



Appeal Decision

Hearing Held on 31 October 2023

Site visit made on 31 October 2023

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th December 2023

Appeal Ref: APP/Z1510/W/23/3315236

Land Opposite 1 to 4 Jenkins Farm Cottages, Kings Lane, Stisted, Essex CM77 8AF

- 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 & Mrs Hasler against the decision of Braintree District Council.
 - The application Ref 22/01836/FUL, dated 7 July 2022, was refused by notice dated 20 December 2022.
 - The development proposed is erection of a 2 bedroom single-storey Agricultural Workers Dwelling.
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Decision

1. The appeal is dismissed.

Costs

2. An application for costs was made by Braintree District Council against Mr & Mrs Hasler. This application is the subject of a separate Decision.

Preliminary Matters

3. A revised description of development was agreed in writing by the Council and the appellants following the submission of the planning application, and was subsequently used in the consultation letters and notification regarding the application. This agreed description was also used in the Council's decision notice.
4. In their statement of case, the appellants have requested that the appeal be considered on the basis of an amended description which removes the reference to an 'agricultural workers dwelling'. A further amendment was suggested in the process leading up to the Hearing, which included reference to a '...part agricultural justification...'.
5. However, consultation and notification in respect of the application has been undertaken using the agreed description, and this description was also used in the Council's decision notice. Even allowing for details submitted with the planning application and further consultation as part of the appeal process, the description as agreed and subsequently used in consultation and the Council's decision has been clearly set out.

6. Having regard to the principles established in *Holborn Studios Ltd*¹, the proposed revised descriptions are more than a minor amendment compared to that agreed, and are materially different from that which has been used as a basis for consultation. Therefore, in the interests of fairness, this appeal must be determined based on the description on which the Council made its decision, and which has been subject to consultation. To do otherwise could unacceptably prejudice the interests of other parties.

Main Issues

7. The main issues are:

- Whether the proposal is in a suitable location for the form of residential development proposed having regard to local and national planning policy;
- The living conditions of future residents with regards to outlook, light and access to external amenity space;
- Character and appearance; and
- Other considerations relevant to the planning balance.

Reasons

Location

8. Paragraph 80 of the National Planning Policy Framework (the Framework) sets out that planning policies and decisions should avoid the development of isolated homes in the countryside, except in a number of circumstances. The appeal site is located outside of the development boundaries set out in the Local Plan². Policy LPP1 of the Local Plan states that development outside development boundaries will be confined to uses appropriate to the countryside, amongst other considerations. This is consistent with the aims of the Framework with regards to the location of development in the most sustainable locations and avoiding isolated homes in the countryside.
9. The appeal site is located close to a cluster of dwellings and other built development on the opposite side of Kings Lane, although this group of buildings contains minimal if any facilities which would support residents of the proposal.
10. The site is some distance from the village of Stisted, and access would be via an unlit road with no demarcated footpath which would limit accessibility by sustainable means such as by foot or cycle. Even then, the facilities in Stisted are limited and would not meet the day to day needs of residents of the proposal. There are more facilities in the town of Braintree, but due to the distance and the nature of the route, including a lack of lighting for much of the route and the need to cross busy highways, this would also be a deterrent to access by sustainable means by residents of the appeal proposal.
11. For the above reasons, the proposed dwelling would be located remotely from services and facilities that future residents could reasonably expect to access

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

² Consisting of the Braintree District Local Plan 2013-2033 Section 1, Adopted February 2021; and Local Plan Section 2, Adopted July 2022.

