

Appeal Decision

Site visit made on 17 April 2023

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th May 2023

Appeal Ref: APP/Z1510/W/22/3309504

Land west of Water Lane, Pebmarsh, Essex CO9 2NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs C Chamley (C W and D M Chamley) against the decision of Braintree District Council.
 - The application Ref 22/00551/OUT, dated 1 March 2022, was refused by notice dated 6 June 2022.
 - The development proposed is 'application for outline planning permission of 3 detached dwellings with all matters reserved'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form includes a detailed description of the site's location. As the address on the appeal form and decision notice is more succinct and appropriate for the purposes of this appeal it has been used in the above heading.
 3. The application is for outline planning permission with all matters reserved for subsequent consideration. Drawings have been provided which show the layout of and access for the proposed dwellings on the site and some landscaping, although I have treated these as illustrative as they concern reserved matters.
 4. The Braintree District Local Plan 2013-2033, Section 2 was adopted in July 2022 after the Council's decision in this case. 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).
 5. I note that the appellants made a financial contribution at application stage to address the required mitigation by the Council of the effect of the proposal on European designated sites.
 6. The Council contends that two of the appellants' appeal submissions, a Landscape Impact Assessment and emergency vehicle swept path plan, should
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not be taken into account. This is because other parties have not had a chance to comment and, therefore, these documents should be discounted in determining the appeal in accordance with the *Wheatcroft* principles¹. However, the principal consideration in that case was whether the development is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation. In my view these documents do not alter the proposal as originally submitted, but instead seek to respond to matters raised through the Council's consideration of the application. For this reason, I have taken them into account.

Main Issue

7. The main issue is the effect of the proposed development on the character and appearance of the appeal site and the surrounding area, including the effect of possible changes in ground levels and related to this the effect on the living conditions of future occupiers, with regard to outlook and privacy.

Reasons

8. The appeal site forms part of an agricultural field on the western side of Water Lane, close to the junction with Pearson Close. There are established dwellings opposite on Kings Mead and Pearson Close, while land to the south and west is open and undeveloped. The site is outside the Pebmarsh village envelope.
9. Reference is made by the parties to a successful appeal for two detached dwellings immediately to the north of the appeal site, which were under construction at the time of the inspection². I am well aware of that appeal as I was the appointed Inspector and I have had regard to the earlier decision.
10. The Local Plan Section 2 sets out the spatial strategy for the district, in which Pebmarsh is defined as a Third 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 Pebmarsh, it is contrary to Policy LPP1. I note, however, that the Council does not raise concerns about the location's accessibility to services and facilities and so the main consideration with regard to the proposal's physical effects is on character and appearance.
11. The established dwellings on the east side of Water Lane are laid out around the two short spur roads running off the lane, Kings Mead and Pearson Close. Consequently, some have staggered building lines or a loose-knit informal layout and generally are well-spaced on generous plots. The two dwellings to the north approved on appeal largely reflect this established pattern of development as they are well separated on relatively wide plots fronting the road. Overall, this reflects a looser, less linear layout of development outside the village envelope as built development transitions to open countryside.
12. The current appeal site is of broadly the same size as the site to the north, accommodating two dwellings. While layout is a reserved matter, the

¹ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37].

² APP/Z1510/W/20/3256120 dated 2 February 2021.

configuration of the site, including the need to gain access from Water Lane, suggests that the submitted plans reflect the most likely layout of the dwellings. As such, the accommodation of three dwellings on a site of similar frontage width to the adjacent one will result in materially smaller plots and a more concentrated form of development than is characteristic of the immediate surrounds. Consequently, the three dwellings directly adjacent to open countryside on the village edge will not reflect the established pattern or layout of development and, therefore, will be uncharacteristic in this setting.

