The Planning Inspectorate

Appeal Decision

Inquiry Held on 27-30 October 2020
Site visit made on 7 October 2020

by Peter Rose BA MRTPI DMS MCMI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2020

Appeal Ref: APP/Z1510/W/20/3251952
Land west of B1057 Bardfield Road, Finchingfield

- 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 Huntstowe Land Ltd against the decision of Braintree District Council.
- The application Ref: 19/00069/OUT, dated 11 January 2019, was refused by notice dated 6 November 2019.
- The development proposed is outline application with all matters reserved (except access) for the erection of up to 50 dwellings and 0.97ha of public open space, and related development.

Decision

1. The appeal is allowed and outline planning permission is granted with all matters except access reserved for the erection of up to 50 dwellings and 0.97 hectares of public open space and related development at Land west of B1057 Bardfield Road, Finchingfield in accordance with the terms of the application Ref: 19/00069/OUT, dated 11 January 2019, and subject to the conditions set out in the attached schedule.

Preliminary matters

2. The appeal proposal relates to an outline application with all matters reserved for subsequent approval except access. Only two plans are submitted seeking formal approval: a 'Site Location Plan' referenced OPA/18008-PP03, and a 'Proposed Highway Access' referenced IT1893/TS/02 Rev A. The application also includes an 'Indicative Layout' referenced 004 and to which I have regard but only as a material consideration. The appeal is also supported by a unilateral undertaking from the appellant made pursuant to section 106 of the Act and dated 2 November 2020.

3. The description in the original application form refers to the site as being to the east of, and not west of, Bardfield Road. This is corrected in the appeal form and in subsequent documentation and is similarly adjusted in the details above.

4. The Council confirmed that its previous objection relating to the effect of the proposal on the local historic environment set out in Reason 2 of its decision notice would not be pursued and that the proposal would not cause harm to any designated or non-designated heritage asset.[1] Nevertheless, and whilst no

[1] See para 12.2 of agreed Statement of Common Ground – CD 12.03

longer supported, such objections are maintained by local interested parties and I consider the matter accordingly.

5. Following discussions with the main parties at the pre-Inquiry case management conference, I undertook an extensive unaccompanied visit to Finchingfield on 9 October, informed by key site references and itineraries provided by the Council and appellant. The visit included not just immediate observations of the appeal site itself, but reference to much wider surrounding views and other relevant matters.

Main issues

6. The main issues are:

- whether or not the proposal would preserve or enhance the character or appearance of the Finchingfield Conservation Area;
- the effect of the proposal upon the character and appearance of the appeal site and of the surrounding landscape and countryside;
- whether or not the proposal would provide an appropriate contribution of affordable housing;
- whether or not the proposal would provide adequate mitigation in relation to any other effects, including public open space, outdoor sport, health services and allotments.

Reasons

Conservation Area

7. Finchingfield is an ancient village with historic buildings clustered around a central green and stream. The village is served by a number of main approaches, one of which is Bardfield Road (the B1057) from the south.

8. The appeal site is an open field of some 4.7 hectares. The Finchingfield Conservation Area is located some distance to the north[2] and is physically separated by various features, including various mature planting, a recreation ground and by more modern bungalows and other buildings fronting this part of Bardfield Road.

9. Braintree District Council's Finchingfield Conservation Area Appraisal (2009)[3] (the Appraisal) explains how Finchingfield has evolved as a small rural nucleated village focussing around St John the Baptist's Church, the central village green and the River Blackwater/Finchingfield Brook. The Appraisal identifies how development within the village has continued along the historic street pattern in areas around the centre and on certain approaches. It highlights how the Conservation Area is dominated by a series of natural and built landmarks, including the rising cliff of The Causeway and the hill up to St John the Baptist's Church.

10. It is clear that the significance of the Conservation Area relates to the historic core of the village. This is characterised by an irregular street pattern occupied

[2] See Mr Jeffcock's Figure 2
[3] CD 9.04

by dense and varied piecemeal development over time and dating back to beyond the medieval period.

11. There is no inter-visibility between the Conservation Area and appeal site due to the intervening topography, planting and later surrounding development. The appeal site is physically and functionally separated from the Conservation Area, has no implications for its setting, and has no listed buildings nearby.

12. I therefore find there would be no harm to the significance of the Conservation Area and that the scheme would not fail to preserve or enhance its character or appearance. There would also be no harm to any other identified heritage assets. Accordingly, there would be no conflict with Policy RLP 90 or Policy RLP 100 of the Braintree District Local Plan Review Adopted July 2005 (the Local Plan), or with Policy CS9 of the Braintree District Council Local Development Framework Core Strategy Adopted 19 September 2011 (the Core Strategy). These seek, amongst other things, to ensure that development protects and enhances the historic environment in order to respect and respond to local context.

Character and appearance

Context

13. The appeal site gently slopes away from the village, and faces open countryside. It forms part of wider national, county and district level landscape areas and relevant details are set out in the accompanying character assessments (LCA's). The various LCAs do not consider the site specifically but define the wider landscape of which it forms a part.

14. Finchingfield is identified in National Character Area 86 (the South Suffolk and North Essex Clayland) as a well-preserved medieval village set within a wider ancient landscape of wooded arable countryside.

15. At county level, the site occupies a transitional location between two LCA's, Blackwater and Stour Farmlands (B3) and Blackwater/Brain/Lower Chelmer Valleys (C6).