- by sustainable means. Due to this location, residents would be reliant on the private vehicle.
12. Policy LPP38 of the Local Plan permits rural worker's dwellings in specific circumstances. This includes Criteria LPP38(a) for a clearly established functional need for a full-time worker to live on the site in the countryside and LPP38(f) which sets out that the rural activity should be established for at least three years, have been profitable for at least one, is currently financially viable, and has a clear prospect of remaining so.
 13. Within this context, I have had regard to the appellants' long term involvement with this site for the keeping of animals, and that one of the appellants is a registered smallholder. As set out at the Hearing, there would be some benefits for the appellants with regard to caring for animals kept on this site. I saw that there were a limited number of horses and other animals on the site at the time of my visit. However, it was also confirmed that the keeping of these animals is not a full-time occupation for either of the appellants. Therefore, despite the functional benefits of caring for animals, this would not represent a need for a full-time worker to live on the site. Indeed, the use of the site is more akin to a leisure or hobby use, rather than one requiring the presence of a rural worker.
 14. The appellants have outlined their intentions to keep sheep and pigs on the land, including a rare-breed sheep which is deemed to be 'at risk'. The appellants refer to selling the sheep as pets or for the grazing of land for maintenance, and associated benefits regarding fertiliser and the keeping of horses. However, no substantive evidence has been provided in respect of the level of income arising from keeping animals at the site, and the appellants confirmed at the Hearing that this would not be their main source of income. Therefore, despite the potential income and the laudable aims of preserving a rare breed, the existing and proposed use of the site represents a hobby or a leisure activity, rather than a use requiring a full-time rural worker.
 15. Based on the evidence before me, there is not a clearly established need for a full-time worker on the site, and it has not been established that the activity is financially viable in support of a full-time worker. On that basis, the proposal would conflict with Policy LPP38(a) & (f) of the Local Plan. Compliance with other elements of that policy would not negate the conflict that I have identified.
 16. Policy LPP38 refers to a 'rural worker' rather than an 'agricultural worker', but based on what I have seen and read the proposed dwelling would not fall within the wider scope of the former description.
 17. As indicated in the preliminary matters, the appellants had requested that the description of the proposal be amended, although I have not accepted this amendment for the reasons given previously. However, the potential form of occupation of the dwelling could be widened by omitting an occupancy condition, notwithstanding the description of the development. However, even if I were to omit an occupancy condition, the proposal would still conflict with the development plan policies regarding uses appropriate to the countryside.
 18. In respect of the residential use of the proposal, both for occupancy by a rural worker or as an unrestricted occupancy, the appellants emphasise the locational sustainability of the site. They submit that journeys by car to

facilities in Braintree would relatively short. However, this could be said of many sites close to this sustainable settlement.

19. Reference is also made to the number of trips to and from the site regarding the care of animals, and that the proposal would significantly reduce these trips. However, these circumstances could also apply to other leisure uses in the countryside, including those involved with the keeping of animals, and I am mindful that residents would still need to travel by car to access employment and services. This significantly reduces the weight I can give to the reduction in the number of vehicle trips.
20. If I was to accept the appellants' arguments in relation to the locational sustainability of the site, this would establish a principle that would undermine the Council's spatial strategy where existing settlements will be the principal focus for additional growth. Not only would this conflict with the policies of the Local Plan, it would also conflict with the Framework in respect of avoiding isolated dwellings in the countryside.
21. The appellants refer to Policy SP3 of the Local Plan, which states that development will be accommodated within or adjoining settlements. However, the appeal site is distinctly separate from Braintree and Stisted, and cannot be considered as adjoining these settlements. Policy SP3 does not therefore weigh in favour of the proposal.
22. Drawing the above together, the proposal would conflict with Policies SP1, SP6, SP7, LPP1, LPP38, LPP47 and LPP52 of the Local Plan in respect of the sustainable location of development and development appropriate to the countryside. The proposal would also be contrary to the Framework in respect of rural housing.

Living Conditions

23. There would be no direct access from the dwelling to the private amenity space located to one side of the proposed building. The only rooms which would overlook the amenity area would be the bedrooms and bathroom, and even then the degree of outlook would be limited due to the design of windows. This would lead to an awkward and inconvenient relationship with the amenity area, and a sense of disconnection that would significantly limit its function for residents of the dwelling. Access to the wider area of the site and the surrounding countryside would not be sufficient to compensate for the poor arrangement of the private amenity area.
24. The main outlook for the seating and dining area would also be directly onto the parking and driveway. This would lead to an outlook that would be dominated by the parking of vehicles, and which would not be of a suitable quality particularly due to the single aspect of the affected room.
25. The Council has also raised concerns in respect of light levels in the dwelling. However, despite the arrangement and siting of the dwelling and the single aspect of the main living area, the proposal would include a number of rooflights which would increase the amount of daylight and sunlight inside the dwelling. On that basis, I consider that residents of the proposal would receive an appropriate amount of natural light, and the Council has provided no substantive evidence to demonstrate otherwise.

