



# Appeal Decision

Site visit made on 5 June 2024

**by K Savage BA(Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 August 2024**

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**Appeal Ref: APP/Z1510/W/23/3332000**

**Woodpecker Barn, Mill Lane, Cressing, Essex CM77 8NU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Mr Ian Nixon against the decision of Braintree District Council.
  - The application Ref is 22/01623/OUT.
  - The development proposed is the erection of two detached self-build or custom-build dwellings with garaging and access.
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## Decision

1. The appeal is allowed and outline planning permission is granted for erection of two detached self-build or custom-build dwellings with garaging and access, at Woodpecker Barn, Mill Lane, Cressing, Essex CM77 8NU in accordance with the terms of the application, Ref 22/01623/OUT, subject to the conditions in the attached schedule.

## Application for costs

2. An application for an award of costs has been made by Mr Ian Nixon against the decision of Braintree District Council. This is the subject of a separate decision.

## Preliminary Matters

3. The application was made in outline with all matters reserved except for access. The location of the proposed access was amended during the course of the application from the western corner to the eastern corner where it would share the access with the existing residential dwelling at Woodpecker Barn. I have assessed the proposal on the basis of these revised access plans, but otherwise I have treated the submitted site layout and elevation drawings as being solely for illustrative purposes.
4. On 30 July 2024 the Government published a consultation on "Proposed reforms to the National Planning Policy Framework and other changes to the planning system" and the "National Planning Policy Framework: draft text for consultation", alongside a Written Ministerial Statement entitled "Building the homes we need". The Framework proposals include measures to increase the delivery of housing, but they remain in draft form and attract limited weight at this stage. I am satisfied that the proposed changes do not fundamentally alter the policies most relevant to the appeal and do not prejudice any party. Therefore, whilst I have had regard to these as material considerations, it has not been necessary to seek further comments from the parties.

## **Main Issues**

5. The main issues are whether the proposal would represent a suitable location for development, having regard to i) relevant development plan policies, ii) the character and appearance of the area, and iii) the accessibility of the site to services and facilities.

## **Reasons**

6. The appeal site comprises part of an undeveloped, triangular field to the southern side of Mill Lane, a relatively narrow two-way road which circles around the southern and western sides of the village of Cressing Tye Green. Development within the village is largely contained by Mill Lane, with areas beyond it to the west and south mainly comprising open countryside, although there are a small number of detached properties to the outer side of the lane to either side of the appeal site. In addition, a significant housing development is under construction directly opposite, albeit the housing is set back from Mill Lane behind a balancing pond and area of soft landscaping.

### *Development Plan Policy*

7. Policy SP3 of the Braintree District Local Plan Section 1 (February 2021) (the LP1) sets out the spatial strategy for the area, stating that development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role both within each individual district and, where relevant, across the wider strategic area.
8. Policy LPP1 of the Braintree District Local Plan Section 2 (July 2022) (the LP2) refines this approach, setting out that development outside development boundaries will be confined to uses appropriate to the countryside whilst also protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils to protect the intrinsic character and beauty of the countryside.
9. The appellant points to a conflict between SP3 and LPP1 in terms of support for development adjoining settlements. SP3 is a strategic policy crafted in broad terms and not specific to housing, whilst LPP1 is specific to uses appropriate to the countryside. I am not persuaded the two policies are in conflict, but I note both parties' positions that the proposal for housing is not explicitly supported under Policy LPP1.
10. However, the Cressing Neighbourhood Plan (February 2020) (the CNP) also forms part of the development plan. Policy 7 sets out that proposals for new housing outside settlement boundaries should be an exception and comprise small-scale, self-build or custom-build schemes which are i) located adjacent to an existing settlement or hamlet; ii) contribute towards maintaining its future viability and sustainability; iii) are sympathetic to the character of the open countryside; and iv) have minimal visual and environmental impact.
11. Therefore, reading these policies together, there is support for development outside of, but adjoining, settlements, in specific circumstances where certain criteria are met. Custom build or self-build housing under Policy 7, Part C of the CNP is one such circumstance. The appellant has provided a completed unilateral undertaking that would secure delivery of such housing. At two dwellings, I regard the proposal as small scale for the purposes of this policy. The proposal would also be located adjacent to the existing settlement boundary, thus satisfying criterion i of Policy 7.

