



Appeal Decision

Site visit made on 26 July 2023

by D J Barnes MBA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 17th August 2023

Appeal Ref: APP/Z1510/W/22/3311390

The Lodge, Rectory Lane, Rivenhall, Witham CM8 3HJ

- 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 (Hopkins Walter Developments Limited) against the decision of Braintree District Council.
 - The application Ref 21/02933/FUL, dated 21 September 2021, was refused by notice dated 25 July 2022.
 - The development proposed is the erection of 3 No. 2-bed single-storey bungalows and garages with a new access off Rectory Lane.
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Application for Costs

1. An application for costs was made by Mr Paul Hopkins (Hopkins Walter Developments Limited) against Braintree District Council. This application is the subject of a separate decision.

Decision

2. The appeal is allowed and planning permission granted for erection of 3 No. 2-bed single-storey bungalows and garages with a new access off Rectory Lane at The Lodge, Rectory Lane, Rivenhall, Witham CM8 3HJ in accordance with the terms of the application, Ref 21/02933/FUL, dated 21 September 2021, subject to the conditions identified in the attached Schedule to this decision.

Procedural Matter

3. For reasons of clarity and precision, the description of development cited on the appeal form has been adopted.

Main Issue

4. It is considered that the main issue is whether the proposed development would be in a sustainable location.

Reasons

5. The proposed development includes the erection of 3 dwellings within the well-defined residential curtilage of The Lodge. The site is outside the defined development boundary of Witham. It is a matter of planning judgement whether the site adjoins the development boundary for the purposes of applying Policies SP3 and LPP1 of the Braintree District Local Plan (LP)¹. In this case, between the site and the closest built forms of development there are

¹ Corbett v Cornwall County Council [2022] EWCA Civ 1069

currently intervening fields and vegetation which gives the visual and physical impression of the site being isolated dwellings within the open countryside from Witham rather than adjoining this settlement.

6. The erection of the proposed development would introduce an urban form of development into a location which is currently characterised as comprising open and verdant countryside surrounding this part of Witham. Adverse harm would be caused to the character and appearance of the surrounding area.
7. There is no dispute that Witham possesses a wide range of facilities and services. It was noted during the site visit that there is a local convenience shop and a school within walking distance of the site. Rectory Lane is a Protected Lane and is proposed to be closed as a through route for traffic. There would be the opportunity for future occupiers to safely walk to the shop and the school. No objection has been raised by the Highway Authority because of concerns about traffic generated by the proposed development using Rectory Lane.
8. The site is further away from the main facilities available within the town centre than the defined development boundary. However, the National Planning Policy Framework (the Framework) recognises that opportunities to maximise sustainable travel solutions will vary between urban and rural areas.
9. The site is within at least cycling distance of the town centre and Witham train station. There would also be the opportunity to use public transport via the bus stops on Forest Road to access the town centre. A travel pack to encourage non-car modes of travel by future residents could be secured by condition. There may still be some reliance by the future occupiers on the private car to access some of the facilities available in Witham but the number of such trips would be low and this matter alone would not be a reason for this appeal to fail.
10. Overall, there would not be a high degree of reliance by the future occupiers on using private cars but this does not outweigh the site's location in the open countryside away from the current development boundary of Witham. According and based upon the currently defined development boundary of Witham, it is concluded that the proposed development would not be in a sustainable location and, as such, it would conflict with LP Policies SP3 and LLP1.

Other Matters

11. The appellant has identified a number of other matters which are claimed to be material considerations which could outweigh any identified harm and conflict with the development plan.
12. The appellant has referred to an appeal for a single dwelling at Little Maplestead² but this scheme is not directly comparable, including by reason of the proposal consolidating an existing ribbon of buildings along a road. Although this appeal site is associated with The Rectory the same consolidation of ribbon development is not applicable. There is also no indication of the distance between this other appeal site and the local facilities when compared to the siting of the proposed development. Limited weight has been given to this other scheme in the determination of this appeal.