16. At district level, the site occupies a similar transitional position. The site itself is in the Hempstead Farmland Plateau LCA (B2) but the adjacent Finchingfield village sits within the Stambourne Farmland Plateau LCA (B9), the boundaries of which lie very broadly along the northern edge of the appeal site. The Pant River Valley LCA (A5) lies to the south of the site. Each of these district LCAs is assessed as having a 'moderate to high'[4] or 'relatively high'[5] sensitivity to change.

17. A number of sensitivities emerge from all three levels of LCA. These include an overall sense of tranquillity in the rural landscape, and the presence of distinctive settlement patterns giving rise to a sense of historic integrity.[6] The B2 LCA also refers to characteristic views across and into the valleys[7] and to the sensitivity of the skyline along rolling hills.[8] Accompanying Landscape

[4] For B9, see CD 8.03 p75
[5] For A5 and B2, see CD 8.03 p47 and p59
[6] At national level, see CD 8.01, at county level see CD 8.02 p59 and p98, at district level see CD 8.03 p47, p59, and p75
[7] District LCA p60 - CD 8.03
[8] District LCA p59 - CD 8.03

Planning Guidelines refer to ensuring that any new development is small-scale and responds to the historic settlement pattern.[9]

18. The appellant's submitted Landscape and Visual Impact Assessment (LVIA) concluded that the site has medium sensitivity to development and that B2 has high sensitivity.[10]

19. The Inquiry received significant further technical evidence from both main parties reflecting relevant guidance and methodologies recommended by the Landscape Institute/Institute of Environmental Management and Assessment.[11] Whilst both parties agree the effect on the host Hempstead Farmland Plateau LCA would be major adverse, and the effect on visual amenity to be moderate/major adverse, there is considerable disagreement regarding the detailed form of those impacts, their duration, and the likely effectiveness of mitigation. The appellant considers the effect on the character of the LCA would substantially reduce to moderate adverse by post-development Year 15[12] and that visual amenity effects would also decrease. In contrast, the Council maintains that matters of location and scale are key and cannot be mitigated.

Implications of location

20. The site lies some 13m south-west of Finchingfield's development boundary.[13] As such, its location just beyond the village envelope would be contrary to the expectations of Core Policy CS5 and of Local Plan Policy RLP 2. These policies make general spatial presumptions against development beyond Finchingfield's defined limits and their justifications include reasons of countryside and landscape protection.

21. Finchingfield displays a distinctive settlement pattern. The village has radiated out from its historic core along a number of approaches to create a 'spider web' of informal fields and associated development.

22. Bardfield Road displays built form extending down to the appeal site. Clusters of more modern buildings lie to the north of the appeal site and some extend back and beyond the street frontage. These include Stephen Marshall Avenue, Hopgrounds, and Park Place immediately to the north, and which all lie closer to the historic core than the appeal site.

23. The proposed location as part of the approach to Finchingfield from Bardfield Road has been advanced as a factor both for and against the scheme. The appellant maintains the current transition into the village from the south to be abrupt and unattractive. It is seen to have no sense of soft or sensitive transition from the countryside and this proposal would enable such an improvement to be achieved. In contrast, the Council explains how Bardfield Road is lined by low level buildings to the east and north of the appeal site and how these modest levels of height and density already provide an appropriate gradual transition towards the more developed village centre.

24. I do not find either contention particularly compelling. This part of Bardfield Road is physically and visually detached from the historic core and the immediate settlement pattern of more modern development along Bardfield

[9] District LCA p60 - CD 8.03
[10] CD 2.01 p28
[11] Guidelines for Landscape and Visual Impact Assessment, Third Edition 2013 (GLVIA3) (CD 8.05)
[12] See Table 1 of Statement of Common Ground - Landscape and Visual Matters - CD 12.05
[13] As agreed in CD 12.05, para 2.3

Road already reflects various urbanising forms and features contrasting with both the surrounding countryside and with the Conservation Area to the north.

25. There is no particularly distinctive overall character to the existing built form to this part of Bardfield Road, but neither is there an obvious need for any additional 'transition' or improvement from the countryside into the village. Trees either side of the road at the northern end of the site create an attractive gateway to the relatively concealed village beyond, and planting extends parallel to the northern site boundary to create a strong belt of vegetation in views from the south.

Implications of scale

26. The district LCA reference to 'small-scale' development is not further defined but some general indications are offered at county level in the Essex Landscape Character Assessment. This includes an evaluation of each LCA's sensitivity to 'small' urban extensions of up to 5 hectares. The Blackwater and Stour Farmlands is defined to have 'moderate sensitivity' whilst Blackwater/Brain/Lower Chelmer Valleys has 'low sensitivity'. For areas with moderate sensitivity it advises landscape impacts may be capable of being absorbed on their individual merits. For areas with low sensitivity it advises impacts are likely to be capable in principle of being absorbed.[14]

27. The Indicative Layout shows how the proposal would not involve a limited, more traditional road-facing development as Bardfield Road currently displays, but a considerably larger scale and enclosed development extending further back into the site. The scheme would extend deeply into countryside to the west and the depth of that intrusion would be inconsistent with the existing immediate pattern of predominantly road-side linear development.

28. The Inquiry was presented with differing and disputed calculations of the relative scale of site coverage proposed, estimates suggesting the proposal would amount to an increase of between 8% and 22% of the existing village footprint. Irrespective of those calculations, aerial photographs show how the scale of development would involve a substantial addition to the overall built form of the village, and be of an unsympathetic depth contrasting markedly in plan form.[15]

Other effects upon landscape character and visual amenity

29. The appeal site is prominent in views from Bardfield Road and, irrespective of the precise details of any scheme, those existing immediate views of unqualified openness would be lost to the development.

