



Appeal Decision

Hearing Held on 26 March 2024

Site visit made on 26 March 2024

by Y Wright BSc (Hons) DipTP MSc DMS MRTPI

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

Decision date: 05 July 2024

Appeal Ref: APP/Z1510/W/23/3335393

Land adjacent to Weavers Park, off Bocking End, Braintree, Essex CM7 9AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Weavers Park Limited against Braintree District Council.
 - The application Ref 23/01552/FUL, is dated 12 June 2023.
 - The development proposed is erection of 22 residential apartments with associated access, parking and amenity area.
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Decision

1. The appeal is dismissed and planning permission for the erection of 22 residential apartments with associated access, parking and amenity area is refused.

Application for costs

2. As part of the appeal process and prior to the Hearing an application for costs was made by Weavers Park Limited against Braintree District Council. This application is the subject of a separate Decision.

Procedural matters

3. The hearing sat for one day. I held an accompanied site visit on 26 March 2024 and carried out an unaccompanied visit to the surrounding area on 27 March 2024.
4. As the proposal is in a conservation area and relates to the setting of a listed building I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
5. An agreed statement of common ground (SoCG) was submitted which sets out the matters of agreement and disagreement between the two main parties.
6. The Council did not issue a formal decision in this case, being an appeal against non-determination, but confirmed in its statement of case (dated 16 February 2024) that it would have refused planning permission for six reasons, had it been empowered to do so.
7. In seeking to address the Council's fifth putative reason for refusal on demonstrating an adequate sustainable urban drainage system, the appellant has submitted further information. The Lead Local Flood Authority has

confirmed that a satisfactory scheme of site drainage could be provided, and I see no reason to disagree. The Council has withdrawn this putative reason for refusal.

8. Planning obligations have been set out in the form of a dated and signed Section 106 unilateral undertaking, which was received electronically on 25 March 2024, with a hard copy submitted to me during the hearing. I refer to this legal agreement within my decision.
9. At the hearing I asked for clarity over the address of the existing block of flats to the south of the appeal site, as it was raised by local residents as being incorrect within the evidence where it is predominantly referred to as 2-7 Coggeshall Road. I was informed at the hearing that the block of flats was 2-7 Park View located at 9A Coggeshall Road. To avoid any doubt, I will use this address within my decision.
10. Both main parties make reference to a previous planning application on the appeal site, for a larger residential scheme and make comparisons with this. However, this was refused consent in February 2023 and has no bearing on my decision in this case.

Main Issues

11. I consider the main issues are:

- The effect of the proposal on the character and appearance of the local area, particularly in regard to the special attention that should be paid to the desirability of preserving the setting of the nearby Grade II listed building, John Ray House, the extent to which it would preserve or enhance the character or appearance of the Braintree Town Centre Conservation Area and the effect on the setting of a non-designated heritage asset, Tabor House;
- Whether the proposal would provide acceptable living conditions for future occupants;
- The effect of the proposed development on the living conditions of neighbouring residents;
- Whether the proposal would provide adequate car parking; and
- The effect of the proposal on open space provision.

Reasons

Character and appearance

12. The appeal site is located within the centre of Braintree and is accessed off Bocking End. The site is irregular in shape and includes an unused car park, an area of existing open green space and the access road.
13. Weavers Park lies immediately adjacent to the site to the north and east providing a prominent open and spacious local character. John Ray House, a Grade II listed building, is located immediately to the north west of the site and Tabor House, a non-designated heritage asset, lies to the south west. The site is also located within the Braintree Town Centre Conservation Area (CA). Other development, including residential properties and a residential care home are

situated to the south and south east. There are a variety of building heights, forms and architectural styles within the surrounding area, including three storey structures in close proximity.

14. The National Planning Policy Framework 2023 (the Framework) seeks well-designed, beautiful and safe places and the conservation of heritage assets in a manner appropriate to their significance.

