
Appeal Decision

Site visit made on 25 September 2023

by Richard Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th November 2023

Appeal Ref: APP/Z1510/W/23/3314549

Land to the east of Tey Road, Earls Colne, Essex

- 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 Robert Prestney against the decision of Braintree District Council.
 - The application Ref: 22/02453/OUT, dated 24 August 2022, was refused by notice dated 5 December 2022.
 - The development proposed is described as '*outline planning permission for the erection of five detached self-build dwellings with all matters reserved*'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal concerns an application for outline planning permission with all matters reserved for later consideration. Although a Block Plan has been submitted showing five detached dwellings in a row and set behind a central access point and internal access road, I have dealt with the appeal on the basis that the plans are indicative.

Main Issues

3. The main issues are:
 - i. The effect of the proposal on Archaeological heritage assets.
 - ii. The effect of the proposal on protected species.
 - iii. Whether the site is a suitable site for housing, having regard to the Council's adopted spatial strategy.
 - iv. The effect of the proposal on the character and appearance of the appeal site and surrounding area.
 - v. The effect on highway safety.

Reasons

- i. *Archaeology*
4. The site lies within an area of high potential for archaeological remains, as recorded on the Historic Environment Record, and includes the potential siting of a Roman Villa given recovery of Roman roofing and box flue tiles in the

locality. Further, metal detection findings include coins from all centuries of occupation and a Bronze age votive axe. Cropmarks are also indicative of ploughed out Bronze Age barrows detected by geophysics within the area proposed for development. Consequently, with such clear evidence of the presence of archaeological remains in the area it was recommended by the relevant statutory consultee that a field evaluation was carried out prior to determination. Neither the application or appeal was accompanied by such an evaluation or any form of initial assessment that describes the significance of the heritage asset.

5. If there is any reasonable prospect of archaeological remains within the site that could be adversely affected by development, then assessment and, if necessary, evaluation should take place before a planning application is determined. This is to be able to predict the presence of any remains and assess their potential significance. As planning permission for the development is granted at the outline stage, I do not consider that the approval of details at the reserved matters stage, would be an appropriate time to determine such effects.
6. Despite agreement to a condition on another site within the same district¹, on the site-specific evidence before me in this appeal I cannot conclude with any certainty what potential impacts there might be on heritage assets or whether appropriate mitigation would be achievable. As such, it would not be appropriate in this case to impose conditions requiring assessments and evaluation prior to any works taking place.
7. For these reasons, the proposal would conflict with Policy LPP59 of the Braintree District Local Plan 2022 ('the LP') which requires archaeological evaluation of a site where important archaeological remains are thought to be at risk from development to be undertaken as part of an application. The proposal would also conflict with the historic environment objectives of the National Planning Policy Framework ('the Framework') insofar as it requires applicants to describe the significance of any affected heritage assets and submit appropriate desk-based assessments where there is archaeological interest.

ii. Protected Species

8. Circular 06/2005 advises that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before a planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
9. Based on the Council's specialist ecological advice it appears that the site provides a suitable habitat for reptiles, Brown Hare and Hedgehogs. However, the proposal is not supported by a preliminary ecological assessment so does not demonstrate sufficiently any impacts and whether there would be an adverse effect. This includes from the extent of removal of mature boundary landscaping that is likely to be required to achieve the necessary visibility splays.

¹ LPA ref: 23/01208/OUT.

10. It has been suggested that such surveys could be conditioned but the Circular also advises that this should only be in exceptional circumstances, and I do not consider that to be the case here. I must be satisfied as the decision maker that protected species would not be adversely affected so the fact that the appellant agrees to such surveys does not resolve the paucity of evidence.
11. The proposal would therefore conflict with Policy LPP64 of the LP insofar as it requires where there is a reasonable likelihood of protected species or priority species being present, an ecological survey be undertaken and necessary mitigation demonstrated, in order to ensure there would be no harm to protected species and no net loss of priority species. The proposal would also conflict with the comparable aims and objectives of the Framework in respect of protecting and enhancing biodiversity.