30. In terms of wider effects, the site can also be seen in views across the shallow valley from higher ground to the east and west. It is also visible in views from higher land to the north.[16] The appeal site is read in those views as part of open countryside adjacent to but immediately beyond Finchingfield, and its slightly rising ground level relative to Bardfield Road contributes to that exposure.

[14] As confirmed in paras 4.4 and 4.5 of Statement of Common Ground - Landscape and Visual Matters - CD 12.05
[15] See Mr Jeffcock's Figure 8
[16] As confirmed by Mr Coverdale at the Inquiry

31. There would be distant views of buildings from public rights of way. Whilst views from Footpaths 12 and 28 (and from Footpath 30 on the opposite side of the site) are similarly characteristic ones across and into valleys, the effects would vary at different parts of each route. Views of the site would not be constant. They would be largely glimpsed and their occurrence intermittent, but the upper parts of built form would undoubtedly be evident at different points.

32. I do not accept that any significant views across the valley would be substantively blocked. The presence of occasional buildings and sporadic development is also characteristic of many of the existing public views. I also do not find that general appreciation of the landscape through the overall rural qualities of those more distant views would be significantly harmed by limited glimpsed sightings of the development.

33. The immediate tranquillity of an arable field would be replaced by the comings and goings generated by up to 50 additional homes but, as the highways evidence indicates, the scale of such activity is likely to be limited.[17]

Summary of effects upon character and appearance

34. The proposal would incur loss of an open field and would transform this part of Bardfield Road. The site itself is not a 'valued' one within the meaning of national policy[18], and has no specific landscape designation. Rather, it is an ordinary arable field at the edge of the settlement boundary and adjacent to various forms of relatively modern built development.

35. Nevertheless, whilst of limited inherent quality in itself, the site still forms part of a wider and acknowledged rural landscape of open countryside and makes a positive contribution in that regard. In that context, I find that the loss of its existing positive contribution to character and appearance would be harmful.

36. Whilst harm would arise by virtue of its countryside location, I find no other specific objection to the principle of its location, including the site's contribution to the approach to the village. This finding largely reflects the site's proximity to other existing built form in Bardfield Road and the opportunity for mitigation presented by the scheme itself.

37. In terms of public perceptions of the location of the site relative to the village and any possible impressions of physical detachment, I also note the main public entrance sign announcing arrival in Finchingfield from the south happens to lie directly adjacent to the appeal site and not further north.[19]

38. The depth of the development into the site would be discordant and would contrast markedly with the existing linear spider-web settlement pattern. To some extent, however, that impact could be offset by the location of the site immediately adjacent to the development boundary, so reading less isolated and more integral to the village itself. Although its extent would broadly align with the existing western boundary of the recreation ground to the north, the planning character of that site is predominantly open.

[17] Para 7.4 to Appendix 2 of Mr Wood's proof (enclosing Mr Williamson's evidence)
[18] Framework para 170 a)
[19] See Mr Jeffcock's Figure 11

39. At street level, the impact of built form replacing countryside could be mitigated to some degree by particulars of layout and planting. In views from the B1057, there has been no suggestion that the scheme could not be designed to present a substantial planted frontage. From higher land, such as views from the north, the incongruous depth would remain more evident.

40. Mitigation has only limited opportunity for assessment through the formal particulars before this Inquiry. Nevertheless, there is little to suggest that a high quality scheme of a design sensitive to its immediate setting and sympathetic in its relationship to the wider countryside could not offset, to some significant degree, the harm to character and appearance arising from loss of the field and the depth of development. Planting would take many years to fully establish and the adverse impact would persist in the interim, albeit reducing. Public open space is proposed of an amount in excess of policy requirements[20] and this, coupled with accompanying planting, would provide significant opportunity for an outward greening of the development as an integral feature.

41. Further, there was no evidence from the Council to suggest that this outline proposal would not be able to deliver the high standard of layout and design required by Policy RLP 90.[21] The density of development would be no greater than generally within the village and would be less than for other new developments elsewhere in the district.[22] Through the reserved matters, opportunities would be presented to create very contrasting but sensitive relationships to Bardfield Road and to wider public views.

42. Whatever the quality of any eventual reserved matters, some moderate level of net residual harm would inevitably persist in terms of loss of countryside and the depth of the development, and this would be particularly apparent in the short term. Nevertheless, I consider that the overall scale of harm to character and appearance and to visual amenity has the potential to be appreciably less than major adverse. I find no reason why in principle a high quality scheme could not succeed in reinforcing and reflecting surrounding landscape and so provide integration and alleviation of the built form. This finding would also be consistent with the potential for absorbing development acknowledged by the County LCA's.[23]

Conclusions against development plan policy

43. The proposal, by virtue of the loss of an open field integral to its countryside setting and the depth of the development proposed, would inevitably incur some moderate harm to local character and appearance. It would thereby be contrary to Policy CS5 to the extent that development outside town development boundaries will be strictly controlled to uses appropriate to the countryside in order to protect and enhance, amongst other things, the landscape character of the countryside. It would also be contrary to Policy RLP 2 which seeks to confine new development to areas within town development boundaries and village envelopes.