Designated heritage assets

15. The Grade II listed building, John Ray House, is currently used as a children's nursery but was the former gymnasium of the County High School, now known as Tabor House.
16. The heritage significance of John Ray House lies in the architectural quality of its design, elevational treatment and use of materials. The main entrance façade of the building faces directly on to the appeal site. The evidence shows that the appeal site historically used to form part of the County School's recreational area. These historical and previously functional connections between the appeal site and the listed building are clearly demonstrated within the evidence and the proximity of the site to the listed building and its openness provides strong intervisibility.
17. Paragraph 205 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation.
18. Whilst I acknowledge that the appeal site includes an unused car park, its existing openness and proximity, together with its historical and previous functional connection, contributes to the setting of the listed building, which in turn supports its significance. Notwithstanding the variety of building heights and designs within the area, the introduction of built form of the scale and mass proposed in this specific location, would significantly reduce the openness of the setting, appear unduly dominant and detract from the asset's significance.
19. I acknowledge that some of the proposed architectural details and the external materials palette would generally complement those of the existing listed building and where concerns have been raised by the Council on the latter this could be suitably conditioned. However, some larger details, such as the prominent crown roof design, with its multiple gable features, flat roofs and inset window bays, and the rather bland elevations would appear overly stark in contrast to the elegant lines and architectural interest of John Ray House. Whilst I acknowledge that simple building forms may be appropriate when close to heritage assets, in accordance with LP Policy LPP52, building design needs to reflect local distinctiveness to ensure there is harmony with the character and appearance of the area. The proposed development would not be entirely sympathetic to the significance of the listed building and its setting in this case.
20. Both parties agree that the proposal would result in less than substantial harm to the significance of John Ray House. Given the proposed reduction in openness of the appeal site, its change in character and appearance and the design of the development, as set out above, I too find there would be harm to the setting of the listed building and therefore its significance. The harm would

- be less than substantial but nevertheless be of considerable importance and weight.
21. The main contributions to the special interest of the CA are set out in the Braintree Town Centre Conservation Area Character Appraisal and Management Plan (2023) (CAMP). This includes 'its legibility as a mediaeval market town' and its growth in response to 'trends in industry and manufacture'. It states that 'Areas of parkland and open space provide sections of reprieve and seclusion which contribute positively to the character of the Conservation Area.'
 22. The CA is divided into six character areas, with the appeal site lying within area 6: The Parks. Within this area, the CAMP defines built form as being 'more generously spaced'. It also refers to important views across the parks stating that they offer 'a sense of space and contrast to the density of built form within other sections of the Conservation Area'.
 23. Notwithstanding the development's proposed landscaping and garden spaces, and its proximity to the more densely developed character area 2: Commercial Core, its mass, scale and density would be at odds with the 'more generously spaced' built form that defines this character area. The proposed development would be clearly visible from within and across the public park, reducing the sense of openness and impacting negatively on how the significance of the CA is experienced. This would harm the wider character and appearance of the CA.
 24. Accordingly, the proposal would neither preserve nor enhance the existing open and spacious character and appearance of 'The Parks' area of the CA. It would therefore fail to preserve the significance of the CA. This harm would be less than substantial but be of considerable importance and weight.
 25. In considering the heritage balance required by paragraph 208 of the Framework it is necessary for me to consider the public benefits of the scheme against the less than substantial harm I have identified to the significance of these two designated heritage assets.
 26. The proposal would be in an accessible location and would make use of an unused car park. This carries some considerable weight in favour of the proposal.
 27. The scheme would result in market housing which would be a public benefit. I also recognise the need for one and two bedroom dwellings within the district. Taking account of the modest number of units proposed and the Council's ability to demonstrate a five year housing land supply, I attach moderate weight to this benefit.
 28. The scheme would also provide a commuted sum for the provision of off-site affordable housing, notwithstanding that there is a disagreement between the main parties on the viability of the proposal and how much should be paid. I refer to this matter later in my decision. Whilst this would be an important contribution to meet an identified housing need, the sum proposed by the appellant would provide limited affordable housing. Were the scheme to provide the financial contribution requested by the Council, the amount of affordable housing to be delivered would increase to some modest extent, providing a moderate benefit.
 29. The proposal would result in biodiversity net gain which carries some modest weight in favour of the proposal. The economic benefits, through the provision

of temporary construction jobs and support for local businesses and facilities would weigh in favour of the proposal to a very modest extent.

