



Appeal Decision

Hearing held on 18-19 June 2024

Site visit made on 19 June 2024

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2024

Appeal Ref: APP/Z1510/W/24/3336760

Deals of Kelvedon, Station Road, Kelvedon, Essex CO5 9NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Kelvedon Village Developments Ltd against Braintree District Council.
 - The application Ref is 22/03134/FUL.
 - The development proposed is described as 'Demolition of existing buildings, mixed use development comprising 24 residential apartments with ground floor commercial space within Blocks A and B and a retail unit in Block C with associated access, parking and landscaping'.
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Decision

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

Preliminary Matters

2. The appellant has requested that I consider a revised site plan (PA03 H). This was submitted to the Council during the application but was not accepted. The difference is that existing on street parking is shown on the revised plan but was omitted from the earlier version. This is a minor point of clarification and therefore I have accepted the amendment as there would be no prejudice caused to any party.
3. In preparation for the hearing, I asked the Council and appellant to provide confirmation of the inputs used in the viability assessment. These were submitted as part of the Statement of Common Ground and formed the basis for discussions at the hearing and my assessment. At the hearing, I accepted the late evidence listed at the end of this decision. I did so because it was relevant, brief, and capable of being addressed by those present. As such, no prejudice was caused.
4. An application for an award of costs was made by Kelvedon Village Developments Ltd against Braintree District Council. This application will be the subject of a separate Decision.

Main Issues

5. The Council failed to determine the planning application within the prescribed period and therefore the appellant exercised their right to submit the appeal. The Council has confirmed through putative reasons for refusal that had it been

able to do so, it would have refused the proposal. The main issues listed below are derived from the Council's concerns.

6. The appellant submitted a planning obligation pursuant to section 106 of the Town and Country Planning Act 1990 at the hearing. This was in the form of a unilateral undertaking. The submission of this document addressed the concerns raised in the Council's fifth putative reason for refusal, these being an absence of financial contributions towards infrastructure. Accordingly, I have not assessed this as a main issue. During the hearing, the Council confirmed that its concerns regarding the alleged lack of parking related to highway safety and not living conditions.
7. Thus, the main issues in this appeal are:
 - Whether the appeal site is a suitable location for the proposed development, with reference to policies concerned with development in areas at risk of flooding;
 - Whether the proposal would make adequate provision for affordable housing;
 - The effect of the proposed development on the significance of the Kelvedon Conservation Area, with particular reference to its setting;
 - Whether the proposed development would be well designed, including its effect on the character and appearance of the area;
 - The effect of the proposed development on highway safety, with particular reference to parking
 - Whether the proposal would provide adequate living conditions for future occupants, with particular reference to noise, the security of the accesses in Blocks A and B, the size, privacy, orientation and outlook of some of the homes and the adequacy of external amenity space.
 - Whether the appeal site is an appropriate location for the proposed development with reference to policies in the development plan concerned with employment land and car parks.
 - The effect of the proposed development on the living conditions of the occupants of Rosslyn Terrace, with particular reference to privacy and any noise and disturbance.

Reasons

Policies concerned with development in an area at risk of flooding

8. Policy LPP74 of the Braintree Local Plan 2013-2033 (LP) states that any proposals for new development within Flood Zones 2 and 3 will be required to provide sufficient evidence to assess whether the requirements of the sequential test have been satisfied. The Policy is not entirely consistent with the National Planning Policy Framework (the 'Framework'), which requires a sequential approach be applied in areas at risk of flooding from all sources.
9. Nevertheless, for the purpose of my assessment the requirements of Policy LPP74 align with those of the Framework regarding development in Flood Zone 2 (FZ2). Indeed, Paragraphs 167 and 168 of the Framework explain that to

avoid flood risk to people and property, a sequential risk-based approach to the location of development should be taken to flood risk from all sources, and that this should be done by applying the sequential test. The Planning Practice Guide (PPG)¹ confirms that the sequential approach means steering development to areas at little or no risk of flooding.