44. I find further conflict with Policy RLP 80 and Policy CS8. There is conflict with Policy RLP 80 insofar as it requires new development not to be detrimental to

[20] Ms Corbishley's proof para 7.16
[21] Confirmed by Ms Corbishley in cross-examination
[22] As confirmed by Ms Corbishley in answer to my question
[23] See para 26 above

distinctive landscape features of the area. Whilst the scheme does seek to successfully integrate development into the local landscape as Policy RLP 80 expects, I find that aspect of the policy to be secondary given the proposal would still be clearly detrimental to the extent defined. Similarly, whilst Policy CS8 requires proposals to have regard to the character of the landscape and its sensitivity to change, as the proposal plainly seeks to do, it further requires development to enhance the locally distinctive character of the landscape. The moderate residual harm I have found conflicts with both policies.

Affordable housing

45. Policy CS2 of the Core Strategy requires affordable housing to be directly provided by the developer within housing schemes. The policy specifies a target of 40% affordable housing on sites in rural areas triggered by a threshold of 5 dwellings or 0.16 hectares in rural areas.

46. The appeal scheme proposes 40% affordable housing. Further details are set out in the accompanying unilateral undertaking. This provides for an Affordable Housing Scheme to be submitted to and be approved in writing by the Council and for no development to commence until such details have been approved. The scheme would include specifications of numbers, sizes, locations and tenures of dwellings, and of the proposed Registered Provider. In terms of delivery, it would also link the timing of occupation of the market dwellings to progress in the availability of the affordable dwellings.

47. The proposal is fully compliant with Policy CS2 and would thereby provide an appropriate contribution of affordable housing.

Other effects, including public open space, outdoor sport, health services and allotments.

48. Policy CS10 of the Core Strategy seeks, amongst other things, to ensure there is a good provision of high quality and accessible green space to meet a wide range of recreation, outdoor sport and amenity needs in the district.

49. Policy CS11 seeks, amongst other things, to ensure that the infrastructure, services and facilities required to provide for the future needs of the community, including health, sport, leisure and cultural provision, are delivered.

50. The appeal scheme proposes 0.97 hectares of public open space[24], and mitigating contributions for health and sport. No objection was pursued by the Council in relation to allotments and its previous concerns are otherwise now addressed.

51. I therefore find the appeal scheme would provide adequate mitigation in relation to public open space, outdoor sport and health services and so be fully compliant with Policies CS10 and CS11.

Other considerations

Access

[24] This is defined in the appellant's planning obligation as a minimum figure and to be the subject of an 'Open Space Scheme' setting out details including size, location, management and maintenance

52. Full details of proposed access are set out in submitted drawing 'Proposed Highway Access' referenced IT1893/TS/02 Rev A.

53. Although concerns are raised by local interested parties in relation to traffic generation and safety, no reasons for objection are identified by the Council or local highway authority.[25] The access would be centrally positioned with good visibility. It would be more than adequate to accommodate peak traffic movements of less than one vehicle movement every 2 minutes[26], and I have little to suggest that any impact upon the further use of, or upon the physical condition of, the historic bridge in the centre of Finchingfield would be other than imperceptible.

54. I find there would be no harm arising from the access and the proposal would therefore comply with Policy RLP 90 which seeks, amongst other things, to ensure that design and layout of new development, and the resultant traffic generation and its management, should avoid significant increases in vehicle movement, particularly in residential areas, and should promote a safe and secure environment.

Housing land supply

55. Both main parties invited the Inquiry to consider the appeal on the basis of a 5-year housing land supply (5YHLS) of between 3.72 years and 4.52 years. This position is based upon the standard methodology and a 20% buffer[27] and reflects the finding of a recent appeal decision for a proposed development at School Road, Rayne.[28]

56. No other evidence has been presented to question the extent of available 5YHLS and I consider the appeal on the basis of the agreed range.

Market housing

57. There is no dispute that the scheme would be consistent with the requirement of the National Planning Policy Framework (the Framework) that, in rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs.[29]

Ecology

58. The proposal includes a commitment to net biodiversity gain consistent with the Framework.[30] The potential for net biodiversity gain would appear to be significant given the limited contribution which an arable field is likely to currently offer[31] and the considerable opportunity arising from the high proportion of open space and new planting within the development. The appellant is also committed to retaining all existing vegetation where that is possible.[32]

59. The development would thereby conform with Policy RLP 80 to the extent that it seeks, amongst other things, to ensure that proposals should not be

[25] See p80 of Committee report - CD 3.03
[26] Para 7.4 to Appendix 2 of Mr Wood's proof
[27] See Planning Practice Guidance
[28] CD 6.03 (Ref: APP/Z1510/W/20/3247020 issued on 31 July 2020, para 108)
[29] Para 77
[30] Para 175 d)
[31] See email from Kevin Slezacek dated 29 August 2019
[32] See para 3.4 of Statement of Common Ground - Landscape and Visual Matters - CD 12.05

detrimental to the habitats of the area, and with Policy CS5 insofar as it seeks to protect and enhance biodiversity. It would also be compliant with Policy CS8 to the extent that it seeks, amongst other things, to create and enhance biodiversity.

Economic factors

60. The economic benefits of development would include investment in construction and related employment for its duration, and an increase in subsequent local household expenditure and demand for services.

61. I disregard any suggestion of financial contributions to the local authority through Council tax receipts or similar as a possible benefit of the scheme. The Planning Practice Guidance (the Guidance) states that whether or not a local finance consideration is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms.[33] Further, it advises that it would not be appropriate to make a decision based on the potential for a development to raise money for a local authority or other government body.

62. The Framework requires that, to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services.[34]

63. Aside from those matters which would be addressed through the proposed mitigation, there is no suggestion from the Council that a proposal for up to 50 homes would be excessive relative to other existing services in the village or their accessibility.[35]

Other aspects of development

64. The appellant cites a number of other features as possible benefits of the development. These include provision of sustainable drainage, and contributions to local health care and sport facilities. I do not regard such matters as benefits. Some are in the nature of mitigation necessary to make otherwise unacceptable aspects of development acceptable, whilst others are simply incidental features of the proposal.

