, given the scale of the development, any such benefits are likely to be small as only five additional dwellings would be constructed. In consequence, they can only be given a limited amount of weight.
44. The development is also likely to generate some economic benefits arising from the construction process. However, these are unlikely to be large and would also be time-limited in impact.
45. Furthermore, by reason of the scale of the proposed development, any support of businesses and facilities by the occupiers of the development is unlikely to be large. In addition, it has not been demonstrated that those businesses and facilities are struggling, to any notable degree, to attract sufficient numbers of people. I therefore give these matters a limited amount of weight.
46. Therefore, whilst giving significant importance and weight to the special attention I must pay to the desirability of preserving or enhancing the listed building, I find that the harm that would arise from the proposal would not be outweighed by its public benefits. Accordingly, there would be a conflict with Paragraph 200 of the Framework as harm to designated heritage assets would not have clear and convincing justification.

Conclusion

47. The proposed development would have an adverse effect upon the character and appearance of the surrounding area, the setting of a Listed Building and

flood risk. In addition, the development would not provide appropriate living conditions for the future occupiers of the development.

48. The scheme would therefore conflict with the development plan taken as a whole. There are no material considerations, including the National Planning Policy Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the preceding reasons, I conclude that the appeal should be dismissed

Benjamin Clarke

INSPECTOR