12. My attention is drawn by the appellant to an application determined by the Council nearby at Polecat Road<sup>1</sup> for a self-built unit. In this case, the Council considered criterion ii of Policy 7 to be met on the basis that new residents would contribute to the social and economic well-being of Cressing. Based on the similar locational characteristics between this site and that before me, I am unconvinced by the Council's conclusions that the current appeal scheme would not meet this criterion. Given the split of facilities between Cressing and Tye Green, residents would have to travel regularly between the two to avail of the full range of services, and I find there to be little material difference in the degree to which residents of the two developments are likely to support local services. Therefore, I find that the proposal would accord with criterion ii. I address criteria iii and iv as part of my considerations below.

### *Character and Appearance*

13. The site lies within the Farmland Plateau Landscape Character Area (LCA), described as comprising gently undulating farmland, with irregular, predominantly large arable fields marked by sinuous hedgerows. The area also contains small woods and copses which provide structure. I saw the appeal site, and particularly the land beyond it to the west, to display these features.
14. The LCA is further noted as having a scattered settlement pattern, frequent small villages and a network of narrow, winding lanes. The immediate surroundings of the appeal site are less demonstrative of these features given the proximity of the extensive urban extension taking shape across Mill Road, which has brought the built form decidedly closer to the appeal site, with Mill Lane now forming a physical and visual edge to the built form, rather than a single, rural lane in the countryside. However, the character of Mill Lane is nonetheless tranquil as identified in the LCA assessment.
15. The outer side of Mill Lane does display a distinctly rural character, but the well-established hedgerow visually contains the lane and limits expansive views over the countryside beyond, which are only had through field and dwelling entrances. The appeal site is well screened by the boundary hedgerow. The development would not occupy the whole of the existing field due to the presence of an exclusion zone beneath the overhead electricity lines crossing the site, but any new boundary treatments and domestic paraphernalia associated with the development would be screened by the hedgerows along the other field boundaries, providing enclosure from the countryside beyond.
16. In this context, the proposed dwellings would be glimpsed over the boundary hedgerow in a similar manner to existing dwellings along the outer side of the lane. They would not be visually dominant from Mill Lane and not disruptive of any expansive views over the countryside. The dwellings would be visible from a public right of way running down the eastern side of the site, but would be seen in context with the existing residential development at Woodpecker Barn and would not intrude harmfully into the broader vista as one travels out into the countryside.
17. Moreover, given the location of the site at the urban edge and its visually contained nature, the proposal would not harmfully intrude into the undulating farmland which characterises the LCA, nor would it erode the network of hedgerows, woods and copses which intersperse it. Rather, its small scale and

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<sup>1</sup> Council Ref 22/02555/FUL, officer report dated 13 March 2024

position close to the lane would respect the scattered pattern and subtle visibility of development to the outer edge of Mill Lane.

18. The specific layout, scale, design and landscaping of the dwellings are reserved for later consideration. There is ample space for two dwellings and no reason why dwellings could not be designed to a high standard to reflect the rural character and integrate with the surroundings in a sympathetic manner. As such, I do not agree with the Council that the development would have an 'urbanising' effect. Furthermore, although the Council points to the site being located in an area having a 'medium-low' capacity for development, that does not mean no development at all. In this case, I find that the scale and form of the proposal would not exceed the landscape's capacity to absorb development, but can integrate without undue harm to the landscape or the prevailing character of the area.
19. The Council has not identified harm to the settings of the listed buildings located short distances to either side of the appeal site. The rural character of Mill Lane and the natural surroundings form an important part of the settings of the listed buildings, evoking the historic links to farming in the area and contributing to their heritage significance. As set out, the proposed dwellings would be capable of being designed in a manner sympathetic to the rural character of Mill Lane, and of integrating with the sporadic pattern of housing to its outer side. Given the limited visual impact I have identified, I am satisfied that the proposed dwellings would not harmfully undermine the historic relationships between the listed buildings and surrounding agricultural land. The proposal would therefore preserve the settings of the listed buildings.
20. For these reasons, I conclude that the proposal would preserve the character and appearance of the area, and so would accord with Policies LPP35 and LPP47 of the LP2, and Policies 2, 3, 7 and 8 of the CNP, which together require development to be of high quality design that recognises and reflects local distinctiveness; to maintain clear separation and avoid any potential coalescence between settlements; to be sympathetic to the character of the open countryside; to have minimal visual and environmental impact and to protect and enhance the special features and overall character of the LCA. The proposal would also accord with the similar expectations for high quality design and protection of the countryside set out in the Framework.

