



Appeal Decision

Site visit made on 14 August 2024

By David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2024

Appeal Ref: APP/Z1510/W/24/3337164

Land adjacent to Kitchen Hill, Bulmer CO10 7EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr D Burke against the decision of Braintree District Council.
 - The application Ref 23/00455/OUT, dated 21 February 2023, was refused by notice dated 1 December 2023.
 - The development proposed is outline planning application for 8no. dwellings with all matters reserved.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal seeks outline planning permission with all matters reserved. Whilst various plans were submitted with the planning application including an indicative layout plan, indicative floor plans, proposed elevations and drawings for proposed access, parking and bin collections, it remains that details such as layout, appearance, scale, landscaping and access would be reserved for separate determination. As such the indicative plans, including the proposed layout, should be treated as a guide as to how the development could potentially come forward. The indicative layout is also broadly reflected in a Landscape and Visual Impact Assessment (LVIA) submitted by the appellant¹. The Local Planning Authority (LPA) made its decision on this basis, and so shall I.
3. The development plan at the appeal location comprises the Braintree Local Plan. It encompasses Section 1 of the Plan, which was jointly prepared by the North Essex Authorities, adopted by Braintree District Council in February 2021. Section 1 contains the strategic policies (prefixed SP) for the period to 2033. Section 2 of the Braintree Local Plan was adopted in July 2022 and contains a specific policy framework for the area to implement Section 1 of the Plan (policies are prefixed LPP). For ease of reference, I refer to the Braintree Local Plan (BLP) as a single document.

Main Issues

4. The LPAs first reason for refusal is broad and wide ranging. It principally relates to the location of the appeal site and can be reasonably split into two separate main issues pertaining to spatial strategy and sustainable location and

¹ The LVIA document before me is based on an earlier 9 dwelling scheme – dated 14 December 2022 (document reference 2211) – but reflects a consistent indicative layout of linear development along Kitchen Hill.

character and appearance. Consequently, the main issues in this appeal are as follows:

- (i) Whether the appeal site would be a suitable location for the development proposed having regard to the development plan and otherwise securing sustainable patterns of development;
- (ii) The effect of the proposal on the character and appearance of the surrounding area; and
- (iii) The effect of the appeal proposal on highway safety in Kitchen Hill.

Sustainable Location

5. Notwithstanding the address in the decision header above, the appeal site is on the western edge of Ballingdon, a settlement in Suffolk (Babergh District) which in spatial terms can reasonably be considered part of the wider town of Sudbury, given they merge into one another across the River Stour. The appeal site comprises part of a wider parcel of land, predominantly grassland, bounded by hedging and occasional trees. The site is not integrally part of the wider built-up area at Ballingdon. Accordingly, the BLP is justified in identifying the appeal site as countryside for planning policy purposes.
6. The starting point for determining planning applications is the adopted development plan. The appeal proposal would comprise development outside a development boundary as set out in the BLP. As countryside, the appeal site is a location where development is to be carefully managed. There is nothing before me from the relatively recently adopted BLP to say that additional housing on the edge of Sudbury/Ballingdon would be a sustainable option for meeting Braintree District's housing needs. Whilst Babergh District Council did not object at the time of the planning application, it nonetheless remains that the edge of Sudbury/Ballingdon is not identified in the settlement hierarchy for Braintree District as part of the detailed spatial strategy in Part 2 of the BLP.
7. There are various objectives that inform a spatial strategy, including securing sustainable patterns of development. There are some sustainability credentials in Ballingdon, including employment sites at Brundon Lane and Ballingdon Hill. There is a convenience store on Ballingdon Street close to the junction with Bulmer Road and some facilities at Brundon Lane employment area including a gym. The appellant also refers to a café in this employment area, but few details have been provided. The only café I observed was very much an ancillary offer within a motorcycle business, which might limit its wider appeal. The Cyclist Café at the Ballingdon crossroads appeared to be permanently closed at the time of my site visit.
8. The appellant and the LPA refer to bus services on Ballingdon Street, approximately a 5 minute walk from the eastern edge of the appeal site. From my observations if there are any bus stops, in either direction, they are not clearly marked or signed. There are no waiting facilities in inclement weather. Furthermore, on the evidence before me, services are intermittent in their frequency and limited in their destinations. Overall, I do not consider bus services in this location to be an attractive alternative to the private motor vehicle.
9. There is concern that footpath connection on Bulmer Road / Kitchen Hill into Ballingdon is poor. The footway directly opposite the appeal site is narrow and

unlit. However, this is only for a very short distance before the footway widens at No.34 Bulmer Road and streetlights begin at Nos.28 & 30. In my view, the short length of narrow, unlit footway would not deter pedestrian movements. Occupiers of the appeal proposal could safely and conveniently walk to employment and services in Ballingdon.

