



Appeal Decision

Hearing held on 1 August 2024

Site visit made on 1 August 2024

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2024

Appeal Ref: APP/Z1510/W/24/3341618

Halstead Hall, Braintree Road, Halstead CO9 1SL

- 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 R Catchpole of Stow Healthcare Group Ltd against Braintree District Council.
 - The application Ref is 22/03366/OUT.
 - The development proposed is described as 'outline application for the erection of 34 dwellings (including 24 market units and 10 social affordable units) with permission sought for access and layout'.
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for Costs

2. An application for costs was made by Mr R Catchpole of Stow Healthcare Group Ltd against Braintree District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The address in the banner heading above is taken from the appeal form, since this more accurately describes the site's location. The description of development reflects that which was agreed between the Council and the appellant during the course of the planning application.
4. The proposal seeks outline permission, with details of access and layout submitted for consideration. I have determined the appeal on this basis and have treated any plans in relation to matters of appearance, landscaping and scale as indicative. The appellant agreed in the hearing that the layout plan, reference 1544-PH2-001 Ref F, should not be treated as indicative.
5. Shortly after the appeal hearing, the appellant submitted a legal agreement under the provisions of section 106 of the Town and Country Planning Act, dated 1 August 2024 (the S106). This has been taken into account in the determination of the appeal.
6. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Both main parties have been invited to comment on this change and the responses received have been taken into account.

References to the Framework in this decision are to the version published December 2023 unless stated otherwise.

Main Issues

7. Based on the evidence, the main issues are:
- Whether the proposal would be in a suitable location with regard to the spatial strategy for the area;
 - The effect of the proposal on the character and appearance of the area, with particular regard to a) landscape impacts b) trees, and c) design;
 - Effects on ecology, and;
 - Whether the proposal would provide acceptable living conditions for future occupants, with particular regard to noise from the A131, outlook and quality of outdoor space.

Reasons

Location for Housing

8. The Braintree District Local Plan comprises two parts. These are the North Essex Authorities Shared Strategic Section 1 Plan adopted 2021 (the LPS1) and the Braintree District Local Plan Section 2 adopted 2022 (the BLP).
9. Policy SP3 of the LPS1 contains the spatial strategy for North Essex and sets out that existing settlements will be the principal focus for additional growth, with development accommodated within or adjoining settlements according to their scale, sustainability and existing role. The BLP includes a spatial strategy specifically for Braintree District and includes development boundaries. It sets out that these boundaries are intended to provide a guide to where new growth should be directed and mark the existing built form of a town or village and provide the distinction between a built up area and its surrounding countryside.
10. Policy LPP1 of the BLP sets 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. While Halstead is recognised as being among the largest urban areas in the District, the proposed houses would be located outside the defined development boundary. Over time, nearby approved developments may result in a shift to the perception of the settlement boundary. However, it remains the case that the appeal site lies outside the defined boundary and in the countryside for the purposes of the BLP. The proposed residential development is not considered to comprise a use appropriate to the countryside and would conflict with Policy LPP1.
11. The inter-play between policies SP3 and LPP1 has been discussed in other appeal decisions evidenced¹ since the BLP adopts a more restrictive approach to development outside settlement boundaries. Those decisions find that the two policy documents should be read together, and the BLP contains a spatial strategy specific to the District. I have no strong reason to reach a different view and the approach in the LPS1 would not alter the non-compliance with LPP1.

¹ APP/Z1510/W/23/3325050 and APP/Z1510/W/24/3338229

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12. The Council acknowledge that the site is well connected to the existing settlement and offers good access to sustainable transport options and to the services and facilities available in Halstead. For these reasons the proposal would comply with BLP Policy LPP42 which refers to sustainable transport. However, given the conflict with Policy LPP1, the proposal would not be in a suitable location for housing having regard to the overall spatial strategy for growth.