10. When considering the flood risk of the site, the Environment Agency's (EA) flood map identifies the front of the site as being within FZ2. This is a conclusion also reached in the appellant's Flood Risk Assessment (FRA). The area at risk of flooding includes a part of the site where two of the proposed buildings would be sited, as well as space around them. As a result, this is not a situation where only a little used part of the site would be at risk of flooding, such as an area of ornamental landscaping². Therefore, as a matter of planning judgment I find that the sequential test is required given the meaningful risk to people and property posed by the risk of flooding.
11. In arriving at this view, I note that Paragraph 174 of the Framework explains that some minor development and changes of use are not subject to the sequential test. The appellant has suggested that the proposal would be a change of use in these terms. However, I do not share this view because the scheme would involve extensive operational development including the construction of 24 new homes. In any event, the scheme would result in a less vulnerable use being replaced with a more vulnerable one.
12. The appellant also submits that the residential element would be located above the flood zone. However, Paragraph 173 of the Framework explains that the placement of the most vulnerable development within the site is a matter to be considered after the application of the sequential test. This is logical because an upper floor refuge would not entirely avoid the disruption and distress caused by a flood event, or the anxiety of worrying about one. Indeed, the appellant's FRA states that a flood plan would be required even with an upper floor refuge, as would signing up to a flood warning scheme. It also suggests that residents should not access or leave their properties during the peak of a design event. Moreover, the PPG³ confirms that unless the development type is specifically exempt⁴, it is only when the *site* has been allocated for the proposed development or is in an area at a low risk of flooding from all sources that the sequential test is not required. That cannot be said of the appeal *site*.
13. The appellant's FRA outlines measures aimed at mitigating the flood risk at the site, including raised floor levels, a drainage scheme and a flood evacuation plan. However, these points form part of the exception test, which cannot be used to justify not applying the sequential test. Such an approach would be entirely at odds with the first sentence in Paragraph 169 of the Framework, as supported by a more direct statement in the PPG⁵. Accordingly, the exception test is only relevant once the sequential test has been passed.
14. My conclusion that a sequential test should be undertaken is not one that the Lead Local Flood Authority (LLFA) or EA came to. However, the comments from the LLFA and EA do not address this point and simply focus on the extent

¹ Paragraph: 023 Reference ID: 7-023-20220825

² Environment Agency standing advice on preparing a flood risk assessment explains that a sequential test may not be necessary if the scheme can be laid out so that only biodiversity and amenity areas are at risk of flooding.

³ Paragraph: 027 Reference ID: 7-027-20220825

⁴ The proposal is not minor development. Nor is it a change of use for the reasons already given.

⁵ Paragraph: 032 Reference ID: 7-030-20220825

of the flood risk and the technical acceptability of the drainage strategy with reference to Paragraph 175 of the Framework. This is unsurprising, as the question of whether to apply the sequential test is a planning policy matter for the decision maker to consider.

15. The PPG explains⁶ how the sequential test should be applied whereby areas of lowest risk of flooding are considered first, then medium and then high. In so doing, the sequential test area (STA) will be defined by local circumstances relating to the catchment of the proposed development. The appeal scheme is not supported by a sequential test that has listed other sites in a robustly defined STA, and then considered if they are of a lower flood risk and reasonably available. In the absence of this information, the appellant has failed to establish that there are no sequentially preferable sites.
16. I therefore conclude that the proposal would be at a medium risk of flooding and this risk has not been adequately justified through the absence of sequentially preferable sites considered in a logical and robustly identified STA. The proposal would therefore be contrary to Policy LPP74 and the Framework, which aim to sequentially direct development away from areas at medium and high risk of flooding to avoid flood risk to people and property. Indeed, the Framework and PPG instruct that development should not be approved if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The proposal is at odds with the relevant flood risk policies, and this provides a clear reason to refuse the application.

Whether adequate provision would be made for affordable housing

17. Policy LPP31 of the LP requires 30% provision of affordable housing in the main towns in the district and 40% elsewhere. This is an approach that has been robustly tested during the preparation of the LP, was found sound by the examining Inspector and is consistent with Paragraph 64 of the Framework. Furthermore, it is of note that the PPG⁷ explains that in such circumstances, applications that comply with the policy requirement should be assumed to be viable. In other words, the starting position is that a typical scheme in Braintree District outside the main towns can provide 40% affordable housing and remain viable.
18. The appeal site is located where 40% provision of affordable housing is required. Both the appellant and the Council agree that the scheme would be viable if 40% affordable housing (9 homes) was delivered on site. However, in this instance the appellant has been unable to identify a registered social landlord (RSL) that would be willing to purchase the affordable homes. Their search appears genuine. The Council has not disputed this proposition as it would seem the business model of local RSLs has changed, whereby they are less interested in schemes providing smaller numbers of affordable housing.
19. Policy LPP31 states that where it is impractical to achieve on-site or off-site provision, a financial contribution of broadly equivalent value, may be accepted instead. The Council's methodology for calculating the financial contribution is set out in its Affordable Housing Supplementary Planning Document. It is the difference between what a RSL would usually pay for an affordable home and a similar home at the open market value. This would presumably enable the RSL