30. The provision of private open space, landscaping and the retention of some existing trees would be necessary to make the scheme acceptable in planning terms, in order to provide for the future occupiers of the development and to mitigate for any harm. These requirements are therefore neutral, do not constitute public benefits and carry no weight.
31. The planning obligations set out in the planning agreement include a range of other contributions that would be provided were the appeal to be allowed. Except for those already highlighted above I have not found it necessary to consider in detail the other contributions as these are intended to mitigate the effects of the development and render it acceptable in planning terms. They therefore do not constitute public benefits.
32. Taking account of the weight I have attached to the public benefits identified, I find that when they are taken as a whole, they do not outweigh the considerable importance and weight given to the less than substantial harm to the significance of the designated heritage assets.

Non-designated heritage asset

33. As regards Tabor House, a non-designated heritage asset, its significance is connected to its architectural value and historic role as the County High School. The evidence demonstrates an historic and former functional connection with John Ray House and the appeal site for the reasons identified above. However, there is less intervisibility between the appeal site and Tabor House than there is for John Ray House, and there is a degree of physical separation and disconnect. I therefore consider that the proposed reduction in the openness of the appeal site would have a very limited impact on the appreciation of this particular heritage asset.
34. Paragraph 209 of the Framework advises that in relation to non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. In considering this balanced judgement and the limited effect of the proposal on the setting of Tabor House I find, on balance, the significance of the asset would be preserved in this instance. Nevertheless, this does not alter my above findings on the designated heritage assets.

Overall conclusion on this main issue

35. Given the above, I conclude that the proposal would have a materially adverse effect on the character and appearance of the local area. It would fail to preserve the setting of the Grade II listed building and the character or appearance of the CA. It would fail to satisfy the requirements of the Act and the Framework and conflict with Braintree District Local Plan 2013-2033 (2021) (LP) Policies LPP47 and LPP57 which both seek development that protects and enhances the historic environment including the setting of listed buildings, and LP Policy LPP53 which seeks the preservation and enhancement of the character and appearance of conservation areas and their settings.
36. On this basis it would also follow that the proposal would not represent a well-designed and beautiful development as required by the Framework. It would therefore also be contrary to LP Policy SP7 which seeks a high standard of

design. It would further conflict with LP Policy LPP52 which seeks, amongst other things, development that reflects or enhances local distinctiveness and local architectural character and is 'sensitive to the need to conserve and enhance local features of architectural, historic and landscape importance, particularly within Conservation Areas and in proximity to heritage assets'. I am mindful that paragraph 139 of the Framework specifically states that development that is not well designed should be refused.

Living conditions for future occupants

37. LP Policy LPP52 includes seeking residential development that provides 'a high standard of accommodation and amenity for all prospective occupants.'
38. The proposed internal layout of the building would result in some of the flats being single aspect. Unit 14 on the first floor and units 20 and 21 on the second floor would be single aspect but south facing. However, units 17 and 18 would be single aspect and north facing.
39. LP Policy LPP52 specifically states, amongst other things, that developments should avoid single aspect dwellings that are north facing. I recognise that the number of single aspect and north facing flats within the development would be small. Nevertheless, the provision of two such flats would unduly restrict sunlight for future occupiers of these units which would result in unacceptable harm.
40. Due to the proposed layout of the flats, many of the kitchen areas would not be directly lit by windows. Whilst these kitchen areas would be integrated into the proposed open plan living/dining space, they would be furthest from the windows, and I am therefore not satisfied that the amount of natural light reaching them would be sufficient to carry out everyday tasks. It would likely mean that future occupiers would be reliant on using electronic forms of lighting in these areas. I find that this would not be conducive to a high standard of accommodation for future occupiers.
41. I accept that none of the bathrooms would have natural light, but this is not entirely uncommon in new builds, and as these would be non-habitable rooms I consider that this would be acceptable in this case.
42. The Council has raised concerns that some of the proposed dwellings would not meet the required Nationally Described Space Standards (NDSS). Whilst one bedroom units 1, 2, 7 and 20 would be below the minimum requirements of the NDSS for two person occupancy, the plans and other evidence submitted by the appellant clearly denote these flats as being for one person occupancy. Accordingly, these floorspaces meet the required space standards for one person occupation.
43. As regards concerns that units 8 and 19 would not meet the minimum NDSS requirements for their respective two person and four person occupancies, the appellant's evidence provides floorspace measurements that appear to meet these standards. The appellant's architect confirmed at the hearing that the floorspace areas had been calculated using industry standard computer aided design software. As such, I see no reason to disagree with the appellant's measurements. I am therefore satisfied that these units would meet the required standards.

