
Appeal Decision

Site visit made on 1 July 2025

by **E Grierson BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 July 2025

Appeal Ref: APP/Z1510/W/25/3358739

Bower Hall, Western Road, Silver End, Essex CM8 3SG

- 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 Andmor Homes Ltd against the decision of Braintree District Council.
 - The application Ref is 24/00613/FUL.
 - The development proposed is the erection of 3 new residential dwellings on land at Bower Hall and the creation of a new site access from Western Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published on 12 December 2024. Whilst I have had regard to the revised national policy as a material consideration in my decision-making, planning decisions must still be made in accordance with the development plan unless material considerations indicate otherwise. In this instance, the issues most relevant to the appeal remain unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework.
3. Reference has been made to a previous scheme on the appeal site, for 9 dwellings, which was refused planning permission¹ and dismissed at appeal². However, this is not the scheme currently before me and therefore I have not taken this previous proposal into consideration in this current appeal.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the setting and significance of the grade II listed building, Bowers Hall;
 - biodiversity;
 - the character and appearance of the surrounding area; and
 - flood risk on the appeal site or within the local area.

Reasons

Listed Building

¹ 18/01824/OUT (the previous planning application)

² APP/Z1510/W/18/3218044 (the previous appeal)

5. A grade II listed building and associated outbuildings, Bowers Hall with barns and outbuildings to the south east, as titled on the official list entry, is located adjacent to the appeal site. From the information provided as part of the application and this appeal, it would appear that its significance is derived, at least in part, from the antiquity of the structure and from its status as a relatively well preserved example of a vernacular building of its age and type. Bowers Hall is currently a private residential dwelling, separated from the adjacent curtilage listed barns and much of the agrarian appearance of the previous farmstead has been lost. Nevertheless, the open and verdant nature of the land surrounding Bowers Hall, including the appeal site, contributes to how the asset is appreciated and this setting makes a positive contribution to the significance of the listed building.
6. 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 the 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 feature of special architectural or historic interest.
7. The proposed development on the appeal site has been positioned to the front of the site, with the land directly to the front of and adjacent to Bowers Hall remaining as undeveloped paddocks. These pockets of land may be closest to the grade II listed building, however it is the undeveloped nature of the appeal site as a whole which contributes to the setting of the listed building and the areas closest to the building are not considered to be significantly more important. Whilst the site may no longer be a formal garden area, this has not diminished the contribution to the setting of the listed building and, as outlined above, the site's undeveloped and verdant nature still make a positive contribution.
8. The addition of three large two-storey buildings, with a modern residential design, in close proximity to the listed building would bring the existing residential surrounds closer to the listed building, reducing its prominence and ability to be viewed as a largely free-standing structure within spacious and undeveloped surrounds. Whilst there are limited views of Bowers Hall on Western Road in the location of the proposed development, there would still be some intervisibility between the listed building and the proposed development despite screening, which would result in the harm to the setting of the listed building being visible, albeit not generally within the public realm.
9. Therefore, for the reasons above, the proposed development would result in harm to the setting and significance of the grade II listed building, Bowers Hall. It would therefore conflict with Policies SP7, LPP47 and LPP57 of the Braintree District Local Plan 2013-2033 (the LP) which collectively seek to ensure that new development protects and enhances assets of historical value, including the immediate settings of heritage assets by appropriate control over the development, design and use of adjoining land, and respects and responds to the local context where development may affect the setting of listed buildings.
10. Due to the separation between the proposed development and the listed building, the harm found is relatively small and therefore, having regard to the Framework, the harm to the setting of the grade II listed building is less than substantial. The Framework, requires, where it would be less than substantial harm, for it to be balanced against the public benefits of the scheme.

