



Appeal Decision

Site visit made on 9 November 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2024

Appeal Ref: APP/Z1510/W/22/3312853

Stonecroft, 2 Leywood Close, Braintree CM7 3NP

- 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 J Sample (Leywood Properties Limited) against the decision of Braintree District Council.
 - The application Ref 22/00453/FUL, dated 28 January 2022, was refused by notice dated 19 October 2022.
 - The development proposed is demolition of care home buildings and erection of 3 x 4 bed detached and 2 x 2 bed semi-detached dwellinghouses (total 5 units), together with related infrastructure and modified access.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of care home buildings and erection of 3 x 4 bed detached and 2 x 2 bed semi-detached dwellinghouses (total 5 units), together with related infrastructure and modified access at Stonecroft, 2 Leywood Close, Braintree CM7 3NP in accordance with the terms of the application, Ref 22/00453/FUL, dated 28 January 2022, subject to the conditions set out in the attached Schedule of Conditions.

Application for costs

2. An application for costs was made by Mr J Sample (Leywood Properties Limited) against Braintree District Council. This is the subject of a separate Decision.

Preliminary matters

3. A revised description of the proposed development was agreed by the appellant and the Council. Therefore, in the banner heading and my decision above, I have used the revised description which I consider accurately reflects the development proposed.
4. Following the Council's decision, a unilateral undertaking (UU) has been submitted. The purpose of the UU is to secure a financial contribution towards mitigation measures in relation to the potential for the development to result in recreational activity on nearby designated ecological sites. I comment on these matters later in my decision.
5. Since it made the decision on the planning application, the Council has stated that a provisional Tree Preservation Order (TPO) placed upon a tree identified as a Silver Birch on the appeal site boundary has not been confirmed and, therefore, the tree is no longer protected by virtue of a TPO.

6. In December 2023, a revised version of the National Planning Policy Framework (the Framework) was published. The Council and the appellant have been given opportunity to comment on the revised Framework. I have had regard to the revised Framework in my decision.

Main Issues

7. The main issues are:

- the effects of the proposed development upon the character and appearance of the area;
- whether appropriate living conditions would be provided for the future occupiers of the proposed development with particular regard to outlook, external space and the provision made for waste and recycling;
- the effects of the proposed development upon the living conditions of the occupiers of Nos 6, 8 and 10 Leywood Close (Nos 6, 8 and 10); and
- the effects of any recreational activities which would result from the proposed development upon the Blackwater Estuary Special Protection Area and RAMSAR site and the Essex Estuaries Special Area of Conservation.

Reasons

Character and appearance

8. Leywood Close is a residential road within a predominately residential area. Properties line Leywood Close along a quite straight route from its junction with Cressing Road but there are also spurs off this main route where properties are arranged around cul-de-sacs. The property types and styles in the area are varied. There are some large houses set within particularly spacious plots such as those adjacent to the appeal site on Cressing Road.
9. Other houses which line Leywood Close and which are within the cul-de-sacs have smaller plots, often with very little garden or landscaped space to their fronts, whilst a number of these houses are terraced. There are small parking courts situated closely beside houses. These areas have a relatively dense built form. The appeal site itself contains a vacant building last used as a care home together with an associated outbuilding and areas of hard and soft landscaping.
10. Reflective of existing neighbouring development patterns, the proposal would create a further spur of cul-de-sac development off Leywood Close. The plot 1 and 2 houses would, like most of the properties that would be beside and opposite them, front onto the main Leywood Close road.
11. The proposed houses would be well spaced apart, more so than some of the existing houses nearby. Each of the five houses would have gardens of a size which would meet the guidance contained within the Essex Design Guide (Design Guide). Although the garden that would serve the plot 5 house would be substantially larger than the other four, given the variance in garden sizes in the area this would not be harmful. Unlike the neighbouring plot 3, and in order to cater for the proposed parking and the house entrance route, plot 4 would only be served by a rear garden. However, this would be one small facet of the overall development which would not unacceptably undermine the quality of the layout overall.