#### *Accessibility*

21. The appeal site is located directly adjacent to the settlement boundary on the opposite side of Mill Lane, and within sight of the extensive new development of some 225 new dwellings, which is following an adjacent earlier scheme of 118 dwellings. Consequently, the built-up area has extended significantly southwards and, as a result, the appeal site is a similar distance from the facilities in the village as the dwellings opposite, residents of which would face winding routes out of the estate to reach facilities on foot.
22. Mill Lane is a relatively narrow, rural lane subject to the national speed limit and without footpaths or street lighting until after the junction with Bulford Lane. However, Bulford Lane provides access to Cressing Station, and it is to be expected that this route is used by pedestrians to reach the station. Indeed, it is indicated that the pedestrian route to the station is to be improved. Mill Lane also did not appear heavily trafficked at the time of my visit, and from

the evidence before me, the ongoing development opposite will not access Mill Lane and so will not create significant additional traffic past the appeal site.

23. The road conditions on Mill Lane may nevertheless deter future occupants from regular walking, but the train station being less than 10 minutes' walk or a brief cycle provides a viable sustainable transport option. There are also bus services within a short walk along Mill Lane.
24. The degree of availability of sustainable modes of transport is reflective of the size and location of the settlement and would not eliminate the need for the private car. However, the Framework recognises that opportunities for sustainable modes of transport will vary between rural and urban areas, and it is to be expected that residents would require a vehicle in a smaller settlement such as Crossing Tye Green, given the likely need to travel beyond the village for work, shopping and education. In addition, given the proximity of Braintree, offering a wide range of services and facilities, many journeys by car would be short. Consequently, I find that the proposal would be accessible by means other than the private car and so would accord with the sustainability aims expressed through Policies SP1, SP3, LPP1 and LPP42.

#### *Overall Conclusions on Main Issue*

25. For the reasons set out, I find that the proposal for two self-build and/or custom build dwellings would accord with the locational criteria for such development within the CNP. Moreover, it would preserve the character and appearance of the area and would be sufficiently accessible to local services and facilities. Whilst there would be a degree of conflict with Policy LPP1, this is outweighed by the clear support the proposal finds under Policy 7 of the CNP, which in turn accords with the wider spatial strategy set out under Policy SP3. Consequently, when considering the spatial strategy as a whole, I find that the proposal would accord with the development plan and represent a suitable location for housing.

#### **Other Matters**

##### *Protected Sites*

26. The appeal site lies within the zone of influence for the Blackwater Estuary Special Protection Area and Ramsar site. The site is protected pursuant to the Conservation of Habitats and Species Regulations 2017 (the Regulations) and is recognised for its value as one of the largest estuarine complexes in East Anglia, its mudflats supporting internationally and nationally important numbers of overwintering waterfowl. Surrounding terrestrial habitats also support an outstanding assemblage of nationally scarce plants and a nationally important assemblage of rare invertebrates.
27. The site is identified as being vulnerable to harm through recreational disturbance, which would be exacerbated by an increase in the local population resulting from new residential development. Additional residents from the proposal could therefore cause an adverse effect on the integrity of the site. Therefore, alone and in combination with other development, the proposal constitutes a likely significant effect to the protected site.
28. As the competent authority in this case, I am required to carry out an appropriate assessment in relation to the effect of granting permission on the integrity of the protected sites. Mitigation has been developed to avoid such

adverse effects in the form of the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS), which is funded through developer contributions. In this case, the appropriate contribution has been secured through a direct payment to the Council and I have been provided with evidence confirming that the required financial contribution was made while the planning application was before the Council.

29. Although the payment has not been made in the form of a legal agreement, the evidence before me indicates that the RAMS is a well-established mitigation strategy, endorsed by Natural England and adopted by several local authorities working in partnership and with legal mechanisms in place. Consequently, I am satisfied that appropriate arrangements exist to ensure that the funds paid to the Council are directed towards the implementation of the mitigation set out in the RAMS. I have no clear reason to doubt that the Council, as a responsible public body, would not direct the money in the way it is intended.
30. In carrying out the appropriate assessment, therefore, I find that the adverse effects of the proposal on the integrity of the protected sites would be avoided. Consequently, the proposal would not adversely affect the integrity of the protected sites, either alone or in combination with other development.