Other concerns raised by local interested parties

65. Local interested parties have raised a number of other issues, and which have not been cited by the Council as reasons for objection or addressed above. These include matters of drainage, impact upon local living conditions, and implications for crime. The Council's Committee report indicates no such supporting objections from relevant statutory consultees[36] and I have little evidence of any specific harm in those regards. Further, a number of these points, such as drainage, would be addressed as matters of detail as part of any subsequent scheme or though associated conditions if a permission were to be granted, and I shall have regard to such matters as appropriate should the appeal be allowed.

[33] Para 011 Reference ID: 21b-011-20140612
[34] Para 78
[35] Also clarified by Ms Corbishley in cross-examination
[36] CD 3.03 p81-84

The Council's Draft Local Plan (the draft plan)

66. It is agreed by the main parties that Section 1 of the Council's draft plan should be afforded no weight in relation to this appeal.[37] The Council refers to how the plan has 'got into difficulties'.[38] The recent post-hearing findings of the examining Inspector relating to Section 1 identified concerns regarding soundness and legal compliance and in relation to the viability and justification of garden community proposals.[39] These appear to represent a key strand of the plan's approach to housing delivery.

67. In any case, the delay of Section 1 and possible implications for Section 2 must bring into question any weight to which policies in Section 2, such as LPP 1 and LPP 71, can now reasonably and logically attract as material considerations. I acknowledge the Council's commitment to take the plan forward, but clear prospects for specific housing delivery remain hard to discern.

Unilateral undertaking

68. The appellant's unilateral undertaking sets out details of its commitments to affordable housing, healthcare, outdoor sport and open space. The Council has also submitted a CIL Compliance Statement dated 23 September 2020 based upon emerging drafts of the undertaking.

69. The Council indicated at the Inquiry that it was satisfied with the form and content of the undertaking as a deed.[40] I find the undertaking to be compliant with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) and to be generally fit-for-purpose. Accordingly, I take into account the commitments and accompanying terms as considerations of my decision.

Assessment against the development plan as a whole

70. It follows from my assessment of the main issues, that the policies which are most important for determining this appeal are Local Plan Policies RLP 2, RLP 80, RLP 90 and RLP 100, and Core Strategy Policies CS2, CS5, CS8, CS9, CS10 and CS11. Of these, I have identified conflict with RLP 2, CS5, RLP 80, and CS8.

71. The Council suggests that only Policies CS5, RLP 80 and CS8 are the policies most important for determining this application. I do not consider that to be a representative basket of the plan's most important overall expectations as they relate to the development proposed. I find there are a range of other policies as identified above and which, as the Council has accepted[41], either would not be breached, or with which the scheme would be compliant. These are either neutral or supportive of the scheme, but are still directly relevant and form part of the basket of most important policies.

72. There may be conflict with all or part of a policy, and the degree of weight to be afforded to any conflict must reflect the specific harm arising in that regard. Further, some policies, such as Policy CS5, may have aspects which infer both positively for the proposal, for example, in highlighting an underlying need to

[37] Para 9.10 of CD 12.03
[38] P17 of Ms Dring's closings
[39] CD 5.02
[40] My question to Ms Dring
[41] Ms Corbishley's proof para 7.3

enhance biodiversity, but also negatively, for example, in relation to loss of landscape character.

73. The conflict with both Policy RLP 2 and with the restraining element of CS5 reflects the location of the appeal site outside the settlement boundary. I find both policies to be substantively out-of-date in those regards as the boundaries are predicated upon long out-dated levels of housing need.[42]

74. There is dispute over the weight to be given to Policy CS5. Reference has been made to a series of five appeal decisions dating from 2017-2020 in which it was found that the policy could be given 'more than moderate' weight in the planning balance.[43]

75. Whilst the restraining element of Policy CS5 is inconsistent with the Framework in restricting development at a time when there is insufficient housing land identified in Braintree to meet its needs, aspects of the policy remain consistent. In particular, there is some broad consistency in its stated aim to protect and enhance landscape character and biodiversity and the amenity of the countryside. In this regard, the Framework seeks to ensure that planning should, amongst other things, contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.[44]

76. The most recent of the five decisions referred to by the parties relates to Bocking[45] in August 2020 and only attributes Policy CS5 'limited weight'.[46] The circumstances of that decision contrast, to varying degrees, with the previous four. Whilst the previous four refer to an absence of a 5YHLS and Flitch Way acknowledges issues with the emerging plan[47], all four pre-date the examining Inspector's note of 15 May 2020.[48]

77. I now find it difficult to afford Policy CS5 anything other than limited weight in accordance with the most recent decision given not just the enduring absence of a 5YHLS and the undermining restraint the policy itself applies in that regard, but also the now confirmed status and delayed progress of the draft plan as a solution to Braintree's future housing delivery.

78. In terms of weighting, the Council also made a significant concession in opening when stating that the authority would not now suggest that the appeal proposal should be refused on the basis of a conflict with Policies CS5 and RLP 2 alone.[49] Indeed, for the above reasons, I find very little weight can be afforded to RLP 2 given its exclusive focus upon out-dated town boundaries.

79. Policies RLP 80 and CS8 are consistent with the Framework and are of particular importance in safeguarding character and appearance. This is of notable relevance in the specific context of a site directly adjacent to Finchingfield, an historic village set in an attractive landscape.