10. However, as set out above, the range of services in Ballingdon are generally limited. The wider range of services in Sudbury are some distance away, including schools, health, and the retail and town centre offer. In my view, these are beyond a reasonable or attractive regular walking distance. Facilities within Sudbury are within cycling distance. However, this would involve cycling along the main A131 road from the traffic lights in Ballingdon into Sudbury and potentially including the narrow one-way system gyratory around the town centre. Whilst my site visit can only represent a snapshot in time, I observed that the A131 is a busy road, including a notable proportion of HGV traffic. There are no demarcated cycle lanes and so cyclists would have to negotiate the busy vehicular carriageway of the main A131 road. In my assessment only confident cyclists would be prepared to do this, further limiting the sustainability credentials of the appeal location.
11. Overall, the appeal proposal would be contrary to the spatial strategy of the adopted development plan. It would be located in the countryside for the purposes of planning policy and would not comprise a type of development that requires a countryside location. There are only moderate sustainability credentials at the appeal location. Due to its very peripheral location relative to most services and facilities in Sudbury and the distance and limited options for regular sustainable transport choices into Sudbury, the appeal proposal would not readily form part of a sustainable pattern of development. The appeal site would not be a suitable location for the development proposed. The proposal would be contrary to Policies SP3 and LLP1 of the BLP. These policies state, amongst other things, that existing settlements across the North Essex Authorities area will be the principal focus for growth, to ensure that development locations are accessible by a choice of means of travel and that development outside development boundaries will be confined to uses appropriate to the countryside to protect the intrinsic character and beauty of the countryside.

Character and Appearance

12. The appeal site occupies part of a countryside gap between Ballingdon and the long-established cluster of housing to the west at Batt Hall. It is positioned across a crest in the undulating landscape as the land rises from the valley floor of the Stour to the east and then drops to a shallow valley close to Batt Hall. The countryside character at the appeal location is readily experienced within Bulmer Road, Kitchen Hill, from Batt Hall and from the public right of way that cuts across the arable field to the north of the appeal site. At the appeal site there is very limited intervisibility to Troggs Cottage or any development to the south on Sandy Lane and only occasional views of the remnant mill tower and roof and chimney of Mill House to the east. Part of a large arable field moderately separates the appeal site from the nearest dwelling to the west at Batt Hall. In many perspectives at and around the appeal site, there is little or no sense that Ballingdon or Sudbury are to the east of the site. The appeal site is not an "infill" site as asserted by the appellant, it is part of the fabric of the wider countryside.

13. The appeal site is on land as it rises from the Stour Valley to the east. The appellant places some emphasis on the comments from the Stour Valley Project planning officer. These comments express a view that a scheme of 7 dwellings would avoid major harm to the character of this part of the Stour Valley Project area. Whilst the comments are a material consideration I have relatively little information on the remit of the Stour Valley Project. That said there is very little before me to confirm that the appeal site should be considered part of a valued landscape for the purposes of NPPF paragraph 180a. As such I attach only moderate weight to the comments of the Stour Valley Project, who are not the LPA.
14. As set out above the proposal is accompanied by a LVIA. Whilst the LVIA considers various viewpoints and perspectives it is largely a baseline document, recording the then conditions at the appeal location and addressing design matters such as landscaping, accessibility and overlooking. It is a relatively limited document and so I give it only limited weight for this main issue. I turn now to consider separately the landscape and visual impacts of the appeal proposal.
15. As set out above, the appeal site is on land as it rises from the Stour Valley. Given intervening development on lower land at Ballingdon, the sense of the site comprising part of the wider Stour Valley is reduced. Nonetheless, it is clearly part of the initial pronounced rise up from the valley floor, as indicated by the presence of the adjacent former windmill (typically located to occupy higher land). The linear extent of the proposed development would significantly erode the remaining sense of this landform at this location. Furthermore, the appeal site is integrally part of the undulating bucolic landscape that extends west from the edge of Ballingdon into the rolling clay farmland. Despite the extent of boundary hedging, the appeal proposal would appear as a conspicuous urban protrusion into this wider rural landscape. Whilst I observed that this landscape is dominated by a patchwork of large, open arable fields, the appeal site provides a pleasing contrast as an attractive pocket of verdant, undisturbed land. The sense of a relatively intimate scale of this pastoral land, functioning as a transition between the edge of settlement and large open arable fields, would be lost in this part of Kitchen Hill as a consequence of the appeal proposal.
16. The proposal would also significantly reduce the gap between the edge of Ballingdon and Batt Hall. Whilst Batt Hall is an interesting cluster of residential development in open countryside, including some notable 3 storey dwellings, it is a well-established² stand-alone settlement in the countryside. Whilst a modest degree of separation would remain between the western edge of the appeal proposal and Batt Hall the appeal proposal would significantly erode the pattern of settlement in this part of the North Essex countryside resulting in a harmful lengthening of development along an extensive part of the rural lane of Kitchen Hill between Ballingdon and Batt Hall. Consequently, the sense of Batt Hall as a detached rural settlement within the rolling farmland landscape would be significantly diminished. Bringing this all together, I find there would be significant harm to the landscape at the appeal location.
17. Turning to visual impacts, as set out above, the settlement character at Ballingdon clearly ends at the bungalow at No.34 Bulmer Road to the north-