11. When determining planning applications, decision makers are not obliged to place harm that would be caused to the significance of a heritage asset, or its setting, somewhere on a spectrum in order to come to a conclusion and that the only requirement is to differentiate between 'substantial' and 'less than substantial' harm for the purposes of undertaking the weighted balancing exercise.
12. However, it is noted that the appellant considers the less than substantial harm to be at a low level whereas the council consider the harm to be mid-level. However, even if I were to conclude that the level of harm to the setting of the heritage asset would be minor, I am still required to attribute this considerable importance and weight in my planning balance, as required by the *Barnwell Manor* judgment³.
13. Although the council maintain that they can currently demonstrate a 5.32 year supply of deliverable housing sites, the appellant disputes this, suggesting instead that the council can only demonstrate a 4.76 year supply, a moderate shortfall.
14. The proposal would provide three additional dwellings to the housing stock in a sustainable location within the existing settlement boundary, although due to the scale of the scheme, the benefits of this are limited. Whilst the Framework advocates granting planning permission where there are no relevant development plan policies or the policies which are most important for determining the application are out-of-date, this is unless, in accordance with paragraph 11(d)(i), the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed.
15. Whilst the harm to the setting of the listed building may be on the lower level of the spectrum, for the reasons outlined above, this is still given considerable weight. As such, I consider that the 'less than substantial harm' identified to the setting of the grade II listed building is such that the policies in the Framework relating to heritage assets provide that strong reason for refusing the development. Therefore, even if there is a moderate shortfall in the housing land supply, this would not weigh in favour of the proposed development.
16. The appellant considers that the design of the proposed development would enhance the character and appearance of the area, which should be given moderate weight in favour of the proposed development. Furthermore, they consider that there would be economic and social benefits from the construction and occupation of the proposed dwellings. However, due to the limited scale of the scheme these benefits are limited. Therefore, jointly, I do not consider that the public benefits of the scheme would outweigh the less than substantial harm to the heritage asset identified.

Biodiversity

17. A great crested newt survey submitted with the application confirms that there is the presence of great crested newt, a European protected species, within the pond on the appeal site. It concludes that the proposed development is likely to result in the loss or significant disturbance of 0.113ha of suitable great crested newt habitat (grassland and scrub) and if great crested newts are present within the pond on site or 55m to the east, this will constitute a loss of 0.113ha within 100m of a potential breeding pond.

³ *Barnwell Manor Wind Energy Ltd v East Northants DC*, English Heritage, National Trust and SSCLG [2014] EWCA Civ 137

18. A Natural England District Level Licensing (DLL) scheme can be used to mitigate the impact upon the identified species which involves the payment of an agreed financial sum to the DLL scheme provider which will be used for the creation of great crested newt habitats in the local area. Consequently, a 'Great Crested Newt District Level Licensing Impact Assessment and Conservation Payment Certificate' (IACPC) has been submitted by the appellant and signed by Natural England on 8 January 2025.
19. The submitted certificate is not a license granted under regulation 55 of the Conservation of Habitats and Species Regulations 2017. However, in signing the certificate Natural England has considered that these proposals will not be detrimental to the maintenance of the population of great crested newts at a favourable conservation status in their natural range. Natural England can only issue a license subject to three tests. These include whether the development is necessary for preserving public health or public safety or other imperative reasons of overriding public interest, where there is no satisfactory alternative and where the action will not be detrimental to maintaining the population of species concerned at a favourable conservation status in its natural range. The certificate signed by Natural England would satisfy the third test, however I am not persuaded that the proposed development would meet the other two tests.
20. The decision about whether a license can be granted is the responsibility of Natural England and is separate from the decision to authorise planning permission. However, the courts⁴ have established that when effects on European protected species are being considered in appeals, decision makers should have regard to the three tests that are used when licenses are being determined. As, due to the first two tests, Natural England would be unlikely to issue a license, I do not consider that this can be used to mitigate the impact upon the identified species.
21. Furthermore, the red line boundary for the appeal site shown within annex 3 of the IACPC does not align with the details submitting in the planning application. Therefore, as it was found that legal protected species can be found within the appeal site and no suitable mitigation provided, I cannot conclude that the proposed development would not have a harmful effect on biodiversity.
22. Therefore, for the reasons above, the issuing of a district level license by Natural England, to mitigate the impact on the identified species is unlikely. Therefore, without adequate information to demonstrate the contrary, the proposed development would have a harmful effect on biodiversity and would not comply with Policy LPP64 of the LP. This policy seeks to ensure that where there is a confirmed presence of protected or priority species on or immediately adjacent to a development site, it has been demonstrated that an adequate mitigation plan is in place to ensure no harm to protected species and no net loss of priority species.

Character and Appearance

23. The area surrounding the appeal site is residential in nature comprised of a variety of dwelling styles on modest sized plots. The layout of dwellings in the area is largely linear with properties fronting the road and gardens to the rear. The appeal site is open and undeveloped and currently provides a break in built form, although it is largely obscured from view from the public realm by extensive tree and hedge

⁴ Morge v Hampshire County Council [2011] UKSC 2

coverage along the front boundary. The proposal would introduce three, two storey dwellings on the front section of the site fronting Western Road.