44. In terms of outside space, the development proposes to include private and communal garden spaces. Whilst small garden areas would be available to the ground floor flats, concerns have been raised that they would not be private and those along the northerly elevation would receive inadequate sunlight restricting their use.
45. LP Policy LPP35 requires, amongst other things, on-site amenity space to be provided in accordance with the adopted guidance. It was confirmed at the hearing that this refers to the Essex Design Guide (2005). This requires a minimum communal garden area of 25 sqm per two or more bedroomed flats. As only six of the proposed flats would be two bedroom the proposal would be required to provide a minimum of 150 sqm of communal garden area. Whilst similar provision for one bedroom flats is welcomed by the Essex Design Guide it is not identified as a specific requirement. Furthermore, with the appeal site being immediately adjacent to Weavers Park, future residents would have direct access to this significant area of open space.
46. The amount of communal garden area proposed by the development would significantly exceed the minimum requirement set out in the guidance. In addition, the proposal would include private garden areas, even though this does not appear to be a policy requirement.
47. The Essex Design Guide specifies that communal garden areas 'must be screened by above-eye-level walls or hedges.' The communal area is proposed to be secured by adequate hedging, railings and other boundary treatment. Based on the submitted plans and landscaping evidence, hedging is also proposed to surround the private garden areas. Due to the small scale of the latter, I do not consider the boundary treatment should necessarily be required to be at 'eye level'. Indeed, if this were the case, this could result in reduced light levels within the relevant flats. Furthermore, boundary treatment is a matter that could be suitably conditioned. I therefore find no harm on the provision of garden space.
48. Whilst I find no harm in relation to floorspace standards and garden space provision, these do not outweigh the harm I have identified on the other aspects. I therefore conclude overall that the proposed development would not provide satisfactory living conditions for future occupiers which would be contrary to LP Policies LLP52 and LLP35 and the Framework, which seeks high standards of amenity.

Living conditions for neighbouring residents

49. Existing residential development lies in very close proximity to the southern boundary of the appeal site, particularly a three storey block of flats (2-7 Park View) at 9A Coggeshall Road. Habitable rooms with windows (lounges and bedrooms) immediately face on to the site, some with balconies.
50. The proposed building would be stepped in this location. However, the single storey element would only be a short distance from the boundary and whilst the step back of the second storey would increase the gap between buildings it would only do so moderately.
51. I accept that views for residents on the ground floor of the Park View flats are restricted by the height and proximity of the existing boundary fence and accordingly there would be limited harm to outlook and little opportunity for

overlooking at this level. However, residents on the first and second floors directly overlook the appeal site and the wider surroundings of the park. Whilst I accept that the existing trees that lie within the appeal site along the boundary filter some views, the proposed development would still be visibly prominent by these neighbouring residents.

52. The resultant development due to its overall height, scale and proximity to the southern boundary, would materially change the outlook for these neighbouring residents to such an extent that it would appear to be overbearing. Whilst the development would be orientated to restrict views between habitable rooms and would include externally mounted vertical louvres on some of the windows to prevent overlooking, there would still be some oblique views and a perception of being overlooked. As such this would likely adversely affect how neighbouring residents use their existing habitable rooms and balconies.
53. Therefore, for the reasons given above, the proposed development would harm the living conditions of the occupiers of neighbouring residents, particularly the block of flats (2-7 Park View) at 9A Coggeshall Road. As such, it would conflict with LP Policy LPP52 which seeks, amongst other things, to ensure that there is no unacceptable impact on the amenity of any nearby residents including in relation to privacy and overbearing impact. It would also be contrary to LP Policy SP7 which includes seeking to protect the amenity of existing residents including in relation to overbearing and overlooking. It would also not accord with the Framework which requires a high standard of amenity.