² APP/Z1510/W/21/3274693

13. However, the appellant has provided an appeal decision³ which has allowed the erection of some 230 dwellings on the field to the east of the site. This is a significant material change in circumstances since the appeal application was assessed by the Council. Although neither this appeal nor the appeal for the adjacent site can alter the defined development boundary established in the Local Plan, the erection of the approved dwellings would change the context of the site in terms of its relationship to the built-up area of Witham. Accordingly, it is reasonable and appropriate to make the judgement that the proposed dwellings would be locationally related to the approved scheme rather than comprise isolated homes in the countryside. Substantial weight is given to this change in circumstances.
14. Other than the choice of materials which could be the subject of a condition, the Council has not objected to the appeal scheme based upon harm being caused to the character and appearance of the surrounding countryside. Although based upon the site's current context such harm has been identified, the character and appearance of the surrounding area would be materially changed by the erection of the dwellings on the land to the east of Rectory Lane. Substantial weight is given to the change likely to occur in the character and appearance of the surrounding area in the determination of this appeal.
15. As identified in the Planning Officer's report, there would be some short term benefits associated with the jobs and expenditure on materials created by the construction of the proposed dwellings. These benefits attract only limited weight because they relate to 3 dwellings and would be temporary and modest in nature.
16. The ability for future occupiers to use non-car mode of travel to access local facilities and services is given moderate weight in the determination of this appeal. As already identified, any trips by car would be low. However, only limited weight is given to the potential expenditure in the local area associated with the future occupiers because of the scale of the development.
17. The appeal site falls within the Zones of Influence for the Blackwater Estuary Special Protection Area (SPA) and Ramsar site, the Dengie SPA and Ramsar site, and the Essex Estuaries Special Area of Conservation, all of which fall within the scope of the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy. The appellant has already made payment which would mitigate the future occupiers' recreational impacts and, as such, there is unlikely to be a significant adverse effect on the integrity of these designated sites. The requirements for an Appropriate Assessment of the appeal scheme under the Conservation of Habitats and Species Regulations 2017 have been met but this matter attracts only neutral weight in the determination of this appeal given the mitigation is directly related to the effects of the proposed development.
18. Although raised as a concern by local residents, no objection has been raised by the Council that the proposed development would harm the setting of Rivenhall Old Rectory which is a designated heritage asset. There are no reasons for a different assessment from the Council's to be made given the separation distance between the site and this Listed Building. This is a neutral matter in the determination of this appeal.

³ APP/Z1510/W/22/3305099

19. The Council cannot demonstrate a 5-year supply of deliverable housing land and, as such, paragraph 11(d) of the Framework indicates that the development plan policies which are most important to the determining this appeal should be deemed to be out-of-date and the presumption in favour of sustainable development is engaged. This provides that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole. The most important policies to determine this appeal and the adverse impacts have been identified as part of the Main Issue.
20. The primary benefit cited by the appellant is that the appeal scheme would make a contribution to meeting the shortfall in the housing land supply of the District. However, there has also been a significant change in the locational circumstances of the appeal site, together with the likely change to character and appearance of the surrounding area, since the determination of the appeal application. These matters are given substantial weight in the determination of this appeal. The other identified material considerations add further weight to the benefits of the appeal scheme albeit to varying degrees.
21. Overall, it is considered that these material considerations and benefits associated with the appeal scheme demonstrably and significantly outweigh the identified adverse impacts associated with the location of the proposed development as was originally assessed by the Council.

Conditions

22. No conditions have been suggested by the Council in the event this appeal is allowed. However, it is necessary for reasons of certainty that the proposed development is erected in accordance with the submitted drawings and, as identified in the Planning Officer's report, the external material used in the construction of the dwellings should be approved by the local planning authority.
23. The consultation responses identify that the Highway Authority wanted certainty associated with the construction of the proposed access and provision of the visibility splays prior to the occupation of the proposed dwellings and such conditions would be necessary for reasons of highway safety. As has already been identified, a travel pack condition is necessary.
24. To ensure that the site continues to positively contribute to the character and appearance of the surrounding area, conditions for a scheme to protect retained trees and hedges and secure landscaping proposals and the implementation of biodiversity enhancements are necessary. For the same reason, the ecological management measures already identified by the appellant need to be secured by a condition.
25. A request for a condition securing archaeological investigations prior to undertaking any development has been made by Place Services. However, given the separation distance from the closest designated heritage asset and the scale of the proposed development, a condition to allow access for an Archaeologist to observe the construction works would be a more appropriate.

26. Accordingly, it is concluded that this appeal should be allowed.

D J Barnes

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 following approved plans: 9180.001; 9180.005; 9180.009; 9180.010; 9180.011; 9180.012; 9180.013; HGN.RL01 and 17337/SK/01.
- 3) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 4) All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwellings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 5) No development shall commence until a Biodiversity Enhancement Strategy for protected and priority species has been submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:
 - a) purpose and conservation objectives for the proposed enhancement measures;
 - b) detailed designs to achieve stated objectives;
 - c) locations of proposed enhancement measures by appropriate maps and plans;
 - d) persons responsible for implementing the enhancement measures; and
 - e) details of initial aftercare and long-term maintenance (where relevant).The development shall be carried out in accordance with the approved Strategy and shall be retained in that manner thereafter.
- 6) No development above ground level shall commence until details of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

- 7) The development hereby permitted shall not be occupied until the vehicular access from Rectory Lane identified on Drawing No. 9180.005 has been constructed. The vehicular access shall not include any unbound material surface treatment within 6 metres of the highway boundary.
- 8) The development hereby permitted shall not be occupied until the visibility splays identified on Drawing No. 17337/SK/01 have been provided and they shall be retained for that use thereafter.
- 9) The development hereby permitted shall not be occupied until details of a Residential Travel Information Pack have been submitted to and approved in writing by the local planning authority and shall include six one day travel vouchers for use with the relevant local public transport operator. The development shall be undertaken in accordance with the approved details.
- 10) All mitigation measures and/or works shall be carried out in accordance with the details contained in the Ecology Survey Report (MHE Consulting Ltd, April 2020). The approved details and shall be retained in that manner thereafter.
- 11) The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority and shall allow that person to observe the excavations and record items of interest and finds.

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