13. In the previous appeal for two dwellings it was noted that the field of which the site was part is at a higher level than the village surrounds and rises sharply away from Water Lane with a steep bank. The proposed dwellings in that case would have been unduly prominent and incongruous unless the ground were lowered to the same level as the surrounding dwellings.
14. Water Lane is on an incline as it rises away from Pebmarsh Road. As a result, the current appeal site is on higher ground than the adjacent land closer to Pebmarsh Road. Moreover, the lane rapidly takes on a rural character and appearance beyond the entrance to Pearson Close, with the steep-sided banks and vegetation on both sides of the lane contributing to this. The dwellings on Pearson Close largely follow the existing landform and the bank and vegetation on the opposite side of the road to the appeal site have been retained despite the adjacent dwellings.
15. To avoid the three proposed dwellings being sited in a prominent, incongruous position on the higher ground to the west of Water Lane, the proposal would need to involve substantive changes in land levels. Due to the higher land than the site to the north, the extent of the changes to the topography and appearance of the lane at this point would be more significant. This would contrast unfavourably with the established development opposite and would materially and harmfully alter the character and appearance of the lane through the removal of the bank and vegetation.
16. I acknowledge that the site frontage would be landscaped with new planting. However, this would not adequately compensate for the loss of the existing landform and vegetation, which makes a positive contribution to the character and appearance of the lane. Moreover, the provision of a vehicular access point would accentuate these harmful changes. I have had regard to the appellants' Landscape Impact Assessment and I accept that it would be possible to mitigate the effects of longer-range views of the dwellings from the surrounding area if the land levels were reduced by a sufficient extent. However, this would not overcome the effects found above with regard to the site's more immediate surroundings.
17. The Council raises concerns about the effect of the proposal on the setting of the Pebmarsh Conservation Area and the Grade II listed King's Head Public House. I am particularly mindful in this regard of the statutory requirement for decision makers to have special regard to the desirability of preserving the setting of a listed building³. In the previous appeal it was found that the King's Head is a central feature in the road junction approaching along Water Lane from the south, which views contribute to its significance. From views adjacent

³ Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

to and immediately south of the appeal site, the listed building is framed by the bank to the left and vegetation to the right, despite the presence of development on Pearson Close and Kings Mead. The rural setting to the village enables an understanding of its significance, providing historical context for the village as a rural settlement. In this wider context, Water Lane provides a link to the conservation area and views of the public house from the surrounding rural area.

18. The set back of the two dwellings under construction, together with the bank and vegetation in front of the appeal site preserves the setting of the listed public house. However, as found above, the removal of the bank and vegetation together with the new access point would harmfully alter the lane at a point where it takes on a transitional rural character and appearance. For the same reason, the proposal would fail to preserve the setting of the listed building by materially changing the surroundings in which the heritage asset is experienced.
19. The National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation⁴; and any harm to the significance of a designated heritage asset, including from development within its setting, should require clear and convincing justification⁵. Based on the above findings, I consider the harm to be less than substantial in this instance, but nevertheless of considerable importance and weight.
20. Under such circumstances, the Framework advises that this harm should be weighed against the public benefits of the proposal⁶. While the proposal would provide three additional dwellings, which would accord with the objective in the Framework to significantly boost the supply of homes, I have found that the harm to the setting of the listed public house is of considerable weight. Consequently, the proposal would not provide sufficient public benefits that would outweigh the harm that has been found.
21. I note the main parties' differing viewpoints with regard to the likely effect of the siting of the dwellings on the living conditions of future occupiers. However, matters related to the appearance and layout of the dwellings are reserved for subsequent consideration. Therefore, as the details of internal configuration, windows and amenity areas are not yet clear, it is more appropriate to focus on the broader considerations with regard to the effects of the proposal, as found above.
22. 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 King's Head Public House. Consequently, it is contrary to Policy SP7 of the Braintree District Local Plan 2013-2033, Section 1, which requires all development to meet high design standards, including responding positively to local character and context. It is also contrary to the following policies from the Local Plan Section 2: LPP1 concerning development boundaries, as described above; and LPP35 and

⁴ Paragraph 199.

⁵ Paragraph 200.

⁶ Paragraph 202.

LPP52, both of which require development to respect the character and appearance of the site and its surroundings, including proximity to heritage assets.

Other Matters

23. I have had regard to the representations made by interested parties, which largely concern matters addressed under the main issue or which are more appropriately considered under reserved matters.
24. The Framework is a material consideration in planning decisions⁷ and it requires that plans and decisions should apply a presumption in favour of sustainable development⁸. The Council indicates that it can demonstrate a five year supply of housing land; consequently, the presumption is not engaged as a result of housing under-supply.
25. The Framework also requires consideration of whether policies which are most important for determining the application are out-of-date. I am not aware of any substantive arguments that the most important policies are out-of-date and I do not consider them to be so because they are recently adopted and consistent with the Framework. Consequently, the presumption in favour of sustainable development does not apply.

Conclusion

26. The proposal is contrary to the development plan as it would have a materially harmful effect on character and appearance. 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.

J Bell-Williamson

INSPECTOR

⁷ Paragraph 2.

⁸ Paragraph 11.