12. I acknowledge that other areas of landscaping and open space to be provided within the proposed development would be quite small, whilst some tree and hedgerow losses would result. Even so, these smaller pockets of open space and landscaping would not be at odds with much of the character of nearby development. Furthermore, in conjunction with the gardens and the trees in and around the appeal site which would be retained (including tree 11, a mature Silver Birch) there would be enough planting and greenery to successfully soften the development.
13. The Arboricultural Impact Assessment identifies a broad range of landscape features within and on the edges of the appeal site including trees, tree groups, hedges and shrubs. I have no reason to conclude that its analysis of the landscaping present, the effects of the development upon it or the measures necessary to protect the features to be retained are inaccurate or insufficient. Neighbouring occupiers are concerned that the fencing on site is not wholly reflective of ownership boundaries and that, in turn, some landscaping features are inaccurately identified within the bounds of the appeal site. However, such matters are principally private matters to be separately resolved between the affected parties.
14. Plot boundary fencing would be visible in views from the main Leywood Close road and would feature quite prominently upon entrance into the site. However, the proposed plot layout plans show that these boundaries would comprise of sections of 1.5m high brickwork wall with a trellis above. This would represent a high-quality boundary. In any event, final details of boundary treatments could be controlled through the imposition of a condition. In these entrance-point views, the parking spaces to the front of plot 5 would be a significant distance away whilst other development would be in the foreground. These parking spaces would not, therefore, be prominent. There is no dispute that the house types themselves would have an acceptable appearance. Having regard to the proposed landscape design, which would soften views into the site, I consider that the scheme would not look out of keeping as seen from Leywood Close.
15. The proposed layout would include some concentrations of parking spaces but those serving plots 1 and 2 would be separated away from the others and the landscaping proposed between plots 4 and 5 would visually soften them. Moreover, small parking courts are part and parcel of the character of the local area.
16. My overall assessment is that the proposed development would achieve a high standard of design and would be sympathetic to the pattern of development in the surroundings. No harmful effects upon the character and appearance of the area would result.
17. The proposed development would comply with Policies SP7, LPP47 and LPP52 of the Braintree District Local Plan (LP). These policies require good quality built environments which respond positively to local character and context and require a high standard of layout and design including well-considered landscaping and public and private realms. The proposed development would also comply with the policies of the Framework that seek to achieve good design.

The living conditions of future occupiers

18. Even though every house proposed would not be served by front and rear gardens, in each case the rear garden would serve as the main external space and would be spacious and logically shaped. The occupiers of the proposed dwellings would, therefore, be well served in this regard.
19. The rear gardens serving Plots 3, 4 and 5 would be accessed via large, glazed doors. This would provide for an open aspect and pleasant living spaces at the backs of these houses. Parking spaces would be positioned to their fronts, but large windows would maximise outlook from the adjacent rooms. Furthermore, in the surrounding area, concentrations of parking spaces are situated closely beside houses. The proposed design would, therefore, not be at odds with the local character.
20. The bin store collection point situated to the rear of plot 1's garden would only need to be accessed on bin collection days. The collection point is situated well away from the proposed houses and an enclosure would screen it from the plot 1 garden. It is situated beside the road and appears to be of an appropriate size and design. I have no reason to conclude that it would affect the passage of traffic. Finally, although the bin collection point would be more than 20m from the adopted highway, as referenced by the Council's waste services team, it would be within 25m. This would accord with the Design Guide. Consequently, the bin collection point would be convenient and represent acceptable design.
21. For these reasons, the living conditions which would be provided for the future occupiers of the proposed development with particular regard to outlook, external space and the provision made for waste and recycling would be acceptable. The proposed development would comply with Policies SP7, LPP47 and LPP52 of the LP which seek to ensure that built environments contribute towards quality of life, protect the amenity of existing and future residents, and ensure well-considered public and private realms with appropriate provision made for waste and parking. The proposed development would also comply with policies within the Framework which set out that development should be well designed and provide healthy places with high standards of amenity.

The living conditions of the occupiers of Nos 6, 8 and 10

22. The Council is concerned that the location of the access road to the rear of Nos 6, 8 and 10 would result in insecure and unsafe conditions for these dwellings. However, the front of the plot 5 house would have a direct line of sight along the access road. Elsewhere, other houses would have rear and side elevations with windows directed towards it. Therefore, the access route through the development would be well overlooked.
23. The back gardens of 6, 8 and 10 are separated from the appeal site by quite high and solid timber fencing, bolstered in areas by hedgerow and trees. I have no reason to think that these features would not endure in the long term. Moreover, some further planting is proposed within the appeal site between the fencing and the access road. Together, this degree of surveillance and the fencing and landscaping would help ensure that Nos 6, 8 and 10 would not have their existing levels of security and safety unduly affected by the proposal.

