



Appeal Decision

Site visit made on 18 December 2024

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th February 2025

Appeal Ref: APP/Z1510/W/24/3348788

Land at Shellards Lane, Wickham St Paul, Halstead CO9 2PP

- 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 R Merton against the decision of Braintree District Council.
 - The application Ref is 23/02867/OUT.
 - The development proposed is outline application for the erection of new detached dwelling: all matters reserved with the exception of access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline, with access, appearance, layout and scale reserved for future consideration.
3. On 12 December 2024, a revised National Planning Policy Framework (the Framework) and updated Housing Delivery Test results were published. I have sought further views from the main parties on this and have taken those comments into account in reaching my decision. I will refer to the updated paragraph numbers.

Main Issues

4. The main issues are:
 - whether the site is a suitable location for development having regard to the spatial strategy for the district; and
 - the effect of the proposed development on protected species.

Reasons

Suitable Location

5. Braintree District Local Plan 2013 - 2033 Section 2 (adopted July 2022) (LPS2) Policy LPP 1 confirms that outside development boundaries, proposals should be confined to uses appropriate to the countryside. Unrestricted market housing is not such a use. As that is the proposal before me, it is on that basis I must assess the appeal.
6. The site lies outwith the development boundary for Wickham St Paul although development on the opposite side of Shellards Lane lies within it. The boundary also excludes the buildings at the end of Shellards Lane. Furthermore, the boundary excludes what appears to be part of the extensive

rear gardens of the properties along School Road and the land immediately adjacent to the site leading towards School Road. When viewed in the overall context of the development boundary, the appeal site appears somewhat detached from it.

7. Braintree District Local Plan 2013 - 2033 Section 1 (adopted February 2021) (LPS1) Policy SP 3 confirms that development will be accommodated within and adjoining settlements. However, it is also clear that it will be through LPS2 that the distribution of housing growth will be set out. LPS1 Policy SP 3 therefore does not provide support for locating dwellings outside the development boundary.
8. There are examples of buildings in proximity to the development boundary on other routes around Wickham St Paul. However, it is clear the buildings at the end of Shellards Lane were in place when the development boundary was set. The supporting text to LPS2 Policy LPP 1 confirms that boundaries were set in accordance with a specific methodology. This was accepted during the examination of the LPS2, as was the settlement hierarchy. While the site is physically closer to the centre of the village than some land within the development boundary, this does not alter the fact that it is outwith that boundary.
9. Wickham St Paul does have a limited bus service, a village hall and public house in proximity to the village green. A farm shop also lies just beyond the development boundary. However, the designation of the settlement as a Third Tier village acknowledges that there are some facilities within it. Their presence would therefore not be of sufficient weight to justify departing from the adopted development plan.
10. Both LPS1 and LPS2 are less than five years old. They would have been prepared and examined in the context of the Framework at the relevant time. There is no evidence before me to suggest that national policy, as now set out in paragraph 83 of the Framework, has changed sufficiently in this respect that the policies of the development plan are no longer consistent with it.
11. The proposal would therefore not be a suitable location for development having regard to the spatial strategy for the district. It would be contrary to LPS1 Policies SP 1, SP 3 and SP 7, and LPS2 Policies LPP 1, LPP 42 and LPP 52 which taken together seek to direct development to the most sustainable locations.

Protected Species

12. At my site visit, I observed a large pond along Shellards Lane. The location plan also indicates a pond on the Shellards Barn site, although I was not able to confirm if this pond remains in place. However, the large pond lay within 500m of the appeal site. While I did not see any goats at my site visit, much of the site did appear to be grazed as set out by the appellant. However, the appeal site also includes land immediately adjacent to the access lane which was overgrown. Although only a small area of the appeal site, it may have the potential to provide a refuge for great crested newts. Both of these are identified in Natural England's 'Great crested newts: advice for making planning decisions' as being circumstances in which to ask for a survey.

13. The Conservation of Habitats and Species Regulations 2017 (as amended) impose a duty on me to consider whether European Protected Species (EPS) would be affected by a proposed development. Circular 06/2005¹ (the Circular) confirms that "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision".
14. In the absence of a survey, I cannot be certain of the effect of the proposed development on protected species, specifically great crested newts. Furthermore, any limitations on how the site could be brought forward would need to be addressed as part of the outline as protected species fall outwith the reserved matters. The Circular is also clear that surveys should only be secured by condition in exceptional circumstances. There are no exceptional circumstances before me which would justify imposing such a condition.
15. I therefore cannot conclude that the proposed development would not have an adverse effect on protected species contrary to LPS2 Policy LPP66 which requires development to provide for the protection of biodiversity.

Other Matters

16. It is not in dispute that the Council can demonstrate a five year supply of deliverable housing land. Notwithstanding, it is clear in paragraph 61 of the Framework that it is the Government's objective to significantly boost the supply of homes and that the amendments to the Framework seek to support this. Housing targets are not a cap, and there would be a limited benefit from the delivery of an additional dwelling. There would also be economic benefits arising from the proposal during the construction and occupation stages of the development, and this would likely support the services and facilities within Wickham St Paul. This would be a further limited benefit of the proposal.
17. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. Shellards is a Grade II listed building whose significance is derived from its age, design and historic fabric. The appellant has also drawn my attention to Shellards Barn, noting it as a curtilage listed structure although it is now in separate ownership from Shellards. It lies adjacent to the appeal site. The setting of Shellards are the views of it along Shellards Lane arising from the lack of development in close proximity to it and the expansive open fields beyond.
18. Although there is more modern development along Shellards Lane, it is typically set back from the lane itself, with landscaping providing screening. The listed building forms a focal point at the end of the lane due to its position in proximity to it, and its distance away from other development, including Shellards Barn and the structures around it. The addition of an access as proposed in this appeal, on the opposite side of the road, would have a neutral impact on the setting of Shellards as this open view would remain. While all other matters relating to the dwelling are reserved, in principle it would be

¹ Circular 06/2005: Biodiversity and Geological Conservation

possible to design a suitably sited, scaled and landscaped dwelling that would not intrude on the views of Shellards. I am therefore satisfied that the proposal would preserve the setting, and therefore the significance of the listed building. This constitutes a lack of harm and is therefore a neutral factor in this appeal.

19. I am satisfied that the proposed access would have an acceptable effect on highway safety. However, this would amount to a lack of harm and would be neutral in my assessment.
20. Both main parties have directed me to other appeal decisions. However, there were distinguishing features in the details presented to me, in terms of scale, physical relationship to the settlement or policy. None of the detail before me would alter my assessment of this proposal.

Conclusion

21. The proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight to indicate the decision should be made otherwise. For the reasons given, I conclude that the appeal should be dismissed.

Jennifer Wallace

INSPECTOR