[42] See Mr Wood's proof p22
[43] See Ms Dring's closing p16
[44] Para 170
[45] CD 6.04
[46] The other four decisions relate to Wethersfield Road at CD 6.01, Flitch Way at CD 6.05, Steeple Bumpstead at CD 6.06, and Coggeshall at CD 6.07
[47] See CD 6.05 Inspector para 32
[48] CD 5.02
[49] And in Ms Corbishley's cross-examination

80. I afford Policies RLP 80 and CS8 full weight in the determination of the appeal. The conflict with these policies relates to the residual harm I have identified which would arise in terms of loss of the field, the depth of the development, and its short-term impact. I acknowledge that the proposal does seek to have regard to successfully integrating the scheme into the local landscape but there is conflict at this outline stage on the terms defined.

Summary of accord and conflict

81. I have found the overall basket of most important policies described to be reasonably up-to-date, subject to the detailed qualifications identified.

82. I have identified moderate harm against two policies to which I attach full weight (RLP 80 and CS8), and similar harm against a further policy attracting limited weight (CS5) and against one policy with very little weight (RLP 2).

83. The development complies with all other relevant policies and, whilst of greater number, those policies are generally of less direct significance to the principle of this proposed development of countryside. They are, nonetheless, important.

84. The judgement is a fine one but, setting aside RLP 2 due to its weight, I find the conflict with CS5, RLP 80 and CS8 is such that the appeal proposal cannot be regarded, read sensibly and in the round, to accord with the development plan as a whole.

Tilted balance

85. By virtue of the agreed absence of a 5YHLS[50], the tilted balance under paragraph 11 d) of the Framework is engaged and the policies most important for determining the application are thereby deemed to be out-of-date. It then follows as an important material consideration that paragraph 11 d) expects proposals to be approved in such circumstances unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

86. The adverse impacts of the development would relate to character and appearance and are as detailed above.

87. Weighing against those impacts, the scheme would provide up to 30 units of much-needed market housing and up to 20 units of similarly required affordable housing.

88. Wherever Braintree's actual 5YHLS may lie within the agreed range, the fact remains that the authority does not have sufficient housing land to meets its needs. Even a most favourable position of 4.52 years, and described in the source School Road decision as 'optimistic', is still notably deficient.

89. The benefits of affordable housing would be very significant. The Council identifies a current unmet need for 685 affordable units.[51] Whilst this shortfall relates to Braintree as a whole, there is also some limited evidence of unmet need more locally to Finchingfield in public representations towards the proposal.[52]

[50] See para 55 above
[51] Confirmed by Ms Corbishley via Ms Dring in answer to my question
[52] Mr Amos and Mr Nelson (although Mr Nelson does not cite a Finchingfield address). Similar general reference is also made on p84 of the Council's Committee report – CD 3.03

90. Little evidence was presented regarding previous or future delivery of affordable housing in Finchingfield. Aside from possibly 4 units to be delivered as part of a wider development proposed at Brent Hall Road[53], no other sites have been identified. Oral mention was made by the Parish Council to development in the 1980's and to existing derelict buildings but no other specific or relevant details are before the Inquiry.

91. Delivery of market housing and of affordable housing would each yield significant benefits for Braintree consistent with the social objective of the Framework.

92. Further, the scheme is considered to be deliverable by mid-2022, even taking into account the current pandemic.[54] The appellant is prepared to reduce the submission period for reserved matters to 2 years to underline that commitment.

93. The scheme would involve a net biodiversity gain and the provision of some 0.71 hectares of public open space over and above the provision required by Policy CS10.

94. There would also be significant economic benefit as described above.

95. In sum, the overall benefits of the scheme would therefore be considerable.

96. The evidence before the Inquiry has not questioned the sustainability of the village for accommodating housing growth. It is currently difficult to appreciate how the authority will be able to significantly boost its supply of homes[55] and meet its housing needs without development of currently unallocated 'countryside' sites beyond existing development boundaries.[56] Further, it is improbable that all such future candidate sites would necessarily offer the same Framework credentials of being immediately adjacent to a settlement, of occupying a sustainable location in respect of transport and services, and of being readily available.

97. The current impasse regarding the Council's future strategy for meeting its affordable and other housing needs and its persisting absence of a 5YHLS may, indeed, yet prove temporary and short-term, and the residual harm that this proposal would cause to landscape character and visual amenity would be permanent. Nevertheless, Braintree's housing needs continue unaddressed, clear prospects for delivery of a 5YHLS are still unknown, and people requiring homes remain unaccommodated by the planning system contrary to national expectations.

98. I am therefore clear that the adverse impacts of granting planning permission in this instance would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Final planning balance

99. Section 38(6) requires this appeal to be determined in accordance with the development plan, unless material considerations indicate otherwise.

[53] CD 6.02, and updated by Mr Wood in cross-examination
[54] Confirmed by Mr Wood in response to my question
[55] See para 59 of Framework
[56] See appellant's closing para 35

100. Whilst the scheme does not accord with the development plan as a whole, I find the conflicts in relation to Policies RLP 2, CS5, RLP 80 and CS8 and the harm arising in those regards to be out-balanced by the far greater weight of other material considerations. Accordingly, material considerations in this instance indicate that planning permission should be granted and lead me to a decision other than in accordance with the development plan.

Conditions

101. I have considered as a starting point the agreed list of conditions put forward by both main parties to the Inquiry. The Parish Council was also present at the accompanying round-table discussion. I have regard to the advice set out in the Guidance and in the Framework in terms of both the need for individual conditions and for clear, precise and enforceable wording.