⁶ Paragraph: 024 Reference ID: 7-024-20220825 and Paragraph: 027 Reference ID: 7-027-20220825

⁷ Paragraph: 007 Reference ID: 10-007-20190509

- to purchase the equivalent number of homes on the open market without incurring additional costs.
20. The approach seems reasonable as the contribution is paid out of the increase in the gross development value from selling more market homes. There is also evidence that it has been accepted by other developers and has not rendered schemes unviable. Indeed, a table provided by Mr Folland demonstrates that eight schemes have provided contributions in this way over the last few years with the average commuted sum being £70,310 per home. In this instance, the Council is seeking £667,596, which is about £74,177 per home and thus broadly in line with the recent average.
21. There are, however, some drawbacks with this approach as it fails to recognise that the developers will likely have increased costs from not providing affordable housing on site. These can include direct costs from increasing the specification of the homes as well as indirect costs from financing the scheme. The latter occurs because the project would not get an early cash injection from selling the affordable homes to an RSL. In addition, the developer would need to find funds to pay the commuted sum towards the provision of affordable housing. Therefore, the developer may need to borrow more and repay it over a longer timeframe as they wait for sales to occur. The appellant therefore submits that a more reasonable methodology would factor in the additional costs. The methodology used by the London Borough of Havering is given as an example⁸.
22. The appellant also submits that the increase in costs associated with the proposal would leave only £49,735 towards affordable housing. Although they are committed to provide £58,500 as per a previous offer. This would be £609,096 below what the Council is seeking and would be nowhere near the equivalent public benefit of providing nine affordable homes on site.
23. The two most significant additional costs identified by the appellant's viability consultant, who was not present at the hearing, are finance and margin. It is suggested that the finance costs for the scheme would be around £841,766. This appears to be based on an interest rate of 10.75% (5.5% above base rate). In support of this approach⁹ the appellant points to the Braintree Economic Viability Study from 2017 which applied an interest rate of 5.5% above the then base rate of 0.5%. Furthermore, a funder has written to the appellant to confirm the interest rate would be 6% over the base rate.
24. Mr Folland has reviewed this on behalf of the Council and has concluded the suggested finance costs would be out of all proportion with the scheme. In short, he found it to be "ridiculous". This is a strong statement for a professional of Mr Folland's experience to make and contrasts with his acceptance of many of the other inputs used by the appellant's viability consultant. There are several points that support his proposition. By way of comparison, he is currently working on a scheme for 1,000 homes in the East Midlands where the finance costs would be around £1,000,000. Although the details are not before me, it is difficult to reconcile how the appeal scheme could have similar finance costs.

⁸ (a) Open market value of the affordable units less (b) the value of the affordable housing less (c) the additional developer costs = the commuted sum. Braintree District Council's approach does not include (c).

⁹ KCL feedback report April 2024

25. More telling is the comparison to a scheme referred to as 'Weavers Park'. This is a recent proposal for 22 homes by the same developer in the same district. The finance costs in that instance were around 4.5% of construction costs. The appeal scheme by comparison would have finance costs of 19.3% of construction costs. Although the schemes are not identical, the discrepancy is still very large, and a robust explanation was not provided at the hearing.
26. Mr Folland suggested that the high finance costs indicated by the appellant's consultant could be on account of the scheme being highly 'geared'. However, he explained that it is normal practice to assume that a developer would provide some capital, and this was not disputed by the appellant at the hearing. This raises a wider point that viability should be assessed based on normal inputs rather than how a specific developer may operate or their credit risk. In this respect, Mr Folland pointed to the Greater London Authority toolkit, which includes a standard input of 6.75% for finance costs.
27. Furthermore, in November 2023 the total finance costs of the scheme with the commuted sum sought by the Council were calculated by the appellant's consultant to be around £344,706¹⁰. This calculation was made with reference to primary terms from a funder¹¹. Consequently, the total finance costs in December 2023 were less than half of what they were in the Summary Table submitted with the Statement of Common Ground (June 2024). It is unclear what has resulted in this change. Mr Folland applied a total finance cost of £368,629, which chimes with the figure suggested in November 2023. Overall, the written and verbal evidence before me indicates that the finance costs suggested by the appellant are too high.
28. In respect of margins, Mr Folland advanced a blended rate of 12.9%. This reflects the 6% usually sought on affordable homes and 17.5% for the market housing. The rationale being that in this instance the provision of affordable housing on site would be viable and consequently there should be equivalence between the profit made if affordable housing is provided on site and a financial contribution provided in lieu of this.
29. However, there needs to be enough of a profit incentive to ensure the developer undertakes the scheme and can secure finance. In the absence of affordable housing on site, there would be higher costs and fewer guaranteed early sales. Consequently, the risk would be higher. A developer may not wish to take the risk at a profit level of only 12.9%. Accordingly, the PPG suggests a margin of between 15-20% on market housing. As the scheme would be for 100% market housing, this would be a reasonable profit range to apply. Thus, a developer will invariably make more profit with a scheme proposing 100% market homes than if affordable housing is provided on site. This explains why developers are often keener on the former.
30. The problem in this instance is that the profit margins would be increased at the expense of the affordable housing contribution despite onsite provision being viable. I am also conscious that according to Mr Folland, the scheme would not be unusually risky because house prices are likely to increase at a faster rate than construction costs. That said, the site is 'brownfield' with potentially unknown contamination and there is some evidence that flat prices

