



Appeal Decision

Site visit made on 13 March 2024

by **David Smith BA(Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 April 2024

Appeal Ref: APP/Z1510/W/23/3325050

Land to the rear of 231 Witham Road, Black Notley, CM77 8NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Douglas Chapman against Braintree District Council.
 - The application Ref is 23/00738/OUT.
 - The development proposed is outline planning application with all matters reserved (apart from access to the site) for up to 13 residential units (Use Class C3), associated car parking, landscaping and ancillary works and infrastructure. Access will be directly off Witham Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with only the matter of access to be decided at this stage. Appearance, layout, scale and landscaping are therefore reserved for future determination. However, an indicative site plan and an illustration of possible house types have been provided and these show one way that the site could be developed.
3. During the course of the appeal, a revised site location plan was submitted to take account of land ownership issues. No interests would be prejudiced in deciding it on the basis of this small adjustment to the site boundary.

Main Issues

4. These are:
 - Whether the proposed development would be in a suitable location for housing having regard to relevant development plan policies;
 - The effect on the character and appearance of the surrounding area;
 - The effect on the living conditions of the occupiers of properties in Witham Road and Meadow Way with reference to noise and general disturbance, outlook and privacy.

Reasons

Location

5. The appeal site comprises about 0.86 ha of land to the rear of Witham Road and Meadow Way. It is largely grassed but there is some hardstanding as well

- as outbuildings and outside storage of building materials. In order to gain access from Witham Road part of the house at No 231 would be demolished.
6. The Braintree District Local Plan is in two sections. The first part, which was adopted in 2021, is the North Essex authorities shared strategy and the second is from 2022 and contains policies specific to Braintree. For convenience the policies will all be referred to as Local Plan policies.
 7. Policy SP3 sets out the spatial strategy for north Essex and indicates that existing settlements will be the principal focus for additional growth. Development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role. The appeal site is immediately outside the designated settlement boundary of Black Notley village. Policy LPP1 confirms that development in such locations will be confined to uses appropriate to the countryside. The proposed 13 houses do not fall into this category and therefore they would conflict with that policy.
 8. The inter-play of Policies SP3 and LPP1 was considered in the appeal decision at Tye Green (Ref: APP/Z1510/W/22/3307493). However, in common with those Inspector's findings, the broad-brush approach of the strategic policy does not alter non-compliance with the restrictive approach towards development outside settlements in Braintree. As such, to allow the appeal would undermine the planned approach to the distribution of development.
 9. Black Notley is a third tier settlement at the bottom of the hierarchy. These are the smallest villages in the District and generally lack most of the facilities required to meet day to day needs and often have very poor public transport links. However, there are some local services in Black Notley and a bus stop close to the site. Based on an appeal decision at Brain Valley Avenue (Ref: APP/Z1510/W/21/3281232), the Council considers that the site is not isolated in terms of functional connectivity. Moreover, that there is opportunity for walking, cycling and transport to nearby facilities, including those in Braintree town. So, whilst the location of the proposal does not sit well with the settlement hierarchy, there is no specific objection in relation to accessibility of services and facilities by sustainable transport modes.
 10. Nevertheless, due to the conflict with Policy LPP1, the proposed development would not be in a suitable location for housing.

Character and appearance

11. The appeal site is within the Brain River Valley character area. The main elements of this landscape are the shallow valley and surrounding plateaus. Although the proposal would bring about a significant change to the site itself, it would be well contained within the wider landscape due to a combination of the topography, vegetation and buildings. Furthermore, as the site is adjoined by housing on two sides it would not significantly protrude into the countryside.
12. Views of the proposed houses from outside the site in Witham Road and from public rights of way and from the golf course would be limited. Moreover, from the east and south these would be seen against the backdrop of the existing buildings on the edge of Black Notley. There is a row of planting along the eastern and southern boundaries including elm, field maple and hawthorn. There appears to be no reason why this could not be retained and

- supplemented to soften the outlines of the new houses. Overall, the landscape and visual effects of the development on the wider area would be insignificant.
13. That said, those surrounding the site would experience a dramatic change from agricultural pasture to built development. The intrinsic character of the land would be urbanised and there would be encroachment into an undeveloped area. Whilst no policies have been cited that seek to protect the countryside per se there would nonetheless be negative consequences in this respect.
 14. Local Plan Policy LPP52 seeks a high standard of design and layout in all developments. In general terms, its final form is not settled as the proposal is in outline. Whilst the indicative plans accompanying the application provide a guide, there are numerous permutations as to the size and siting of the houses. Furthermore, the application is for "up to" 13 dwellings and the maximum density would be 15 dwellings per hectare which is not high. At the reserved matter stage, there would therefore be opportunity for the Council to secure good design and there is no reason to suppose that the place shaping principles in Policy SP7 could not be achieved.
 15. Based on the illustrative plan, a few of the garden depths would be less than 15m but the plots shown would be of reasonable proportions and the amount of hard surfacing could be controlled. There is no obvious reason why conditions regarding the provision of planting would not be effective or why a scheme could not be devised to ensure the retention of the existing screening and any further planting. There is therefore nothing to indicate that building 13 houses here would inevitably result in a poor and unsatisfactory scheme.
 16. Although the proposal would not be at odds with Policy LPP52 or have an adverse impact on the wider landscape, there would be a modest level of harm to the character and appearance of the surrounding area associated with the fundamental change in the site from pasture to housing.