102. Reflecting the appellant's commitment to early development of the site, the timescale for submission of reserved matters is 2 years as agreed.

103. For reasons of certainty, a condition is imposed to ensure the development is undertaken in accordance with the relevant drawings. Conditions are also attached specifying the number of dwellings and amount of public open space.

104. Conditions are required to protect the ecological interests of the site and to promote net biodiversity gain. As with other matters, I have combined and rationalised the various suggestions of the parties in that regard. I note that the appellant's Preliminary Ecological Assessment Report identified no specific presence of bats or of Great Crested Newts and the only potential habitats would relate to vegetated boundaries which are to be retained.[57]

105. To safeguard the relationship between the character and appearance of the appeal site and surrounding countryside, and to protect and promote biodiversity, a condition requires retention of existing vegetation.

106. Details of external lighting are to be agreed. This reflects both the general significance of views in and around the site during the hours of darkness, but also has implications for safeguarding the future ecological value of the land. The evidence presents insufficient justification for further general restrictions upon external lighting within the site.

107. To safeguard any hitherto unrevealed heritage interest within the site, a scheme of archaeological investigation is necessary.

108. To promote sustainable transport, conditions require provision of a residential travel information pack, and details of arrangements and works to connect the development to adjacent public footpaths. For reasons of safety it is necessary for the approved access to be implemented prior to occupation and for specified sightlines to be provided and retained.

109. To ensure a satisfactory living environment for occupiers and neighbours, and to contribute to a sustainable development, conditions require details to be submitted to and be approved by the local planning authority relating to surface water drainage. Similarly, a condition requires details of arrangements for refuse to be approved and implemented.

[57] See CD 1.04 and email from Kevin Slezacek dated 29 August 2019

110. To protect the living environment of neighbours during construction, it is necessary for the works to be undertaken in accordance with a Construction Method Statement.

111. The parties have suggested conditions relating to details of future landscaping and hard surfaces. Such details are not part of this outline application. They remain for formal submission as reserved matters and I find no reason to make such reference at this time.

112. Whilst the parties have suggested a condition to upgrade bus stops in the vicinity of the site, the reference remains unclear and, besides, I am not satisfied such matters would be within the control of the applicant or that such a condition is necessary.

Conclusion

113. For the reasons given above I conclude that the appeal should be allowed.

Peter Rose
INSPECTOR

SCHEDULE OF CONDITIONS

Reserved matters and time limits

1. Details of the appearance, landscaping, layout, and scale, (hereinafter referred to as 'the reserved matters') shall be submitted to and be approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

2. Application for approval of the reserved matters shall be made to the local planning authority not later than 2 (two) years from the date of this permission.

3. The development hereby permitted shall commence not later than 2 years from the date of approval of the last of the reserved matters to be approved.

Details and drawings

4. The development hereby permitted shall be carried out in accordance with the following approved plans: 'Site Location Plan' Ref: OPA/18008-PP03 dated 05.03.2019, and 'Proposed Highway Access' Ref: IT1893/TS/02 Rev A dated Nov 2018.

5. The development hereby permitted shall comprise no more than 50 (fifty) dwellings.

6. The total area of publicly available local open space to be provided shall be no less than 0.97 hectares.

Other pre-commencement

7. No development shall take place until arrangements to safeguard biodiversity within the site during the course of development, and including any implications for protected and priority species, have been submitted to and been approved in writing by the local planning authority. The arrangements shall include details of the following:

   a) a risk assessment of potentially damaging construction activities

   b) practical measures (both physical measures and sensitive working practices/method statements) to avoid or reduce impacts during construction

   c) the location and timing of any sensitive works and the accompanying measures to avoid or minimise harm

   d) the nomination of a competent person or persons/organization to undertake and supervise the safeguarding works and arrangements

   e) details of protective fences, exclusion barriers and warning signs.

   The arrangements shall be informed by the results of the further wildlife surveys required by Condition 8.

The approved biodiversity safeguarding arrangements shall be implemented from the commencement of works and be maintained in accordance with the approved details and an agreed programme.

8. No development shall take place until further surveys for any Great Crested Newts and bat activity as detailed in the appellant's Preliminary Ecological Assessment Report (November 2018) have been completed and been submitted to and been approved in writing by the local planning authority. The submission shall include a plan of action and associated programme in relation to any findings and the development shall be undertaken in accordance with details of the plan and programme as approved.

9. No development shall take place until a plan to secure net biodiversity gain within the site, and including any implications for protected and priority species, has been submitted to and been approved in writing by the local planning authority. The plan shall seek to deliver a minimum of 10% measurable biodiversity net gain calculated according to the DEFRA Biodiversity Metric 2.0 or any successor. The submission shall include the following:

   a) baseline data and assessment of current site conditions

   b) details of how net biodiversity gain principles will be applied to maximise available opportunities, including justification of habitat types and all other relevant particulars

   c) provision of full net biodiversity gain calculations

   d) details of implementation measures, timescales and management of proposals

   e) details of monitoring and auditing measures.

   The plan shall be implemented in accordance with the approved details and an agreed programme, and measures shall be maintained in the approved form thereafter.

10. No development shall take place until full details of existing vegetation within the site to be retained have been submitted to and been approved in writing by the local planning authority. The details shall include arrangements for protection of the vegetation during the construction period and a programme for such action. The development shall proceed in accordance with the details as approved.