#### *Self-Build and Custom Build Housing*

31. The appellant's unilateral undertaking would ensure that the dwellings were constructed and occupied to meet the legal definitions of self-build and/or custom-build housing. Given the policy support under the CNP is predicated on delivering this form of housing, I consider the planning obligation in this case is necessary to make the development acceptable in planning terms, and it accords with the tests for planning obligations set out under Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the Framework. I have therefore taken the completed undertaking into consideration.

#### *Housing Land Supply*

32. At the time of the Council's decision, it accepted that it could not demonstrate a five year supply of deliverable housing sites, with supply stated to be 4.86 years. During the appeal, the Council provided an update to indicate that it could now demonstrate a five year supply, stating it to be 5.8 years. The appellant has not queried the Council's position, but equally the Council has provided no underlying data to substantiate its claim of a 5.8 years' supply. However, in light of my conclusions on the main issues of the appeal, whether or not the Council is able to demonstrate a sufficient housing supply is not a decisive consideration.

#### *Other Issues Raised*

33. The council did not refuse the application in respect of any other matter including the impact on neighbours' living conditions, highway safety, ecology and biodiversity. On the evidence before me, I have no reasons to reach different conclusions in these matters. The absence of harm means they are neutral considerations in the overall planning balance.

#### **Conditions**

34. As the application was made in outline, it is necessary to impose conditions relating to the timing and nature of reserved matters applications and the

subsequent commencement of development, as required by statute. A condition listing the approved plans is also necessary to provide certainty.

35. A condition specifying the details of landscaping to be included in the corresponding reserved matters application is necessary to ensure a satisfactory appearance. It is also necessary to require the submission and implementation of a biodiversity enhancement strategy in the interests of protecting species and promoting biodiversity.
36. Finally, it is necessary to require the approved access to be constructed prior to the occupation of the development, and for residents to be provided with Travel Information Packs, in the interests of highway safety and promoting sustainable transport.

### **Conclusion**

37. For the reasons set out above, I conclude that the proposal would represent a suitable location for housing and would accord with the development plan, taken as a whole. There are no material considerations which have been put to me that, in my view, would be of such weight as to justify a decision other than in accordance with the development plan. Therefore, I conclude that the appeal should be allowed.

*K Savage*

INSPECTOR

### **Schedule of Conditions**

- 1) Details of the appearance, landscaping, layout, and scale ("the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans, only in so far as the details relate to the approved matter of access: 20/31/01 Rev A (Existing Site and Location Plan); 20/31/02 Rev C (Proposed Site Plan); SPD210-200-202 Rev 05 (Proposed Access Design).
- 5) The landscaping scheme required by Condition 1 of this permission shall incorporate a detailed specification of hard and soft landscaping works for the residential plots. This shall include plant/tree types and sizes, plant numbers and distances, and written specifications including cultivation and other operations associated with plant and grass establishment, colour and type of material for all hard surface areas and method of laying, and an implementation programme.

All areas of hardstanding shall be constructed using porous materials laid on a permeable base, unless details have been submitted to and approved in writing by the local planning authority. All hard surface areas agreed as part of the scheme shall be carried out in accordance with the agreed implementation programme.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in accordance with the approved implementation programme. Any trees or plants which die, are removed, or become seriously damaged, or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season in accordance with the approved landscaping scheme.

- 6) Prior to any works above slab level a Biodiversity Enhancement Strategy for Protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:
  - a) Purpose and conservation objectives for the proposed enhancement measures;
  - b) detailed designs to achieve stated objectives;
  - c) locations, orientations and heights of proposed enhancement measures by appropriate maps and plans (where relevant);
  - d) persons responsible for implementing the enhancement measures;

e) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter.

- 7) No occupation of the development shall take place until the following have been provided or completed:
- a) The site access as shown on drawing SPD210-200-202 Rev 05 (Proposed Access Design).
  - b) Residential Travel Information Packs in accordance with Essex County Council guidance.
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