Living conditions

17. In response to one of the purported reasons for refusal, the appellant carried out a noise impact assessment. This relates to the proposed access road which would run between 229 and 231 Witham Road. Using a conservative approach, this concludes that that there would be a negligible change to long term average noise levels and a minor change to short term noise levels. Noise may be heard but would not affect behaviour or attitudes and the slight effect on the acoustic character of the area would not bring about a perceived change to amenity. To mitigate the magnitude of change to the properties on either side of the access road, it is recommended that an acoustic fence be installed.
18. The Council accepts the findings of the assessment subject to the imposition of conditions. Therefore, there would be no adverse implications in terms of noise and disturbance for those living at Nos 229 and 231.
19. The outlook from the rear of the existing houses in Witham Road and Meadow Way would change from open land to buildings. However, the indicative layout indicates how 25m separation between properties could be achieved in line with the Essex Design Guide. Matters such as the relative position of buildings, window positions and internal layout could be tackled through reserved matters. Accordingly, there can be confidence that a satisfactory inter-relationship between new and existing houses could be achieved.

20. Therefore, there would be no harm to the living conditions of adjoining occupiers and no conflict with Local Plan Policy LPP52 which seeks to ensure that there is no unacceptable impact on the amenity of any nearby properties.

Other Considerations

21. The provisions of paragraph 76 of the Framework do not apply to applications made before the date of its publication according to footnote 79. Therefore, the expectations of national policy in this case are that a five-year housing land supply should be demonstrated.
22. In this respect, the Council's latest position statement for 2023-2028 claims that there is a supply of 5,070 dwellings which are projected to be completed during that period. This equates to a 5.8 year supply of deliverable sites against a total requirement of 4,367 homes. The appellant contests this and maintains that supply is 4,017 units or 4.6 years.
23. There is no disagreement with the contention that 99 units should be removed from the supply either because permissions or the deadline for reserved matters have expired, or for a site with only a resolution to grant and or a permission for communal accommodation. More significantly, the deliverability of nine sites with outline planning permission for major development is disputed. According to the Framework, for sites of this type to be considered as deliverable there needs to be clear evidence that housing completions will begin on site within five years (by 2028). The only information provided by the Council comprises the notes attached to its Housing Trajectory.
24. The Planning Practice Guidance on *Housing Supply and Delivery* gives examples of the type of evidence that might demonstrate deliverability. No tangible progress beyond the grant of outline permission has occurred at the sites at Small Acres, Hatfield Peverel; London Road, Kelvedon; Braintree Road, Cressing and Boars Tye Road, Silver End. Two of these sites are quite small but national policy makes no differentiation in this respect. Without any supporting evidence, it cannot be assumed that they will come forward quickly. Omitting these sites reduces supply by 285 dwellings.
25. A reserved matters application is anticipated for Phase 5 of the site at Witham (110 units) following discussions with the developer. There is a 'track record' of delivery here as Phases 3b and 4 are under construction and partly completed. The last reserved matters application for those phases was submitted in February 2021 suggesting that work could proceed 'on the ground' within the next 3 years. However, it is not evident that it would be realistic to suppose that all of the units will be delivered by 2028. Adopting a benevolent view because of past events, it can be taken that only half of them will be provided, meaning that another 55 units should be removed from the supply.
26. According to the Council the supply of housing sites exceeds the five-year requirement by 703 units. Based on the evidence provided and when judged against the tests in the Framework, this should be reduced by 439 based on the analysis undertaken so far.
27. At Broad Road, Braintree (140 units) a phasing strategy has been agreed and a reserved matters application submitted for a small section of spine road. In January 2023 a reserved matters application was made in respect of Gilda Terrace, Braintree (119 units) but it remains undetermined. The site at Maldon

Road, Hatfield Peverel (110 units) is understood to still be being marketed by the landowner and it is also claimed that the reserved matters application was submitted after the outline permission had expired. At Woodend Farm, Witham Central (190 units) reserved matters applications relating to a section of spine road and the central open space are undecided. A series of applications to discharge conditions have also been submitted including a phasing strategy.