11. The reserved matters applications if submitted for any particular phase or part of the development shall be accompanied by full details of the location and design of the refuse facilities and of accompanying arrangements for access/servicing corresponding to that phase. The refuse facilities and associated vehicular access shall be provided as approved prior to the first occupation of the units within the phase of the development to which those reserved matters applications relate and shall be retained in the approved form thereafter. If reserved matters are not to be pursued by phase, the

submission requirements for such refuse details and their provision and retention set out in this condition shall apply to the scheme as a whole.

12. No development shall take place until a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works and to prevent associated pollution has been submitted to and been approved in writing by the local planning authority. The scheme shall be implemented as approved and prior to the commencement of development and be maintained for the duration of the works.

13. No development shall take place until full technical details of a scheme of sustainable surface water drainage to serve the development has been submitted to and been approved in writing by the local planning authority and the scheme shall be implemented in accordance with the details as approved and an accompanying programme. The submitted details shall include:

    a) details of the design storm period and intensity, the method to be employed to delay and control the surface water discharged from the site and the measures to be taken to prevent pollution of the receiving groundwater and/or surface waters

    b) a timetable for implementation

    c) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements necessary to secure the operation of the scheme throughout its existence.

14. No development shall take place until a Construction Method Statement has been submitted to and been approved in writing by the local planning authority. The statement shall provide for:

    a) the parking of vehicles of site operatives and visitors, delivery/unloading of plant and materials, and associated site access

    b) storage of plant and materials used in constructing the development

    c) the erection and maintenance of site hoardings

    d) wheel washing facilities

    e) measures to control the emission of dust and dirt during construction

    f) a scheme for recycling/disposal of waste resulting from construction works

    g) delivery and construction working hours.

    The approved Construction Method Statement shall be implemented and adhered to throughout the construction period.

15. No development shall take place until a scheme of archaeological investigation has been submitted to and been approved in writing by the local planning authority. The scheme shall include:

    a) the programme and methodology of site investigation and recording

b) the programme and arrangements for post-investigation assessment

c) the provision to be made for publication and dissemination of the analysis and records of the site investigation

d) the provision to be made for archive deposition of the analysis and records of the site investigation

e) the nomination of a competent person or persons/organization to undertake the works to be set out within the approved scheme.

The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority, and shall allow that person to observe the excavations and record items of interest and finds.

Any historic or archaeological features not previously identified which are revealed when carrying out the development hereby permitted shall be retained in-situ and be reported to the local planning authority in writing within two working days of their exposure. Works shall be immediately halted in the area/part of the development affected until provision has been made for retention and/or recording in accordance with details that shall first have been submitted to and been approved in writing by the local planning authority. Such further remedial works shall then be implemented as approved.

Pre-occupation

16. No occupation of the development shall take place until full details of a scheme for external lighting within the site have been submitted to and been approved in writing by the local planning authority.

    The scheme shall identify those features on site that are potentially sensitive for bats, including important routes used for foraging, and details of how and where external lighting will be installed and its form so as not to disturb, impede or otherwise prevent bat presence or movement.

    The scheme shall also be designed to minimise general external light pollution and unnecessary illumination of the development in views from outside the site.

    All external lighting shall be installed in accordance with the approved details and an agreed programme.

17. No occupation of the development shall take place until the vehicular site access as shown on drawing IT1893/TS/02 Rev A has been completed in accordance with the approved details. This shall include a vehicular visibility splay as detailed on the approved drawing. The visibility splay shall be provided before the access is first used by vehicular traffic and shall be retained subsequently free of any obstruction at all times.

18. No occupation of the development shall take place until the details and content of a residential travel information pack have been submitted to and been agreed in writing by the local planning authority, and the pack becomes available for future occupiers of each dwelling. The pack shall be

designed to include measures to promote and raise awareness of local opportunities for sustainable transport.

19. No occupation of the development shall take place until full details of a scheme for footpath links between the site and the adjacent public footways have been submitted to and been approved in writing by the local planning authority. The scheme shall be implemented in accordance with the details and an agreed programme.

End of conditions 1-19.

INQUIRY DOCUMENTS

The following documents were submitted and accepted by the Inquiry:

On behalf of the local planning authority:

Opening submissions by Ms Dring

Revised CD 8.02

GLIA3 extract p80

Speaking note from Mr Jeffcock dated 27 October 2020

Closing submissions by Ms Dring

On behalf of the appellant:

Opening submissions by Mr Cosgrove

Response to Mr. Jeffcock's speaking note from Mr Blake dated 26 October 2020 (sic)

Closing submissions by Mr Cosgrove

Completed unilateral undertaking signed and dated 2 November 2020

Jointly on behalf of the local planning authority and appellant:

Amended list of suggested conditions received by email dated 3 November 2020

On behalf of local interested parties:

Written statement from Mr Coverdale on behalf of Finchingfield Parish Council (submitted by email dated 26 October 2020)

APPEARANCES

For the local planning authority:

Emma Dring of Counsel

She called:

John Jeffcock, Chartered Landscape Architect,
Michelle Bolger Expert Landscape Consultancy

Melanie Corbishley, Senior Planner,
Braintree District Council

For the appellant:

Tom Cosgrove of Queen's Counsel

He called:

Nicholas Corbett, Associate Director Heritage,
WSP

Steven Williamson, Chartered Highways and Transportation Engineer,
Intermodal Transportation Ltd

James Blake, Chartered Landscape Architect,
James Blake Associates Ltd

Matthew Wood, Chartered Town Planner,
Phase 2 Planning and Development Ltd

Interested persons:

David Coverdale, Parish Councillor and planning spokesperson for
Finchingfield Parish Council