24. Furthermore, the same boundary treatment and landscaping would ensure that the proposed access road, turning head and parking spaces would not result in any unacceptable infringement upon the privacy of existing residents. With the buildings on site presently being vacant the proposal would, I accept, create some additional noise and exhaust emissions from vehicles. However, given that only five dwellings are proposed, with a total of ten parking spaces, the vehicular movements associated with the development would be relatively low, as would any pollution. Furthermore, a cul-de-sac of residential properties with their associated comings and goings would be commensurate with the use of neighbouring land.
25. The houses proposed on plots 3, 4 and 5 would be of two storeys. As they would be situated to the south-west of Nos 8 and 10, some overshadowing of the adjoining gardens would take place. Their presence would also represent a change in outlook for the existing occupiers given the large garden area which currently lies behind the former care home building. However, the pair of semi-detached houses at plots 3 and 4 would be well separated from the No 8 plot boundary, with the access road and areas of proposed garden and landscaping on intervening land. The plot 5 house would not be situated directly behind the rear elevation of No 10 but set more at an angle to it. Furthermore, on this side, the plan form of the plot 5 house would progressively step away from the common boundary. The existing boundary fencing and the landscaping features in the area will already be having some effects upon light and outlook. The separation which would remain between properties would also be similar to that which prevails in the area.
26. The bin collection point would be sited well away from existing properties. Therefore, any odours which may arise from it would not be problematic.
27. For the above reasons, no unacceptable effects upon the living conditions of the occupiers of 6, 8 and 10 Leywood Close would result from the proposed development. The proposal would be compliant with Policies SP7, LPP47 and LPP52 of the LP. These policies seek to create built environments which are safe and secure, contribute towards quality of life and protect the amenity of existing and future residents by creating well-designed neighbourhoods including streets and spaces that are overlooked and active. The proposed development would also comply with the advice of the Framework in regard to ensuring well-designed and healthy places.

Designated sites

28. The Essex coastline is home to internationally important numbers of breeding and non-breeding birds and their coastal habitats. The area contains European sites, including the Blackwater Estuary Special Protection Area (SPA) and the Essex Estuaries Special Area of Conservation (SAC) which are afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Furthermore, the Blackwater Estuary RAMSAR, although not a European site, is to be afforded the same protection.
29. The qualifying features of these protected sites include the habitats within them and species supported by them. The qualifying habitats include the particular Sandbank, Estuary, Mudflat, Sandflat, colonising Glasswort, Cord-grass swards, Atlantic salt meadow and Mediterranean saltmarsh scrub found here. Qualifying species supported by the sites include the Common pochard, Ringed plover and Little tern breeding bird populations. Further qualifying

- species are the Dark-bellied brent goose, Hen harrier, Grey plover, Dunlin, Black-tailed godwit, non-breeding bird populations and waterbird assemblage.
30. The SPA and SAC have their own conservation objectives. In summary, these are to ensure that, subject to natural change, the integrity of the sites are maintained or restored as appropriate, that the sites contribute to achieving the favourable conservation status of their qualifying features and contribute to achieving the aims of the Wild Birds Directive. This is to be achieved through the maintenance and restoration of the structure, function, supporting processes, extent, population and distribution of their various qualifying habitats and species.
31. Recreational activities undertaken by residents and visitors to the area can harm birds, for instance, by increasing their stress and causing displacement and avoidance of habitat suitable to them. The particular habitats which help to support these species could also be adversely affected by these activities. The proposed development would deliver five additional dwellings and would contribute to the recreational activities and consequential effects. This contribution would be quite limited by itself, however, in combination with other development in the area, it is likely to have significant effects on the designated sites by contributing to the overall level of recreational activity which takes place.
32. These activities would impede the achievement of favourable conservation status for the qualifying features of the SPA and SAC and adversely affect the integrity of the sites. Consequently, the Habitats Regulations require that an Appropriate Assessment (AA) is carried out.
33. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) identifies a programme of mitigation measures the purpose of which is to prevent such adverse effects. Although these measures are geared toward the protection of the integrity of the SPA, SAC and other European sites, they would also serve to protect the RAMSAR site, given that some of their particular interest features are shared. Amongst other actions, the measures include the employment of a delivery officer and rangers to help implement the mitigation, the dissemination of information to educate visitors to the coast, and habitat creation, together with infrastructure works such as car park, cycle path and waymarking rationalisation. Natural England is content that, provided a financial contribution towards these measures is secured by way of a Section 106 legal agreement that would be paid on commencement of the proposed development, no adverse effects upon the integrity of the SPA, RAMSAR and SAC would result.
34. To this end a unilateral undertaking (UU) has been submitted. The up-to-date contribution required by the RAMS is £156.76 per dwelling and the UU provides for this. This would be paid to the Council prior to the commencement of the proposed development, which aligns with the advice provided by Natural England.
35. The UU would contribute towards the provision of mitigation without which an adverse effect on the integrity of the nearby designated sites would likely occur. Therefore, the financial contribution is necessary to make the development proposed acceptable and is directly related to the appeal scheme. In addition, the financial contribution is derived from the costs of delivering these mitigation measures and is thereby fairly and reasonably related to the

development proposed in scale and kind. The UU therefore meets the three tests for planning obligations set out at paragraph 57 of the Framework and Regulation 122 of the CIL Regulations. I therefore give it significant weight in the determination of this appeal.