iii. Site Suitability

12. The site lies within the countryside for planning purposes, being outside of any town or village development boundaries. It does not qualify as an appropriate countryside use under the relevant policies of the LP.
13. Although Tey Road is unlit and narrow in this part of the lane, a footway exists approximately 100 metres to the north of the site and pavements exist within the settlement. This would provide pedestrian access to local services in the village core and rural bus services, an approximate 10-minute walk. Such a journey would not appeal to all however, especially in inclement weather and for any younger children, the elderly or the infirm. I acknowledge that the frequency of rural public transport will not be the same as in urban areas. I have not been provided with the full details of the bus service, but, on the evidence before me, the level of provision and location of bus stops is unlikely to provide a realistic alternative for future residents.
14. The site's location means that most future residents are likely to be heavily reliant on car-based journeys for trips to and from shops, school, work, health, leisure and other day to day services and facilities further afield. It is likely that there would also be additional visitor and delivery trips associated with the occupation and servicing of the dwellings. Such reliance on private vehicles would cause environmental harm because it would contribute to cumulative harmful greenhouse gas emissions.
15. For these reasons, the site would fail to have regard to the adopted settlement strategy and objective of reducing reliance on car-based journeys. Accordingly, it would conflict with Policies SP3, SP7 and LPP42 of the LP insofar as they seek to concentrate growth in specific settlements according to their role and to prioritise the needs of pedestrians, cyclists, and public transport above use of the private car. In the context of an acknowledged lack of a 5-Year housing land supply I return to matters of weight to these conflicts below.

iv. Character and appearance

16. The application site comprises open grazing land located to the east of Tey Road and within an open agrarian and wooded landscape adjoining the settlement. It is part of a larger holding primarily used for arable and pastoral agriculture and is part of the Colne River Valley Landscape Character Area, which is characterised by the River Colne and its surrounding sloping river valleys.

17. Much of the site frontage contains mature trees and hedging and by virtue of its extensive, undeveloped, and open character the appeal site provides a clear and strong rural setting to the adjoining settlement. Although all reserved matters for the scheme would fall to be assessed in greater detail at a later stage, in trying to achieve an appropriate scheme for five detached dwellings there would be a limited number of ways in which the appeal site could be developed. Moreover, because of the shape, size, and nature of the site the buildings are highly likely to end up being sited uncharacteristically close together in a row and with limited space in-between them.
18. In such a context the proposal would result in an intensification of built form in an area where open space contributes positively to the locally distinctive settlement pattern. Suburbanisation of the appeal site would fundamentally change the character and appearance of the rural setting of the settlement harmfully diminishing the positive contribution the site currently makes. I do not consider that this effect would be appropriately mitigated by additional landscaping, given the amount of time it would take to mature.
19. For these reasons, the proposal would cause harm to the character and appearance of the appeal site and surrounding area. It would therefore conflict with Policies SP7, LPP52 and LPP67 which, amongst other things require development to respond positively to local character and context to preserve and enhance the quality of existing places and their environs, to be in harmony with the character and appearance of the surrounding area and be of a high standard of layout and design.
20. Although the site is not protected by a specific designation paragraph 174 of the Framework applies. It explains that decisions should contribute to and enhance the natural local environment but in this case the development would fail to recognise the intrinsic character and beauty of the countryside and would conflict with paragraph 174 b).

v. Highway safety

21. Tey Road is a narrow and winding rural lane, subject outside of the village to the national 60 mph speed limit. For a single access serving five dwellings, Essex County Council as Highway Authority require demonstration of vehicular visibility splays of 2.4 metres by 215 metres along with the provision of a footway from the appeal site to join into an existing footway approximately 100 metres to the north and within the settlement. It recommends that the acceptability of such splays should be supported by evidence from a speed survey, but no such survey, nor any plan showing the required splays or footway have been submitted.
22. Means of access is a reserved matter but the application must still state the area or areas where access points would be situated². The submitted block plan, although indicative, shows a central access point on the site although I observed at my visit that no such access point currently exists. No alternative access is shown within the red line on the location plan.
23. I also observed at my visit that the mature screening along the site boundary with Tey Road has the potential to impede visibility from the likely access point. Visibility splays would be likely to require the removal of extensive areas of

² Article 5(3) of the General Development Management Procedural Order.

existing vegetation, the extent of which cannot be assessed on the basis of the evidence before me. I have considered whether consideration at the reserved matters stage or a condition requiring such splays, would be acceptable. However, the land for the splays appears to be outside the land to which the application relates and other land under ownership is not shown. Therefore, I am not satisfied that the required splays could be provided, and highway safety maintained.