² Most of the dwellings appear to be over 100 years old.

east of the appeal site. Directly to the east of the appeal site, the settlement edge of Ballingdon is more diffuse owing to the adjacent large plot of the former mill and the mill house. As such when looking west out from within Bulmer Road in Ballingdon to Kitchen Hill, the appeal site is patently part of the adjacent countryside. This is emphasised by its verdant frontage combining with a scrubby belt of trees and hedging on the opposite (northern) side of Kitchen Hill. Whilst various matters remain reserved for detailed consideration (layout, scale and landscaping), it would be challenging to conceal the proposed linear extension of residential development in this currently rural perspective within Bulmer Road. Any development on the eastern side of the site would be appreciably elevated given the topography and would be visible above the existing hedging within Bulmer Road, particularly in winter months.

18. In views from the west when approaching from Batt Hall and to the north when walking on the public footpath across the arable field, the appeal proposal would appear as a pronounced and jarring extension of development into open countryside, with almost no other development visible other than the upper parts of the truncated former mill building to help assimilate it into its context. Whilst the site is bounded by hedging, and this could be augmented by detailed landscaping proposals, it remains that the eastern side of the site close to the former mill is on elevated land forming the crest of the hill. This part of the appeal site is clearly visible in views when approaching the site from Batt Hall. As such the proposed development, even single storey, would appear conspicuously above the existing hedging and any proposed landscaping.
19. Whilst layout and access are reserved matters the proposal would require access from Kitchen Hill. Other than an existing, small, gated field entrance, there is a reasonably consistent line of hedging along the frontage of the site onto Kitchen Hill. Either improving the existing point of access or creating a new point of access would visibly announce the extent of the development on this rural edge of Ballingdon to various visual receptors including occupants of vehicles and anyone walking or cycling along this rural lane. Overall, there would be a significant visual harm arising from the appeal proposal.
20. I therefore conclude that the appeal proposal would result in significant harm to the character and appearance of the surrounding area. Accordingly, it would be contrary to Policies SP7 and LLP67 of the BLP, which require, amongst other things, that development proposals respond positively to local character and preserve and enhance the quality of existing places and their environs and recognise the intrinsic character and beauty of the countryside. Specifically, Policy LLP67 states that proposals should be informed by, and be sympathetic to the character of the landscape and should not be detrimental to the distinctive landscape features. Policy LLP67 further states, development which would not successfully integrate into the local landscape will not be permitted. These policies are consistent with the NPPF at paragraph 180b.

Highway Safety

21. Access is not a detailed matter for this proposal. However, as the Planning Practice Guidance states at paragraph 14-034-20140306 an application for outline planning permission must also indicate the area or areas where access points to the development will be situated, even if access has been reserved³.

³ By reference to article 5(3) of the Development Management Procedure Order 2015.

- The indicative layout plan shows a single point of access onto Kitchen Hill. The appellant has considered visibility splays from this location.
22. The highway at the appeal location is of variable width. Generally, it narrows slightly at the edge of Ballingdon as the road ascends from Bulmer Road to the east before widening at the brow of the hill to become a highway with a marked centre line and two edges line all the way through to Batt Hall. The brow of the hill also demarcates the change of speed limit from the national limit (60mph) down to 30mph on approaching into Ballingdon. The position of the access point on the indicative plan and in various visibility splay drawings would be at a point in the national speed limit (up to 60mph). This would be a short distance from the 30mph speed limit, but it would be a point where vehicles are accelerating out of Ballingdon on to a sweeping road up to Batt Hall which the Parish Council and others reasonably describe as a fast road.
 23. The pronounced brow of the hill affects visibility for highway users. The appellant has provided drawings with visibility splays in both directions which show that good visibility can be achieved to the west when exiting the site but that it would be limited to the east. This would be for turning right out of the appeal site, which is the more likely direction for vehicle movements given it is the route into Sudbury and to the A131. The Local Highway Authority (LHA) maintains that such visibility is insufficient and not supported by up-to-date speed data information at the appeal location such that a precautionary approach to securing the required visibility splays within the designated speed limit must be maintained.
 24. Whilst I recognise the appellant's frustration at the timing in the change in position of the LHA, in my assessment, there is insufficient information to demonstrate that there would not be an in-principle harm to highway safety due to the degree of visibility to the east being affected by the topography and vegetation as currently exists. Whilst the appellant has provided speed data held by Essex County Council this is now 3 years old and from a position, a distance further to the west than the appeal location at Batt Hall cottages, limiting its relevance. As such it has not been adequately demonstrated that requisite visibility splays, could be secured, as a matter of principle.
 25. I therefore conclude that the appeal proposal would have a harmful effect on highway safety in Kitchen Hill. The proposal would be contrary to Policy LLP52 of the BLP which states that development proposals should not have a detrimental impact on the safety of highway users. NPPF paragraph 115 states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety.