Character and Appearance - Landscape Effects

13. The area has been subject to consideration by several landscape assessments, including the Braintree Landscape Character Assessment (LCA) which defines the area as the Gosfield Wooded Farmland. The Council's assessment accepts that there is not a clear and irrefutable case for the area to be attributed the status of a 'valued landscape' for the purposes of the Framework. Nonetheless, I agree that it should be regarded as a landscape with something of an elevated value and a grading of medium/high value as a base line for its appraisal.
14. The appeal site itself comprises land parcels forming part of the spread of the former wooded parkland estate of Attwoods Manor and which now include parts of the grounds of Halstead Hall care home. The site lies to the south-west edge of Halstead and adjoins other residential developments on the opposite side of the A131² as well as sites with extant planning permissions to the north³ and on the far side of Halstead Hall to the south⁴. At present, the verdant character of the site contributes positively to the transition of the town to the open countryside and woodland beyond. However, it is acknowledged that the surrounding developments will very likely extend the perceived edge of the settlement along the A131 to some degree.
15. The parcel of land at the north-western side of the site has a distinctly rural and tranquil character, derived from its expanse of open grassland and surrounding tree belts. The northern boundary comprises more sporadically positioned trees which, together with its elevated position, allow views into the site from the adjacent open land and from longer views across the River Colne valley beyond.
16. The proposed development on this north-western parcel would extend notably beyond the area of development approved on the sites to the north and south of Halstead Hall. This would breach what would otherwise be a well-defined edge of the settlement and the edge of Halstead would be seen as climbing into its wooded backdrop, bringing a degree of erosion to its character as a settlement held within the valley.
17. These effects would be apparent to those using the footpath which runs further to the north and users of the adjacent land, which will serve as accessible open space should the neighbouring permission be implemented. Given the distances involved and the locations of the proposed houses relative to the site boundaries, the effect on those visual receptors would be of a moderate adverse nature. The effects described above to the settlement edge may also be perceived in longer views from the north, although given the distances

² 14/01580/PUT

³ 20/01493/OUT

⁴ 21/02449/FUL

involved and relatively small component of the view that would be affected, the effects would be limited to a low level adverse effect.

18. The development approved by earlier planning permissions in 1994 and 1997 on the appeal site was limited to structures to the southern part of this parcel of land and these were primarily low level structures. As such, they represented a very limited intrusion into this part of the site and their landscape effects would have been substantially different to those of this appeal scheme.
19. The parties agree that the effects of the development on the north-west parcel could be mitigated by landscaping after a period of 15 years. I have no strong reason to reach a different view and this could reasonably be achieved given the set back of housing from the northern boundary. However, until such maturity of the landscaping were achieved, there would be a degree of harm to the landscape setting as set out above. This harm would, however, be for a limited period and with fairly limited visibility.
20. In conclusion on this main issue, the proposal would cause a degree of harm to the landscape character, albeit at the lower end of the scale. The proposal would conflict with Policy LPP67 of the BLP and the Framework which require account to be had for the intrinsic character and beauty of the countryside and to ensure that development is suitable for local context.

Character and Appearance - Trees

21. The appellant accepts that there are trees of possible veteran status on the site. Veteran trees are defined by Natural England and Forestry Commission standing advice as irreplaceable, having exceptional biodiversity, cultural and heritage value. The Framework is clear that development resulting in the loss or deterioration of irreplaceable habitats, which include veteran trees, should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.
22. The potential veteran trees are four oak trees labelled T234, T231, T299 and T217. The appellant's tree survey identifies three of those trees as category A trees and one as a category B, and all having either good or average form, shape and condition and life expectancies exceeding 40 years. These are attractive trees which make a significant and positive contribution to the visual amenity of the site. There is not substantive evidence to suggest that they should not be considered as potential veteran trees or that they result in health and safety concerns on the site.
23. All four of those potential veteran trees would experience encroachment into their root protection areas (RPAs) as a result of access roads and parking spaces forming part of the development. In the case of trees T217 and T231 the encroachments would be significant. The effects of such works within the RPA could include damage to the tree, its understorey and roots, as well as damage to its soil including through compaction, changes to drainage and increasing levels of air pollution, noise and vibration.
24. The British Standard⁵ acknowledges that technical solutions might be available to install hard surfacing within an RPA where it is unavoidable. However, it makes clear that this advice does not apply to veteran trees, where it

⁵ BS 5837:2012

recommends that no construction, including the installation of new hard surfacing, occurs within the RPA. The standing advice of Natural England and the Forestry Commission goes further and recommends inclusion of an appropriate buffer zone for veteran trees. On this basis I cannot be satisfied that the proposed methods, including minimised digging, would be effective in preventing any deterioration of those trees.