36. For the above reasons, I am satisfied that, with the proposed mitigation secured through the UU, the effects of any recreational activities which would result from the proposed development would not have an adverse effect upon the integrity of the European sites nor the RAMSAR site.
37. The development proposed would therefore comply with Policy SP2 of the LP which sets out that financial contributions will be secured in order to mitigate the effects of the development on designated coastal sites.

Other Matters

38. The parking spaces serving plots 1 and 2 would be at the foot of their gardens, however, access to them would be available through the gardens or alternatively by walking along the development access road. The parking spaces would be overlooked by several properties. Therefore, the design would be neither insecure nor inconvenient for the future occupiers. Moreover, similar arrangements subsist elsewhere in the neighbouring cul-de-sacs and thus the development would be reflective of the local area.
39. Since the Council refused planning permission for the development the subject of the appeal, an alternative development proposal at the site for four houses has been approved¹. The Council and appellant have made submissions to me in this regard. However, I have formed my own view on the appeal proposal and I have found that the scheme is acceptable when assessed on its merits and taking account of current planning circumstances. Therefore, the planning permission for four houses is of very limited weight in my decision.
40. I am mindful that the Local Highway Authority has raised no objections to the proposed development. Even accounting for the cumulative effects which would arise together with other development in the area, there is no evidence that any unacceptable effects upon the local highway network would result, nor that inconsiderate parking would become a significant problem. The parking provision for each dwelling would be adequate. Therefore, no harm would result from the absence of garages within the proposal. There is no reason to think that the proposed development could not be adequately accessed by emergency services. Notably, within its consultation response, Essex County Fire and Rescue have not identified any concerns.
41. The submitted plans include details of surface and foul water drainage. I have no reason to conclude that the site could not be adequately drained or that it would increase the risk of flooding.
42. The application was supported by a Preliminary Ecological Appraisal which includes mitigation and enhancement measures. The ecological impacts of the proposal could be appropriately managed by the imposition of a condition.

¹ Planning application reference 23/01415/FUL

Planning Balance

43. The proposed development would accord with the development plan. Paragraph 11(c) of the Framework advises that development proposals which accord with an up-to-date development should be approved without delay.
44. That said, the Council cannot currently demonstrate a 5 year supply of deliverable housing, albeit with a supply of 4.86 years there is not a significant shortfall. For this reason, the Council applied paragraph 11(d) of the Framework and in such circumstances so shall I.
45. In my third main issue I have undertaken an AA and I have concluded that no adverse effects upon the integrity of European sites nor the RAMSAR would result. The application of the policies within the Framework that protect areas or assets of particular importance provide no clear reason to dismiss the appeal.
46. In providing 5 new houses, the proposed development would make a modest, albeit valuable, contribution to housing supply and provide a choice of new homes. This is at a time when the Council cannot demonstrate 5 years' worth of supply. In so doing, the proposal would redevelop a small site and make efficient use of land. Some economic benefits would be derived from both the construction and operational phases of the development. A final scheme of ecological mitigation and enhancement measures would be likely to secure a biodiversity net gain. These are all benefits of the proposed development.
47. I have found that the proposed development would be one of high quality overall and compliant with LP policies. It follows that there would be no adverse impacts that would arise from the grant of planning permission which would significantly and demonstrably outweigh the benefits.
48. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, I have found that the proposed development would be compliant with the development plan taken as a whole and that there are no material considerations which indicate that a decision other than one in accordance with the development plan should be made.

Conditions

49. I have considered the conditions suggested by the Council and the comments made on them by the appellant. For clarity, precision, to avoid duplication and, to ensure compliance with the Planning Practice Guidance, I have also undertaken some editing and rationalisation of the conditions suggested by the Council.
50. I have imposed the standard condition in respect of time limitation and a plans condition in the interests of certainty. A condition requiring approval of external materials is required in the interests of the character and appearance of the area. Conditions requiring the implementation of a more precise landscaping scheme, including the hard landscaped areas and means of enclosures, which build upon the general proposals shown on the submitted plans and which control the works to and the protection of trees, are also required for the same reason. I am mindful that the plans do not precisely show all the ecological mitigation and enhancement measures, such as the siting of the bat bricks and

bird boxes. Therefore, a condition is necessary in the interests of protecting wildlife and ecology.