Balance and Conclusion

26. On the main issues in this appeal, I have found conflict with the development plan. Section 38(6) of Planning and Compulsory Purchase Act 2004 (as amended) states that applications for planning permission are required to be determined in accordance with the development plan unless material considerations indicate otherwise.
27. As part of the appeal process the appellant has submitted very recent appeal decisions⁴ in Braintree District Council which have concluded that the Council

⁴ APP/Z1510/W23/3325050; APP/Z1510/W/24/3338229 and APP/Z1510/W/23/3331319

cannot demonstrate a required deliverable housing land supply equivalent to five years' worth. These recent decisions have concluded a shortfall of either 4.7 or 4.9 years, with the more detailed appeal decisions finding a 4.9 years' supply. The appellant has also referred to the recent Written Ministerial Statement (WMS)⁵ which as a material consideration, signals the Government's drive to boost housebuilding (1.5million homes over the next five years) to sustain economic growth and address the housing crisis.

28. Whilst the WMS clearly advocates the need to significantly increase housing delivery it also supports planning for growth through a plan-led system, cautioning against growth coming forward on a piecemeal basis with fewer guarantees on the best outcomes for local communities. It is material in this case that the LPA has a recently adopted Local Plan. It is not an authority that is dragging its heels on planning for growth. I note the most recent detailed appeal decisions referred to by the appellant recognise the slim marginality of any deficit in deliverable supply, the forthcoming pipeline of supply (as would benefit from a recently adopted Local Plan) and the ability for circumstances to potentially change quickly and positively for the LPA.
29. Nonetheless, having regard to these recent appeal decisions, the NPPF at paragraph 60 on the need to significantly boost the supply of housing and the recent WMS, I ascribe significant weight to the social benefit of an additional 8 market houses. There would also be modest economic benefits in terms of supporting construction jobs (most likely for a small-to-medium sized housebuilder) and expenditure from the occupiers of the dwellings in supporting local facilities. I give the overall economic benefits moderate positive weight in favour of the appeal proposal.
30. The appellant has also submitted that the proposal could secure biodiversity net gain (BNG). A figure of at least 200% is cited but there is very little before me to demonstrate how this could be achieved. Nonetheless, I cannot discount the potential to secure BNG, which would be an environmental benefit. Due to the limited evidence before me on this matter I ascribe this potential benefit only limited weight. The appellant also states that the development could upgrade the footway between Batts Hall and Ballingdon. As set out above, whilst this pathway is narrow and unlit, I have not found it an impediment to safely walking along this part of Kitchen Hill. As such, any condition requiring such an improvement would be unlikely to pass the test of necessity. As such, I attach only minimal weight to any social and environment benefits of the appellant's offer of a footway upgrade.
31. I have afforded the LPA the opportunity to further comment considering recent appeal decisions and the WMS. In response the LPA has submitted a significant volume of material, reflecting on the recent appeal decisions, to maintain its position that it asserts it can demonstrate a 5.8 years' deliverable supply. In my assessment, a written representations appeal for an outline scheme for 8 dwellings is not the appropriate arena to forensically dissect the LPA's latest voluminous evidence. In any event, were I to conclude there is a shortfall in the five-year housing land supply, the adverse impact of granting permission in this case would significantly and demonstrably outweigh the benefits identified. These harms include the conflict with the spatial strategy in a recently adopted development plan and the limited sustainability credentials

⁵ Statement UIN NCWS48 30 July 2024

of the appeal location. I give this harm substantial weight. There would also be the significant harm to the character and appearance of the surrounding area and the harm to highway safety. Accordingly, the appeal proposal would not amount to sustainable development, for which there is a presumption in favour of, and so would not find support from BLP Policy SP1.

32. I have had regard to all other matters raised but there are not the material considerations in this case that would justify a proposal that would conflict with the development plan and so I conclude the appeal should be dismissed for the reasons given.

David Spencer

Inspector.