25. Therefore, in the absence of evidence to the contrary, the proposal would cause the deterioration of those potential veteran trees. There is not substantive evidence of either wholly exceptional reasons or a suitable compensation strategy for the deterioration of those trees, as set out in the Framework. It would not be appropriate for these details to be the subject of a condition given I am not satisfied that an acceptable solution exists which would resolve these concerns.
26. The British Standard is now of some age and there is other guidance elsewhere surrounding this matter. However, there is not substantive evidence which would lead me to find the relevant British Standard to be out of date and BLP Policy LPP65 refers specifically to the need to consider it as best practice. The appellant's specialist also reports substantial experience of dealing with similar matters elsewhere where trees have successfully been retained using the no-dig method. However, I cannot be satisfied that those circumstances were the same as those before me.
27. In addition to the potential veteran trees, the proposal would entail works within the RPAs of a number of other trees across the site primarily from the laying of new roads and parking areas. These affected trees are of varying quality, but include a number of good quality category A trees which together contribute to the overall verdant character of the site. The British Standard states that the default position should be that structures, including paths and carriageways, are located outside the RPAs of trees to be retained, but gives provisions which should be followed where there is an overriding justification for it.
28. It has not been adequately demonstrated that there is an overriding justification for the works within those RPAs, nor that the subsequent recommendations in the British Standards, relating to compensatory areas and mitigation measures, would be adopted. The appellant has detailed methods and working practices intended to protect root systems in RPAs, including a reduced-dig method and permeable hard surfacing options. Nonetheless it has not been adequately demonstrated that the sequential steps of the British Standard have been followed. The proposal could therefore cause deterioration of a significant number of quality trees on the site, undermining its verdant qualities and contributing to the landscape harm set out above.
29. In addition, the proposal would see the removal of a substantial number of other trees of varying quality across the site which together also contribute to its character. As above, replacement landscaping could be secured, and there would be ample open space across the site to place and maintain new trees. However, this would inevitably take time to become established and to make a comparable contribution to the existing. As such, the substantial removal of trees on the site, together with the potential damage to those retained arising from RPA encroachments, would contribute to the landscape harms arising from the proposal.

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30. In conclusion on this main issue of trees, the proposal would result in the loss, and potential damage to a number of trees which together make a significant positive contribution to the character and appearance of their surroundings. This conflicts with Policy LPP52 of the BLP insofar as it relates to conservation and enhancement of local features of landscape importance and LPP65 which states that such trees will be retained unless there is good arboricultural reason for their removal or they are dangerous or in poor condition. There is also conflict with the Framework where it states that existing trees should be maintained wherever possible and that decisions should recognise the intrinsic character and beauty of the countryside.
 31. The effects on the potential veteran trees as deterioration of irreplaceable habitats would also be contrary to Policy LPP52 above, as well as the Framework which states that such development should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.
 32. Policy LPP64 of the BLP requires proposals resulting in the deterioration of veteran trees to be considered against the need for, and benefits of the development in that location. The benefits of the scheme are discussed in greater detail below and include the provision of new housing including affordable homes, as well as economic benefits arising from the construction process and local spending by future occupants. Even if there is a significant need for housing to the extent suggested by the appellant, the benefits of the proposal would not outweigh the harm to the potential veteran trees as set out, which would be significant and long lasting. Therefore, the proposal would also be in conflict with Policy LPP64.

Character and Appearance - Design

33. A degree of suburbanisation would occur as a result of the residential development of the site. The proposed layout includes attributes which differ from the surrounding patterns of development, including blocks of flats and a looped road to the northwestern part of the site. Despite this, the wider area displays a mix of housing typologies and layouts, and the site would have an edge of settlement location and form part of the transition into the woodland beyond. For these reasons I do not find the deviation from surrounding development layouts would necessarily cause visual harm.
34. The proposed car parking areas, particularly that proposed to the north of the care home, would be substantial, and could appear as visually prominent features close to the entrance of the development. However, their prominence could reasonably be reduced through their detailed design including integral landscaping and surface treatments. The design of the nearest houses and flats, and location of their windows, would also help to inform the extent of natural surveillance.
35. As the proposal is in outline only, details of appearance, scale and landscaping would fall to be considered at a later date and I see no reason why many of the Council's concerns could not reasonably be addressed at that stage, including boundary treatments, treatment of private spaces and bin stores. The appearance and architecture of the buildings are also not for consideration at this stage.
36. In conclusion on the matter of design, the proposal at this stage would be acceptable and the layout would not contribute to the landscape harm identified above. Insofar as the site layout is concerned and notwithstanding

the concerns relating to trees above, the proposal would comply with Policy LPP52 of the BLP and SP7 of the LPS1 which require, among other things, developments to respond positively to their context.