51. I have imposed a condition requiring a construction and demolition method statement. Given the site is located within a residential area with residential properties adjoining it on several sides, this is necessary so as to ensure that the effects of construction and demolition on the living conditions of neighbouring occupiers would be acceptable. I have imposed a further condition in order to minimise the pollution and health risks which could arise from unexpected site contamination.
52. A condition requiring details of finished floor levels is necessary in the interests of the character and appearance of the area and the living conditions of neighbouring residents.
53. Conditions 3, 4 and 5 are each pre-commencement. This is necessary so as to avoid harm to the living conditions of neighbouring occupiers, to trees and to wildlife from the outset of development activities.
54. I am mindful that Part S of the Building Regulations now governs the installation of electric vehicle charging points in new housing developments and so I have not imposed the Council's suggested condition on this matter. With regard to restricting the use of the development and limiting permitted development rights, there is no clear justification to do so and the suggested condition would not pass the test of necessity. Finally, the Council suggests a condition requiring residential travel information packs. In my view this condition is not necessary because the site is in an accessible location.

Conclusion

55. For the above reasons, I conclude that the appeal should be allowed subject to the conditions in the attached schedule.

H Jones

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

TIN_006-LP Revision C
TIN_006-100 Revision D
TIN_006-101 Revision B
TIN_006-102
TIN_006-103
TIN_006-104 Revision B
TIN_006-105 Revision A
TIN_006-106 Revision B
TIN_006-107
TIN_006-108 Revision E
TIN_006-109 Revision E
TIN_006-110 Revision D
TIN_006-111 Revision A
TIN_006-112 Revision D
TIN_006-113 Revision D
TIN_006-114

3. No development, including demolition, shall take place until a Construction and Demolition Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide details of:
 - a) the parking of vehicles for site operatives and visitors;
 - b) the loading and unloading of plant and materials;
 - c) the storage of plant and materials used in demolition and construction;
 - d) site cabins;
 - e) vehicle washing facilities;
 - f) measures to control the emission of dust and dirt during demolition and construction;
 - g) measures to control the emission of noise and vibration during demolition and construction;
 - h) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - i) the hours during which deliveries, demolition and construction works may take place including the operation of any plant and machinery.

The approved Construction and Demolition Method Statement shall be adhered to throughout the demolition and construction phase of the development.

4. Notwithstanding the details shown on the approved plans, no development, including demolition, shall take place until a scheme of ecological mitigation and enhancement measures, inclusive of a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include details of the measures necessary to

comply with the recommendations set out at paragraph 5.2 and Annex 4 of the Preliminary Ecological Appraisal Incorporating Bat Survey Inspection MH1365. Development shall be carried out in accordance with the approved details.

5. All development works and works to trees and hedgerows shall accord with the details within the submitted Arboricultural Impact Assessment Ref 784 and its appendices (the AIA). No demolition, site clearance, preparatory work or other development shall take place until all trees scheduled for retention, as detailed within the AIA, have been protected in accordance with the details contained within the AIA. The protection measures shall be retained until the completion of the development works.
6. No development other than demolition shall take place until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - a) details of proposed planting including the species, plant supply sizes, planting locations and plant numbers/densities;
 - b) details of proposed hard surfacing materials including access routes and parking spaces;
 - c) details of means of enclosure, boundary treatments and any retaining structures including details of materials; and
 - d) a timetable/programme for implementation of the scheme of landscaping which details the trigger points for when the planting, seeding and turfing will take place and be completed and when the hard landscaping works, enclosures, boundaries and retaining structures will be provided.

Development shall be carried out in accordance with the approved details.

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.

7. No development other than demolition shall take place until full details of the finished levels, in relation to the existing ground levels, of the buildings and hard surfaced and garden areas have been submitted to and approved in writing by the local planning authority.

Development shall be carried out in accordance with the approved levels.

8. The construction of any buildings shall not commence until samples of the materials to be used in the construction of the external surfaces of those buildings have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved samples.
9. Any contamination that is found during the undertaking of the development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, remediation and verification schemes, inclusive of timetables for their

implementation, shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out in accordance with the approved details and the timetables therein.