28. At each of these sites, a little progress has therefore been made towards achieving the necessary approvals before work can start. However, several matters and details remain outstanding and have not been the subject of applications. Of those that have been submitted, some are unresolved after more than a year with no indication as to why this might be so. Indeed, at none of these sites are planning performance agreements in place to set out agreed timescales for dealing with reserved matters applications or the discharge of conditions. Furthermore, there is no direct evidence of developer intentions, start dates or of historic and proposed build out rates. Therefore, even if work does commence, it is unclear why it is anticipated that these sites will yield the number of completions set out in the trajectory.
29. What has been provided in respect of these major sites with outline planning permission falls short of "clear evidence" of deliverability. They account for 559 units of the Council's supply figure. Determining what will happen in the future is not an exact science but the information given does not indicate that there is a realistic prospect of all of the housing attributed to those sites being delivered within the relevant time span. Therefore, the Council not been able to demonstrate a supply of specific deliverable sites across the District sufficient to provide five years' worth of housing from a base date of 2023.
30. As a result, when judged strictly against national policy and for the purposes of this decision, all of the housing from those four sites should be excluded which reduces total supply to 4,072 units or 4.7 years.
31. The provision of 13 dwellings in an edge of village location would make a useful contribution towards addressing the shortfall. However, the quantum of permitted development significantly exceeds the five-year requirement. The supply position could change if clear evidence of delivery were forthcoming. Furthermore, for applications made after the publication of the revised Framework on 19 December 2023, the Council will not need to show a five-year housing land supply as the adopted plan is less than five years old.
32. Nevertheless, whilst the position may be different in other cases, this appeal has to be decided on the basis of the available evidence. Furthermore, there is no cap on the level of housing provision. That said, the benefit of allowing extra houses should be seen in the context of a modest deficiency in supply and a recently adopted development plan with the possibility that the position could change for the better in the near future. Therefore, providing additional housing is a positive factor but not a significant one.
33. Other modest benefits would arise from the funding of affordable housing in line with policy expectations, short-term economic benefits linked to employment during construction, potentially increasing expenditure on local services and the scope to achieve a net biodiversity gain.
34. The Council granted planning permission in 2022 for a new house next to No 231 directly adjacent to the development boundary of Black Notley. However,

the proposal is larger and would not be confined to an existing residential curtilage. It can therefore be distinguished. Therefore, the limited weight given to the conflict with development plan policy in reaching that decision does not have to be replicated in this case.

35. Reference is made to an appeal decision (Ref: APP/Q3115/W/22/3309622) at Chalgrove for 160 dwellings. However, aside from the larger scale of that scheme, harm was also found because of the landscape and visual impact and the loss of agricultural land. None of those objections exist here and so the outcome in that case is not directly comparable.

Other Matters

36. There is no evidence to suggest that a sustainable drainage system could not be incorporated in line with Local Plan Policy LPP76. This matter could therefore be dealt with by condition.
37. The parties have entered into a S106 agreement. This includes obligations relating to contributions in lieu of the on-site provision of affordable housing; healthcare and open space as well as provisions relating to the maintenance of amenity areas and arrangements for refuse collection. These are required to comply with development plan policy, including Policy LPP78, and are therefore necessary to make the proposal acceptable in planning terms. The tests in the Community and Infrastructure Levy Regulations are met and so the obligations can be taken into account. With these measures in place, there is nothing to indicate that local infrastructure would be unable to cope with more residents.
38. Black Notley Parish Council strongly object to the proposal and representations against it were also made at application stage by others. Some of the concerns raised have been covered as part of the main issues or could be dealt with by conditions on any planning permission.
39. In respect of the others, there are no technical safety objections from the highway authority and there is no evidence that the proposal would lead to an unacceptable impact or that the residual cumulative impacts on the road network would be severe. Some disruption during construction is likely but would be short-lived and is not a reason in itself to oppose new development. No security concerns have been raised by Essex Police.

Final Balance

40. Having regard to the development plan, the proposal would not be in a suitable location for housing. It would undermine the planned approach to the distribution of development. There are no policies that expressly favour the proposal and therefore it would not accord with the development plan as a whole. Because this is recently adopted and as the Framework states that the planning system should be genuinely plan-led, the departure from the Local Plan counts very significantly against allowing the appeal. There would also be a modest level of harm to the character and appearance of the area.
41. However, the evidence in this appeal indicates that there is not a five-year supply of deliverable housing sites in Braintree. Because of this, paragraph 11 d) of the Framework is relevant.
42. The Government's overall objective is to significantly boost the supply of homes. Although 13 houses would make a useful contribution in this respect

this is against a backdrop of a small shortfall, a large number of outstanding outline permissions and a recent development plan. Because of this the value of the additional provision is less than significant. The other benefits that would ensue are of modest weight.

43. When judged overall, this is a case where the policy provisions regarding the location of housing should prevail. The proposal would not be well placed when judged against the settlement hierarchy. This trumps the benefits associated with up to 13 new units in a District where housing land supply is only just less than Government expectations and where the recently adopted strategy could still bear fruit. Therefore, the adverse impacts of the proposal significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development, referred to in Local Plan Policy SP1, does not apply.
44. The planning obligation also includes a payment to mitigate the effects of recreational disturbance on the Blackwater Estuary Special Protection Area and the Essex Estuaries Special Area of Conservation. However, as the appeal is to be dismissed, there is no need to undertake an appropriate assessment or to have regard to the Conservation of Habitats and Species Regulations.

Conclusion

45. The proposed development would be contrary to the development plan and there are no other material considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the proposal is unacceptable and the appeal should be dismissed.

David Smith

INSPECTOR