Ecology

37. The appellant's Preliminary Ecological Assessment acknowledges the site to contain suitable habitat features for amphibians including Great Crested Newts (GCNs) and I understand they are present in one of the ponds on the site. GCNs are designated and protected as European protected species and protected under the Conservation of Habitats and Species Regulations 2017.
38. The appellant has previously engaged with Natural England to enter into the District Level Licensing scheme (DLL). However, there is no evidence to demonstrate that a licence has been secured or that it would be granted. This is necessary to confirm that the scheme is suitable for DLL, meets the favourable conservation status test and secures adequate compensation for any impact. While I appreciate the challenges which the appellant has faced in attempting to enter into the DLL, there is nonetheless inadequate certainty that appropriate mitigation would be delivered by these means.
39. Alternatively, a traditional licensing route could be undertaken by carrying out further population surveys of GCNs which would be necessary to confirm the extent of mitigation required and to secure the license. As GCNs have been found to be present on the site, such surveys would be necessary prior to the grant of any planning permission so that the extent of effects and mitigation required can be established. Given the outstanding matters in respect of this alternative licensing route, there is similarly uncertainty as to the effects on GCNs and whether appropriate mitigation can be secured.
40. While numbers of GCNs on the site may be low, and limited to areas surrounding the concrete ponds, in the absence of appropriate mitigation, the proposal could cause significant harm to populations of GCNs on the site. I have considered whether this matter could otherwise be dealt with by the imposition of a planning condition. While the Council have provided the wording for such a condition, which would require the later submission of a mitigation licence, it was made clear at the hearing that it does not accept the principle of this route. For the reasons given above, there is not sufficient certainty to demonstrate that such a condition would be achievable or reasonable. Neither would a condition requiring further GCN surveys be reasonable given the need to consider the full extent of impacts of the proposal on GCNs before planning permission is granted. Exceptional circumstances for this approach as described in Planning Practice Guidance, are also not apparent here.
41. With regard to bats, tree T215 has been identified as having moderate potential for bat roosts. Despite some safety concerns for that tree, it does not necessarily require removal to facilitate the proposed development. Based on the evidence, it is very likely that a reasonable solution exists as set out by the Council and which could be agreed between the parties if the scheme were otherwise acceptable. Consequently, there would be adequate certainty of the likely impacts on bat species.
42. Additional clarification has been provided in respect of reptile mitigation and it is accepted that a suitable solution exists involving relocation to a receptor site. As such, the Council accept that a condition could reasonably address the

outstanding matters and I have no strong reason to reach a different view, given the certainty which now exists surrounding this matter.

43. I understand there is no local policy requirement for biodiversity net gain, and the application pre-dated the mandatory requirement. A net loss for biodiversity is reported on the site and the appellant has agreed to a form of mitigation for which conditions are recommended. I have no reason to believe that those would not secure appropriate measures.
44. In conclusion on this main issue, and in the absence of evidence to the contrary, the proposal would be likely to cause harm to GCNs. The proposal would conflict with Policy LPP64 of the BLP which requires an adequate mitigation plan to ensure no harm to protected species where there is a confirmed presence on the site. It would also conflict with the Framework insofar as it relates to the protection of sites of biodiversity and that, if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or, as a last resort, compensated for, then planning permission should be refused.
45. The Council accept that BLP Policy LPP23, listed in the putative reason for refusal, is not applicable here since it relates to a site allocation elsewhere.

Living Conditions

46. The Council accepted in the hearing that the appellant's noise report adequately demonstrates that the effects of road noise on the new houses would be acceptable, subject to the imposition of a relevant condition. I have no reason to reach a different view and the proposal would be acceptable in this respect.
47. Several of the proposed private gardens would be north facing and bound in part by trees and hedgerows. However, given the overall size of those gardens they would provide a good quality of outdoor space for their future occupiers with an acceptable degree of outlook and natural lighting. The appellant has provided clarifications following concerns for oversized units and the scale of the houses, and their design, would be subject to consideration at the reserved matters stage if the proposal were otherwise acceptable.
48. In conclusion on this main issue, the proposal would provide an acceptable standard of accommodation for its future occupiers, compliant with Policy LPP52 of the BLP and the Framework insofar as they require high standards of accommodation and healthy living conditions.

Other Matters

49. The S106 would deliver planning obligations including affordable homes as well as financial contributions to mitigate the effects of the proposal on education, libraries, healthcare and Habitat Sites. It also provides certainty in respect of arrangements for management of open space and access. The absence of such a legal agreement was one of the Council's putative reasons for refusal. However, given the appeal is being dismissed for other reasons it is not necessary to consider this matter in any further detail since the outcome of any assessment would not change the decision.
50. The S106 includes mitigation for the effects of the proposal on the Hamford Water, Colne Estuary, Stour and Orwell Estuaries, Blackwater Estuary and

Dengie and Essex Estuaries Habitat Sites. However, Regulation 63(1) of the Habitats Regulations⁶ indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposal. As the appeal is being dismissed on other grounds, it is not therefore necessary to address this in any further detail.