Car parking provision

54. Policy LPP43 of the LP requires development to provide vehicular and cycle parking in accordance with the Essex Vehicle Parking Standards (PS). The Council has confirmed that this refers to the adopted 2009 version. Based on a preferred requirement of one car parking space for each one bedroom flat and two spaces for each two bedroom flat, plus six visitor spaces, the development would require the provision of 34 parking spaces. The appeal scheme proposes to deliver 28 parking spaces (22 spaces for residents and six spaces for visitors) which would not accord with these preferred standards.
55. The PS states 'Reductions of the vehicle standard may be considered if there is development within an urban area (including town centre locations) that has good links to sustainable transport ...'. Both parties agree that the proposal would be located in an accessible location within the town, close to shops, services, facilities and public transport. I concur with this view.
56. Nevertheless, parking can be an issue in urban areas, particularly in residential locations close to central facilities. I saw on my site visit that some adjacent and nearby roads have parking restrictions in place limiting on street parking. I am unsure where residents and visitors would be expected to park locally if insufficient spaces are provided within the site.
57. I note the appellant's statement that there are lower levels of car ownership within local flatted developments when compared to houses. Nevertheless, the PS clearly states that flats and houses are to be treated the same when it comes to parking standards. Furthermore, the evidence before me does not sufficiently demonstrate that the existing flatted schemes are directly comparable to this specific development, particularly as regards tenure. I

therefore have insufficient evidence to determine whether lower car ownership levels would occur in this case.

58. There is also dispute between the main parties over whether some of the parking spaces would measure less than the PS preferred bay width and length. However, this is not determinative in this matter. Even if I were to accept that the bay sizes were acceptable, the proposal would still not deliver the preferred number of parking spaces.
59. Overall, the provision of car spaces below the preferred standard has not been robustly justified. I therefore conclude that the proposed development would not provide adequate car parking which would be contrary to LP Policy LPP43 and the PS.

Open space

60. Part of the appeal site is identified as an area of informal recreation space on the adopted Proposals Map. On my site visit I saw that this part of the site is currently open to Weavers Park and spatially and visually appears as part of it. It is currently accessible to the public.
61. LP Policy LPP50 seeks, amongst other things, to protect open space. It includes a requirement that existing open space should not be built on unless an assessment has been carried out, or the proposal otherwise complies with the policy. It also seeks to avoid 'any erosion of recreational function'.
62. The Council's evidence sets out the reasons as to how they acquired this part of the site from Essex County Council in 2001, and why they were then legally required to transfer the land to the developer in 2021, due to an option agreement. There is no dispute that the land is now in private ownership. However, although the Council was legally required to transfer the land, this does not in itself confirm that the land is surplus to open space requirements.
63. The proposal would be for this area to remain as open space for the private use of the future residents of the development. Landscaping is proposed and the boundary would be secured with railings which would separate this area from the rest of the park. The appellant indicates that enclosing the site could be carried out at any time.
64. Whilst this part of the site would not be built on, it would become a private communal garden for the development. Its function as publicly accessible informal recreation space would therefore be lost.
65. The main parties differ in their conclusions as to whether the land is surplus to open space requirements. Whilst the evidence shows that within the Bocking Blackwater Ward supply exceeds the required standards for 'amenity green space' and 'park and recreation ground', it also demonstrates deficits in other types of open space, as well as deficits in provision in adjacent wards. The Council considers that such deficits could be reduced if areas that exceed standards are utilised for alternative open space uses. Furthermore, my attention has been drawn to an extract from the Braintree Open Space Strategy 2015, which states that the standards are 'for minimum guidance levels of provision' and that where areas exceed these minimum standards this 'does not mean there is a surplus...'.