26. Notwithstanding my conclusion in respect of light, I conclude that the proposal would lead to significant harm to the living conditions of future residents in respect of access to the private amenity area and inadequate outlook. The proposal would therefore be contrary to Policies SP7, LPP47 and LPP52 of the Local Plan in respect of the amenity and needs of future occupants. The proposal would also be contrary to the Framework which seeks to provide a high standard of amenity for users of development.

Character and Appearance

27. In respect of character and appearance, the Council has raised no objections to the siting of the proposal, its size or use of materials. However, it has raised concerns regarding the detailed design of the building including the use of false gable walls, fenestration and the location of doors.
28. The proposed building would be of an understated appearance located on a part of the site that is well-screened in views from the surrounding area. There is no defined character of buildings in this area of countryside, even within the cluster of dwellings and other buildings on the opposite side of Kings Lane.
29. Although the proposed building is of no particular architectural merit, the design of the gables and placement of windows would not be particularly obtrusive or incongruous. The lack of an obvious entrance to the dwelling is also a minor matter of detail. Given the siting and context of the appeal site, the concerns raised by the Council on matters of design are not of such weight as to justify the refusal of planning permission.
30. I therefore conclude that the proposed dwelling would be acceptable in respect of character and appearance. The proposal would therefore not conflict with the design requirements of Policies SP7, LPP47 and LPP52 of the Local Plan. The proposal would also not be contrary to the Framework with regards to achieving well-designed places.

Other Considerations

31. The proposal would add to the mix and supply of housing in the area, and may represent a self-build dwelling. The Council accepts that it cannot demonstrate a 5-year supply of deliverable housing sites, and it was specified at the Hearing that the land supply stands at 4.86 years. However, even given the Council's housing land supply position the benefits arising from a single dwelling would be limited.
32. I am mindful of the self-build nature of the proposal and the Appeal Decision on the site of Burnt Gardens³. However, little evidence has been provided to me in respect of the need for and supply of self-build dwellings in this area. Therefore, notwithstanding the support for self-build housing in local and national planning policy and the conclusions of the Burnt Gardens appeal, based on the evidence before me I give the contribution of the proposed single dwelling to self-build housing only limited weight.
33. The proposal would increase the level of security of the site as well as the degree of care and supervision of animals. But no substantive evidence has been provided in respect of whether crime or other anti-social behaviour at the

³ APP/Z1510/W/23/3316412

site is of an unacceptable degree, or whether this can be addressed by means other than a dwelling on the site.

Planning Balance and Conclusion

34. Notwithstanding my conclusion in respect of character and appearance, the proposal would be unsustainable development in the countryside and would be harmful to the living conditions of future residents. The proposal would conflict with the development plan when read as a whole in respect of the sustainable location of development and amenity considerations.
35. The Council accepts that it cannot demonstrate a 5-year supply of deliverable housing sites. Paragraph 11(d) of the Framework is therefore triggered which sets out that planning permission should be granted unless 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.
36. I am mindful of the benefits arising from the proposal, including the contribution to the supply and mix of housing, a potential reduction in vehicle trips and for the existing and potential keeping of animals on the site. However, I have given these benefits limited weight, and they do not outweigh the significant weight I give to the harm arising from the unsustainable location of the development in the countryside and to the living conditions of future residents. Were I to allow this appeal, the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, and would be contrary to the policies of the Framework taken as a whole.
37. The proposal would therefore not represent sustainable development and the appeal should be dismissed.

David Cross

INSPECTOR

Appearances

FOR THE APPELLANTS:

Mrs Hasler

Mr Hasler

Mr Ian Coward - Collins & Coward

FOR THE COUNCIL:

Chris Tivey

INTERESTED PARTIES:

Alan Routledge - Vice-Chairman, Stisted Parish Council

Documents Submitted at the Hearing

Burnt Gardens, Back Lane Location Plan

Representation on Behalf of Stisted Parish Council