24. The proposed dwellings are well set back from the road and in a linear form, in accordance with the prevailing pattern of surrounding development in this area. Although well separated from surrounding built form, they would be situated within close proximity to one another, with a separation distance of approximately 2 metres between them. However, such separation distances appear to be largely typical in the surrounding area, including new dwellings on the large estate to the east of the appeal site. Therefore, whilst there is limited space between the dwellings, this would not result in a layout which would conflict with the surrounding built form and would not appear contrived in the surrounding area.
25. The Council contend that the elevation design of the proposed dwellings is poor and lacks articulation. Whilst there is minimal detailing on the front elevation of the dwellings, visible in the streetscene, the mixed use of materials, the front projection with a hip or gable roof and the presence of a porch ensure that they do not appear bland and the design would be in keeping with similar modern residential development in the area.
26. The roof slopes proposed for the dwellings are steep, adding significant height and bulk to the proposed dwellings. However, roof forms in the surrounding area are varied and the proposed dwellings would not appear wholly out of character in this regard. Whilst dominant in scale, compared to some of the shallower pitched roof forms on neighbouring sites, they are well set back from the road and therefore would not appear overly prominent in the streetscene. The steep pitch roof forms also sit comfortably with the proposed fenestration on all elevations of the dwellings.
27. Therefore, the proposed development would not harm the character and appearance of the surrounding area and would not conflict with Policies SP7, LPP1, LPP35 and LPP52 of the LP in this regard. These policies seek to ensure that development meets a high standard of urban and architectural design with the scale, layout, height and massing of buildings reflecting the area's local distinctiveness in harmony with the character and appearance of the surrounding area and the density and massing of residential development related to the character and site and its immediate surrounding, as well as the wider locality. Within development boundaries, development will be permitted where it satisfies design criteria and where it can take place without material adverse detriment to the existing character of the settlement.

Flood Risk

28. The appeal site is located within Flood Zone 1 and no information has been provided to suggest that a site specific flood risk assessment should be provided by the appellant to support the application. However, a number of third party representations were made in relation to a nearby ditch and the potential for an increase in flood risk from the proposed development, which led to the Lead Local Flood Authority (LLFA) issuing a holding objection due to a lack of information regarding this. Subsequently, the appellant has submitted a flood risk statement and preliminary surface water drainage strategy as part of this appeal.
29. This concludes that the appeal site has a low to very low risk of flooding, from all sources of flooding, based on the available data. It outlines a survey of the

adjacent ditch which was conducted in January 2025, showing that the ditch was not holding any water along its length other than a small amount at the location of the existing culvert. It also states that a significant portion of the ditch has been filled in and there are no reported incidences of flooding in the area, suggesting that the ditch is not conveying flows from upstream and is not a significant drainage feature in the area. It also provides details of a proposed surface water strategy using permeable paving for the hardstanding on the appeal site to prevent pluvial flood risk.

30. The Council maintain the view that insufficient information has been submitted to demonstrate how the proposed development would impact on the existing ditch and I have no information before me as to whether the LLFA were consulted or if they still object to the proposal. Nevertheless, there is no evidence to suggest the conclusions of the appellant's flood risk statement and preliminary surface water drainage strategy is incorrect. Therefore, although the appeal site is in close proximity to an existing ditch, it is an area at low risk of all types of flooding, details have been submitted in relation to surface water management which could be secured by condition and I see no reason as to why the proposed development would result in an increased flood risk in relation to the adjacent ditch.
31. Consequently, subject to a condition in relation to surface water management, the proposed development would not result in an increased flood risk on the appeal site or within the local area and would not conflict with Policies LPP74, LPP75 and LPP76 of the LP. These policies collectively seek to ensure that new development is located on flood zone 1 or areas with the lowest probability of flooding, taking climate change into account, and will not increase flood risk elsewhere, with sustainable urban drainage systems provided for all new development of 10 dwellings or more.

Other Matters

32. The council have indicated that the appeal site is located in the zone of influence for the Blackwater Estuary Special Protection Area (SPA) and Ramsar site, the Dengie SPA and Ramsar site and the Essex Estuaries Special Area of Conservation (SAC). Given that the proposal is for additional housing, there is a reasonable likelihood that these European Sites would be accessed for recreational purposes by future occupiers of the development. Therefore, in combination with other developments, likely significant effects cannot be ruled out. The council have confirmed that a financial contribution in relation to the protection of habitats has been received.
33. The Conservation of Habitats and Species Regulations 2017 (as amended) requires the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. However, regulation 63(1) indicates the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. Therefore, in view of my overall conclusions resulting in my decision to dismiss the appeal, it has not been necessary to address this in any further detail.

Conclusion

34. Whilst the proposed development would not result in harm to the character and appearance of the surrounding area or an increased flood risk, it would harm the

setting and significance of the grade II listed building, Bowers Hall, and would have a harmful effect on biodiversity. Therefore, for the reasons given above and having had regard to all other matters raised, the proposal would conflict with the development plan taken as a whole and I conclude that the appeal should be dismissed.

E Grierson

INSPECTOR