66. On the basis of the evidence that is before me, and notwithstanding the land is now in private ownership, there is insufficient evidence for me to determine that this area of open space within the appeal site is surplus to requirements. Accordingly, I find that the proposed loss of public informal recreation space is not robustly justified. I therefore conclude that the development would result in an adverse impact on open space provision which would be contrary to LP Policy LPP50.
67. Whilst I recognise the appellant's frustrations that they were not made aware that open space was an issue for the Council until a late stage in the planning application process, this appears to relate to the previous application for a larger scheme which was refused consent in February 2023. As previously stated, this has no bearing on my decision.

Other matters

68. The appellant has submitted a signed and dated unilateral undertaking which contains a number of planning obligations. I have already considered those obligations which are public benefits under the Framework's paragraph 208 heritage balance above. I also give them due regard within my overall planning balance later in my decision.
69. Given that I am dismissing the appeal for the harm I have identified on other issues, it has not been necessary for me to consider the issue of affordable housing in any further detail or to consider other matters raised by local residents. Whilst affordable housing provision is a benefit to be weighed in the planning balance, the scale of provision proposed would, at best, be modest. Accordingly, whilst I take account of this benefit within my overall planning balance, it is not a determining factor in this case.

Planning balance

70. The duty in section 38(6) of The Planning and Compulsory Purchase Act 2004 enshrines in statute the primacy of the development plan. As an essential component of the 'plan-led' system, it is also reiterated in the Framework.
71. The Council has submitted a five year housing land supply position statement (and an associated housing site schedule) for the period 2023-2028. The Council considers it can now demonstrate a 5.8 year supply of deliverable sites. Whilst the appellant has queried this I have insufficient evidence to disagree with the Council's position. In any event, even if I were to consider that the Council was unable to demonstrate a five year housing land supply and therefore the presumption in favour of sustainable development under paragraph 11 d) of the Framework did apply, I would need to consider whether one of the circumstances listed in sub sections i or ii of the paragraph is met.
72. Section d) i states that the presumption should not be applied if specific policies in the Framework indicate development should be restricted. Footnote 7 includes policies relating to designated heritage assets. In the circumstances, having carried out a paragraph 208 heritage balance, I have concluded that the less than substantial harm identified would not be outweighed by the public benefits of the proposal. Accordingly, the presumption would not apply anyway in this case.
73. Furthermore, I have also concluded that the overall design of the development would fail to comply with the provisions of the Framework and that satisfactory

living conditions for future occupiers and neighbouring residents would not be provided. These factors all carry considerable weight against the proposal. I have found that parking provision would not be adequate and there would be an adverse impact on open space provision, both of which carry moderate weight against the proposal.

74. I have already identified and weighted the benefits of the scheme as part of my paragraph 208 heritage balance, and I do not repeat them again here.
75. Overall, the benefits identified would not be sufficient to outweigh the harm identified. Therefore, overall, the appeal scheme would not be compliant with the Framework when considered as a whole and would not be sustainable development.

Conclusion

76. For the reasons given above, I conclude that the appeal should be dismissed, and planning permission be refused.

Y. Wright

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon Kivotos	Architect, EK Architects
Glen Richardson	Urban Design Consultant
Steven Handforth	Director, Handforth Heritage
Kelvin Kift	Director, KCL (Kift Consulting Limited)
Lisa Skinner	Director, LSA Planning
Rob Mackay	Developer

FOR THE LOCAL PLANNING AUTHORITY:

Melanie Corbishley	Senior Planning Officer, Braintree District Council
Lee Smith-Evans	Design Heritage Consultant
David Sorapure	Built Heritage Consultant, Place Services
Andrew Golland	Director, Andrew Golland Associates

DOCUMENT SUBMITTED DURING THE HEARING:

- 1 Unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 signed and dated 25 March 2024
- 2 Letter from the Council dated 25 March 2024 regarding queries on the indexation of the financial contributions set out in the unilateral undertaking
- 3 Updated list of suggested planning conditions
- 4 Copy of the Braintree Town Centre Conservation Area Character Appraisal and Management Plan August 2023