24. Despite a willingness to enter into a legal agreement to designate land and contribute to the extension of the footway³ no completed agreement is before me, and again, the connection and extent of land and its ownership that it relates to is not shown on the plans. I have considered the appellant's request for a condition but the Planning Practice Guidance states that planning permission should not be granted subject to a positively worded condition that requires the appellant to enter into a planning obligation. Only in exceptional circumstances, should a negatively worded condition requiring a planning obligation or other agreement to be entered into for more complex and strategically important development. This scheme does not amount to complex or strategically important development.
25. For these reasons, the proposal does not demonstrate that safe access would be provided for future users of the appeal site and highway. The proposal would conflict with Policy LPP52 of the LP and paragraph 110 of the Framework insofar as it aims to ensure that safe and suitable access to sites can be achieved for all users.

Other Matters

26. The site lies within the zone of influence for the Blackwater Special Protection Area/Ramsar site and the Essex Estuaries Special Area of Conservation. However, if the circumstances leading to a grant of permission had been present, I would have given further consideration to this in accordance with the Habitats Regulations, but because I am dismissing the appeal on the main issues above, I have not found it necessary to consider this matter any further.
27. My attention has been drawn to an appeal decision where an Inspector took a different view in relation accessibility⁴ matters. Whilst some general similarities can no doubt be drawn with such cases I do not have the full details of that scheme before me, but it differs in being for a smaller number of dwellings and would therefore have different effects. I have also identified other significant harm in this case and do not find that decision to be directly comparable. It does not therefore alter my view in relation to that main issue.

Other considerations

28. The harm and conflicts are such that the proposal should be regarded as being in conflict with the development plan as a whole. It is therefore necessary to consider whether there are material considerations which indicate that permission should be granted, notwithstanding this conflict.
29. The Framework is one such consideration and the Council acknowledge that they cannot demonstrate a 5-year supply of housing land (4.86 years). Consequently, the presumption in favour of sustainable development set out

³ Paragraph 6.27 of Appellant's Statement.

⁴ APP/Z1510/W/3243946.

within paragraph 11 d) ii. of the Framework applies by virtue of Footnote 8 and in this case is not disapplied by 11 d) i.

30. The adverse impacts arise from harm to the character and appearance of the appeal site and surrounding area, and in terms of the effects on archaeological heritage assets, protected species and highway safety. These carry substantial weight. The weight to be afforded to the conflicts with the spatial strategy is necessarily reduced because the Council cannot demonstrate a 5-year housing land supply. However, the shortfall in supply is small and the relevant policies are still broadly consistent with the Framework insofar as they seek to direct development to sustainable locations to minimise the need to travel, create sustainable communities and thereby address the causes and effects of climate change. Accordingly, I still afford the adverse impacts and the resultant conflict with the spatial strategy significant weight.
31. Balanced against this the proposal would result in the creation of five dwellings that could be designed to utilise energy efficient measures and materials in their construction. The description of development refers to self-build dwellings, but no further details have been provided and there is no obligation before me to ensure that custom/self-build proposals would be constructed. Such a small scheme could be built out quickly and I acknowledge the commitment to the dwellings being constructed to Part M4(2) of the Building Regulations. Having regard to the number of dwellings proposed these benefits weigh moderately in favour.
32. There would also be some economic benefits during construction and from future occupants spending in the local economy as well as supporting of services and facilities. Future occupation could assist in maintaining the vitality of rural communities although there is little substantive evidence to qualify or quantify this benefit. These benefits therefore attract a small amount of weight in favour of the proposal, and this is limited given the scale of the proposal.
33. The proposal also includes a commitment to designate an area of land at Chalkney Wood to the southwest of the site and further along Tey Road, as open access land and its incorporation into a woodland planting scheme via a condition. Whilst there may be a willingness to instruct an environmental expert to produce a report and to work with the Council, the evidence before me is not clear on the environmental net gain and does not demonstrate that a condition would meet the relevant tests⁵. Consequently, this consideration carries little weight.

Planning balance and conclusion

34. Whilst the proposal would accord with some elements of the Framework, overall, the proposal would fail to fulfil the environmental and social dimensions of sustainable development. The adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As such, the proposal would not be the sustainable development for which Paragraph 11 d) ii. of the Framework indicates a presumption in favour.

⁵ Paragraph 56 of the National Planning Policy Framework.

35. In conclusion, the proposal would conflict with the development plan, when read as a whole. Material considerations, including the Framework do not indicate that a decision should be made other than in accordance with the development plan.
36. Having considered all other matters raised, I conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR