

Appeal Decision

Site visit made on 1 August 2024

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2024

Appeal Ref: APP/Z1510/W/24/3346178

Green Lodge, Halstead Hall, Braintree Road, Greenstead Green, Essex, CO9 1SL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr R Catchpole of Stow Healthcare Group Ltd against the decision of Braintree District Council.
 - The application ref is 22/02211/FUL.
 - The development proposed is described as 'extend and refurbish existing redundant building to form a 37 bed dementia unit with associated car parking and landscaping'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published.
3. In any event, the policies that are material to this decision are not subject to any fundamental changes, and I am satisfied that this has not prejudiced any party. Consequently, this decision refers to the version of the Framework published in December 2023, unless it is stated otherwise.
4. The appellant has submitted an agreement under section 106 of the Town and Country Planning Act 1990 with the appeal (the S106), signed 13 August 2024. I have taken this into account in the determination of the appeal.
5. The site address used in the banner heading above is taken from the appeal form, since this most accurately describes the part of the site to which the appeal relates.

Main Issues

6. The main issues are:

- The effect of the proposal on the non-designated heritage asset of Green Lodge;
- The effect of the proposal on existing trees and on the character and appearance of the area;
- Effects on ecology, and;
- Whether the proposal would deliver appropriate contributions towards health services.

Reasons

Non-Designated Heritage Asset

7. Green Lodge lies within the curtilage of Halstead Hall, formerly known as Attwoods, which formed part of a country estate to the south west of Halstead. Evidence suggests it was built in 1875 by John Vaizey, High Sheriff of Essex and formed one of a number of buildings on the estate including a stable block, bungalow and other agricultural buildings further to the west. Green Lodge provided ancillary accommodation to Halstead Hall and working space, focused on the care of horses and carriages as well as providing a ballroom and entertaining rooms.
8. The building comprises cream gault clay brick with slate tile roofs. Its primary access, or 'principal element', as it is described by the Council, exists to its south eastern side, facing Halstead Hall. This is the tallest part of the building as it incorporates the former ballroom with high ceilings on its first floor. It also has the most decorative external detailing, including two covered porches with slate roofs supported on brick columns with moulded edges, capitals to the columns, and with brick arches and pediments. At the first floor level there is a central, triangular bay window and decorative brick chimney stacks, set around a section of ornamental ridge tiles.
9. The other parts of the building, which extend from the principal element, are similarly two storey but have a lower ridge height. Their elevations have more simple detailing but include a projecting string course, brick arches and pediments, similarly formed of cream gault brick. The repetition of brickwork patterns, even along the most simple south west façade of the coach house, provide a sense of unity throughout the building as a whole.
10. Green Lodge has experienced extensions and alterations over time as a result of changes to its use, which have diluted its architectural significance to some extent. Most notably this includes a single storey extension to the front of the principal element, in a different brick tone and which obscures much of the ground floor level of that elevation. A substantial flat roof addition has also been added behind the principal element which again extends across much of its ground floor level, and many of the original windows have been replaced with less sympathetic alternatives in modern materials.
11. The changes to the setting of Green Lodge have also considerably reduced its historic significance. Most notably, a two and a half storey extension to Halstead Hall projects directly in front of Green Lodge's principal element. Halstead Hall's rear elevation now heavily obscures much of the building and

only a narrow gap exists between them. As a consequence, Green Lodge has very little public visibility and is experienced primarily from the car park to the south. The perception of a functional relationship between the two buildings, and their ability to be appreciated together as part of a group has, therefore, been substantially lost. The other buildings among the grounds which formed part of the historic group associated with the estate are also heavily deteriorated, some suffering partial collapse, and the value of the group as a whole is very limited.

12. The remaining architectural details across the elevations of Green Lodge are apparent when walking around its immediate environs. However, the building has been vacant for some time and is currently in a state of heavy disrepair. Many of the remaining timber windows and doors appear damaged or rotting. Dense foliage covers, and in some cases penetrates its elevations, and the appellant reports the effects of self-seeded trees which are now substantial and presenting effects on the foundations of the building. The appellant has described rainwater ingress, damp and condensation as a result, which have affected the building's structure. The roof structure is also reported as being in a poor condition, adding further to water penetration and rotting of the roof structures. I appreciate the Council's concerns that an earlier planning permission granted in June 2022 sought to retain Green Lodge¹. However, there is not substantive evidence which would lead me to doubt the appellant's conclusions on the current condition of the building, which I observed during my site visit. In addition, it has been subject to vandalism both inside and outside resulting in broken windows and the need for the building to be largely surrounded by security fencing.
13. For these reasons taken together, the building can be considered as a non-designated heritage asset in light of the relevant Historic England criteria. However, today, its significance as a heritage asset is very limited.
14. The proposed development would see the demolition of much of Green Lodge, retaining only part of the principal element, closest to Halstead Hall. As set out above, while the two transverse wings are more simple in their design and their value somewhat depreciated, they nonetheless form an important part of the remaining heritage value of the building. Their comprehensive demolition would remove what remains of the ability to appreciate the former function and social role of the building as a whole and the unity of the architecture throughout. While the principal element would be retained, this would consequently lack any meaningful architectural connection or unity with the new extensions and would remain only as a nod to the historic interest which previously existed on the site.
15. Overall, the proposal would result in considerable harm to the remaining significance of the heritage asset. The Framework states that, in weighing applications that directly or indirectly affect 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. This balancing exercise is returned to below.
16. However, considered against the relevant development plan policy, there is not evidence to suggest that the requirements of Policy LPP57 of the

¹ 21/02449/FUL

Braintree District Local Plan 2013-2033 (the BLP), which relate to all heritage assets, could not be achieved, and I do not find conflict with that policy.

Character and Appearance

17. Policy LPP33 of the BLP seeks to focus specialist housing within settlement boundaries, but gives criteria where minor extensions to, or the expansion of existing specialist housing in the countryside, may be acceptable. The Council accept the principle of the proposed accommodation in this location, given its proximity to Halstead and other developments, and the previous grant of planning permission for a dementia unit² on the site.
18. The proportion of new build would be very significant compared to the part of Green Lodge to be retained. However, the enlargements would be situated on a similar footprint to the existing, but extend the building to wrap around an integral courtyard. As above, Green Lodge and Halstead Hall are substantial buildings set within a former estate of generous grounds, characterised by open and verdant surroundings. The proposal would maintain the scale of buildings on the site and adequate spaces would exist around the building to maintain the established character of the site. For this reason, the scale, siting and design of the proposal would be sympathetic to the landscape character.
19. The ridge heights of the development would be lower than the retained principal element, allowing it to be read as the most prominent part of the building and its entrance. The Council are of the view that the design of the extensions are acceptable, having details which would largely mirror those on the original building. As such, and notwithstanding the heritage effects found, the proposal would be sympathetic to the host building. Policy LPP33 goes on to state that the Council will have regard to the cumulative impact of extensions on the character of the original property and its surroundings. The proposal would appear as a single unified extension to the retained part of the building, and I do not find conflict with this aspect of the policy.
20. In conclusion on this main issue, the proposal would not cause harm to the character or appearance of the area. It would comply with Policy LPP33 of the BLP, which provides criteria for specialist housing in the countryside.

Trees

21. The existing trees on the site contribute positively to its verdant character and to the transition of Halstead into its woodland setting. Three category A trees are identified as having encroachment into their root protection areas (RPAs) as a result of the proposed development.
22. The appellant acknowledges that these include potential veteran trees. These are trees numbered T217, just beyond the site boundary to the north, and T229, which are acknowledged to be high quality, category A oak trees. Veteran trees are defined by Natural England and Forestry Commission standing advice as irreplaceable, having exceptional biodiversity, cultural and heritage value. There is not substantive evidence to suggest they should not be treated as potential veteran trees, or that they give rise to health and safety concerns on the site.

² 21/02449/FUL

23. The footprint of the building would encroach into the RPAs of both potential veteran trees, and both trees are identified as needing their roots pruned as a consequence. This would cause direct effects upon those trees, through damage to their root systems and potential future growth. The positioning of the development could also necessitate works to the lower levels of the canopy of T229, since the pitched roofs of the development are shown to extend beneath it.
24. There have been works close to tree T229 in the past, including changes to the ground surface and location of some low level outbuildings, which could be removed as part of the development and which could benefit the tree. Nonetheless, it is not apparent that this would mitigate for the effects of the footprint of the new building being within its RPA. The appellant acknowledges that new drainage runs are also shown within the RPAs of the two potential veteran trees, but could be relocated. While this may be the case, it is not apparent that this would not cause effects on other trees, and in any event, harmful effects from the footprint of the development would still occur. Having the works overseen by a specialist and using sympathetic dig methods, do not provide adequate assurances that harmful effects would not subsequently occur.
25. 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. Neither have been shown to exist here, and the proposal would conflict with this aspect of the Framework.
26. In addition to those veteran trees, the works include the laying of a pathway within the RPA of a further Category A tree to the south of the site, number T54. While its effects may be mitigated by an appropriate construction method, it is not apparent that the best practice of the British Standard³ has been followed, which supports technical solutions to works within an RPA only where there is an overriding justification for construction within the RPA.
27. Although the affected trees are not within a conservation area or protected by Tree Preservation Orders, this does not imply that they are not of significant amenity value or unhealthy. As above, the appellant has identified these affected trees as being category A and the potential veteran status is not disputed.
28. Overall, the proposal would have unacceptable effects on a number of high quality trees on the site, which include two potential veteran trees. The proposal would conflict with Policy LPP65 of the BLP insofar as it requires developers to reflect the best practice guidance of the British Standard and which requires a suitable distance between the established tree to be retained and the new development, to allow for its continued wellbeing. While the British Standard refers to best practice only, Policy LPP65 expects developers to adhere to it and there are not otherwise adequate assurances that the effects of the proposal would be acceptable. The proposal would also conflict with policy SP7 of the BLP which relates to the protection of assets of natural value.

³ BS5837:2012

29. The proposal would 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. It would also conflict with the Framework insofar as it relates to irreplaceable habitats which, by definition, includes veteran trees as set out above.

Ecology

30. The Council report that the site in its entirety is Priority Habitat Wood Pasture and Parkland, designated for its importance to nature conservation. The site includes vacant buildings and trees which could provide roosting opportunities for bats. All bat species are designated and protected as European protected species, and are protected under the Conservation of Habitats and Species Regulations 2017.
31. The appellant has submitted additional ecological information with the appeal, in response to the concerns raised by the Council surrounding the age of previous surveys. Those earlier ecological surveys found that bats were present in the building and a European Protected Species Licence would be needed. They also found no evidence of bats emerging from the potential bat roosts.
32. The new information includes a bat roost and activity assessment, following a walkover survey. Its findings in respect of bats are brief, although it notes that no trees identified for removal within the area of the appeal site were raised as having potential bat roosting features. While it does not reference the likelihood of Green Lodge itself accommodating bats, it goes on to state that a European Protected Species License application must be made to Natural England for the demolition of the building after any approval, to identify suitable mitigation for the bat species present and the roost site. However, there is no further evidence to suggest the extent of any effects, the likely mitigation required, or likelihood of such a license being granted. There is therefore uncertainty about the effects of the proposal on bats. I also note the absence of clarity highlighted by the Council regarding the tree works, and whether those requiring removal of dead wood have been surveyed. This adds to the concerns in respect of impacts on bats.
33. Based on the evidence as a whole, I cannot be satisfied that any potential harm to bats would be adequately mitigated and significant harm to biodiversity, as set out in the Framework, cannot be ruled out. In the absence of clarity on these matters, it would not be reasonable to secure further details by a planning condition.
34. In respect of the priority habitat, Policy LPP64 requires that, where those habitats are likely to be adversely impacted by the proposal, the developer must demonstrate that adverse impacts will be avoided, and impacts that cannot be avoided are mitigated on-site. It also includes provision for off-site compensation for any residual impacts. Based on the evidence, it cannot be established that the requirements of the policy have been met. The proposal would conflict with Policy LPP64 of the BLP insofar as it relates to effects on priority habitats and protected species, and the Framework where it relates to protection and enhancement of sites of biodiversity.

Financial Contributions

35. The Council has set out that a contribution of £7,500 would be necessary towards an increase in floorspace at Elizabeth Courtauld Surgery to mitigate the effects of the additional population arising from the proposal. The appellant has not disputed the need for the contribution and has provided a S106 which would be capable of securing that contribution, and its spending in an appropriate way, if the appeal were to be allowed. The provision of the contribution would comply with Policy LPP78 of the BLP, which relates to infrastructure delivery and impact mitigation. Since the appeal is being dismissed for other reasons, it is not necessary to consider in further detail whether the contribution would meet the relevant tests for a planning obligation.

Planning Balance

Heritage Balance

36. Returning to the matter of the effects on the non-designated heritage asset, the Framework requires that a balanced judgement is carried out, having regard to the scale of any harm or loss and the significance of the heritage asset. It has been found above that the proposal would result in considerable harm to the significance of the non-designated heritage asset, but that the significance of the asset is low.
37. The proposal would deliver a 37 bed dementia unit. There is dispute surrounding the extent of need for the development, and the County Council do not consider there is need for additional care home provision in the area. Nonetheless, this would appear to relate to care homes more generally and the County Council acknowledge that the proposal is unlikely to be primarily aimed at adults known to social care, and that the suppliers developing provision should undertake their own due diligence on demand and future direction. As such, I do not consider that their comments should lessen the weight to be attached to the benefit of the proposed dementia unit.
38. The proposal would provide a valuable resource to those with dementia and their families. This accommodation would be located close to the existing care home facility and be on the edge of an existing town with good accessibility to services and facilities, including lit footpaths and onward public transport links. This benefit attracts significant weight based on the evidence.
39. The proposal would allow for an improved configuration of rooms compared to the earlier permission, not dictated by the existing structure. While there is dispute as to whether the accommodation of the previous permission would have been inadequate, the appellant finds this appeal would allow for larger room sizes, ensuite bathrooms and improved sound and thermal insulation, which in turn would benefit the quality of accommodation and care which could be provided. Economic benefits to the appellant are also reported including the advantages of dividing the costs across a greater number of units.
40. I appreciate that the Council would prefer to see the heritage asset maintained, as proposed in the earlier planning permission. However, I am required to assess the acceptability of the proposal before me. It is alleged

that the retention and reuse of the building and its materials would also help to reduce energy consumption and carbon emissions compared to the proposed rebuilding. However, there is very little evidence to suggest the extent to which this would be a benefit here, given the condition of the existing building. While the condition of the building is reported to have deteriorated since the earlier application, there is not evidence to suggest this was deliberate neglect as described in the Framework. As such, these factors do not weigh against the development in the heritage balance.

41. Overall, I find that the benefits which would be delivered by the proposal would outweigh the harm to the non-designated asset, having regard to the scale of harm and its significance. The proposal would therefore be acceptable in terms of its heritage impacts, and compliant with the Framework in this respect.

Presumption in Favour of Sustainable Development

42. 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.
43. This conclusion is consistent with Policy SP1 of the LP, 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 further.

Remaining Planning Balance

44. Despite these findings, there would nonetheless be benefits to the proposal as set out above, notably in terms of its provision of high quality dementia accommodation. As above, this would be adjacent to an existing care facility and located on the edge of an existing settlement with the benefits that brings in terms of accessibility. There would also be economic benefits arising from associated employment, the construction process and ongoing expenditure into the local economy by future occupants and their families. In addition, the proposal would also provide a form of housing, and would contribute to the national objective to boost the supply of homes. As communal accommodation this would equate to approximately 20.6 units using the ratio set out in the Council's evidence. However, even if the Council's housing land supply were below five years as alleged by the appellant, the contribution would be modest.
45. 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. 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. This would similarly be the case even if some additional weight were given to the

benefit of new housing in light of the consultation version of the Framework and the Written Ministerial Statement of July 2024.

Other Matters

46. The appeal site lies within the zone of influence of several designated Habitat Sites which are afforded protection under the Conservation of Habitats and Species Regulations 2017. However, Regulation 63(1) 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.
47. The main parties refer to planning permission granted in 1997 for extensions to include 29 bedrooms, nurse stations and reception area on land adjacent to the care home, including Green Lodge, and for the change of use of the bungalow to a creche, dining room and kitchen and erection of a conservatory and covered corridors for a hydrotherapy unit⁴. There is dispute as to whether that permission has been implemented. However, there is otherwise little information before me regarding that decision and its implications for this appeal. As such it does not provide a reason to alter the above judgement and has not been a pivotal matter in the determination of the appeal.

Conclusion

48. The proposal would conflict with the development plan 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.

C Shearing

INSPECTOR

⁴ 97/0900/FUL