Planning Balance

51. There is dispute between the main parties as to whether the Council can demonstrate a five year land supply for housing. If it were not able to demonstrate such a supply, then paragraph 11d) of the Framework would be relevant to the appeal. However, even if this were the case, the application of policies in the Framework that protect irreplaceable habitats provide a clear reason for refusing the development proposed. The proposal would not, therefore, benefit from the presumption in favour of sustainable development set out in the Framework. This conclusion is consistent with Policy SP1 of the LPS1, which requires an approach which reflects the presumption in favour of sustainable development set out in the Framework. As a conclusion on the Council's housing land supply would not therefore change the outcome of the appeal in any event, I have not considered this matter in further detail.
52. The delivery of housing would, nonetheless, still weigh in favour of the proposed development and would support the government's objective to boost the supply of homes. This would include affordable housing including 7 affordable rent and 3 shared ownership homes, and be located on the edge of an existing settlement with good accessibility to services and facilities including public transport links. The Framework acknowledges that medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built out relatively quickly. There would also be economic benefits arising from the construction process and from ongoing expenditure into the local economy by future occupants. Even if the Council's housing land supply were as low as alleged by the appellant, and even if the site in its entirety were previously developed land, only moderate weight can be given to these benefits as a whole, given the scale of the development.
53. The appellant refers to off site biodiversity enhancements, however it is not clear what this would entail or whether it would provide a net benefit when considered against the loss of biodiversity which would occur on the site. There is also reference to the proposal helping to fund the creation of a dementia unit on the neighbouring site, however there is similarly not sufficient evidence to conclude this would definitely be the case if the appeal were allowed. Based on the evidence, these matters do not therefore attract weight in favour of the development. Where the development has been found to be policy compliant in other respects, these are neutral matters that similarly do not add weight in favour of the scheme.
54. The proposal would cause harm to potential veteran trees as irreplaceable habitats and to protected species, which would be significant and long lasting and would be in conflict with the development plan and the Framework, and I ascribe those harms very substantial weight. Harm has also been found through conflict with the Council's spatial strategy and landscape harms. However, I give these harms moderate weight, given the sustainable attributes

⁶ The Conservation of Habitats and Species Regulations 2017 as amended

of the site's location on the edge of the settlement, and as the landscape harm could be mitigated after a period of time.

55. For these reasons, the benefits of the proposal would not amount to material considerations of sufficient weight to outweigh the conflict with the development plan as a whole.
56. The Written Ministerial Statement and consultation Framework of 30 July 2024 accentuate the need for housing and the use of previously developed land. However, even if additional weight were to be given to the benefit of the delivery of new housing and affordable homes, it would nonetheless remain the case that the benefits of the proposal would not outweigh the conflicts with the development plan and the Framework set out.

Conclusion

57. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal is dismissed and planning permission refused.

C Shearing

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Rowan Clapp	Cornerstone Barristers
Paul Munson	Planning Consultant for Melville Dunbar Associates
Melville Dunbar	Architect, Melville Dunbar Associates
Harry Bennett	Lichfields
Andrew May	Ecologist, ACJ Ecology
Paul Allen	Arboricultural Consultant, EnviroArb Solutions Ltd
Roger Catchpole	Stow Healthcare Ltd

FOR THE COUNCIL:

Ben de Feu	Cornerstone Barristers
Melanie Corbishley	Senior Planning Officer, Braintree District Council
Lee Smith-Evans	Urban Design Consultant, Braintree District Council
Hamish Jackson	Senior Ecological Consultant, Braintree District Council
James Remington	Tree and Landscape Officer, Braintree District Council
Kathy Carpenter	Senior Planning Officer, Braintree District Council

DOCUMENTS SUBMITTED AFTER THE HEARING

- Responses from the Council and the appellant regarding the Written Ministerial Statement and consultation on the National Planning Policy Framework, both submitted 8 August 2024
- S106 Agreement, submitted 5 August 2024
- Addition to the appellant's costs application, submitted 1 August 2024
- Council's response to the costs application, submitted 5 August 2024
- Appellant's response to the Council's response to the costs application, submitted 8 August 2024