¹⁰ Appendix 8B of Affordable Housing SoC

¹¹ See Paragraph 4.2 of the statement of case from KCL

in Braintree have fallen¹². Nevertheless, Kelvedon is a popular high value area, and the scheme would be relatively simple to construct as it would not exceed three storeys. Therefore, when considering risk and equivalence, a profit margin around 15-17.5% would be reasonable. The appellant has set their profit at 20% and I consider this to be too high in the prevailing circumstances.

31. For reasons I go into, the evidence before me demonstrates that the site is currently unviable for employment uses. Mr Folland's analysis therefore applies a high yield to the rental value, and this results in a capital value of around £1,176,000. I share the view of Mr Folland that this is likely to be "very generous" because it is entirely unclear who would pay around £1,200,000 for a business premises where the available evidence in the Whybrow and Kemsley reports indicate that commercial uses are currently unviable in this location.
32. Thus, in conclusion, the evidence before me suggests the finance costs and margin are too high. As a result, the total development costs are too high and the residual land value too low. Moreover, the benchmark land value is probably too high. The implication being that the surplus as advanced by the appellant is too low. Indeed, it is likely the surplus would significantly exceed both the £48,735 set out in the Summary Table or the £58,500 offered. As a result, the evidence before me indicates the scheme would be able to provide more towards affordable housing even if I were to use the appellant's methodology for calculating the sum. Thus, the proposal would not make adequate provision for affordable housing contrary to Policy LPP31 of the LP.

The effect on the setting and significance of the Kelvedon Conservation

33. Kelvedon Conservation Area (CA) encompasses a fine mix of period buildings mostly dating from the medieval period through to the 19th Century. The different architectural layers have given the street scene a rich and interesting appearance. The CA is broadly focussed on the historic core of the village, which is the area around the church and is of early medieval origins. Over time the settlement spread in a linear fashion along the route between London and Colchester up to the River Blackwater. Until recent times the local economy was mainly agriculture, including wool and seed production. Save for the railway line, only limited industrialisation has occurred and therefore the CA has retained a semi-rural character and a locally distinctive appearance.
34. Accordingly, the CA is a source that illustrates past human lives and activity, including the form, morphology, and incremental development of a rural settlement. It therefore has archaeological (also sometimes referred to as evidential or research interest) and historic interest. The collection of attractive period buildings in the CA also imparts architectural and aesthetic interest. This interest results in value and significance.
35. The ability to experience and understand the historic townscape of the CA and its evolution enables its significance to be better appreciated. In this respect, the approaches to the CA are important aspects of its setting. The main points of arrival into the CA are found in areas 1, 3, 5, 6 and 7 as defined in the Conservation Area Appraisal (CAA). In these locations the CA retains some semblance of the historic links with the countryside. Elsewhere, the estate development in the later half of the 20th Century onwards has filled the space

¹² See Paragraph 5.4 of the KCL feedback report dated April 2024

- between the High Street and the rail line and river. Therefore, the High Street has a built-up feel. A point reinforced by the extent of traffic.
36. The appeal site is located adjacent to Area 3 as defined in the CAA. The CAA explains that this area was historically more open and semi-rural given the presence of the river and the peripheral location relative to the church. This is shown on the 1830 Tithe Map and is still apparent to an extent given the openness of Area 1 and the presence of several mature trees along the river. Over time, Area 3 has become an important gateway to the historic settlement given the presence of the rail station, which is accessed via Station Road.
37. The analysis in the CAA goes on to explain that buildings in Area 3 vary in form and finish but generally comprise smaller dwellings on individual plots. In this respect, several terraces of small dwellings are identified as positive buildings. This includes Rosslyn Terrace despite its alterations. Many of the listed buildings are of a traditional domestic appearance and scale and reflective of the local built character. The height of structures varies, but nearly all are two storeys. As a result, there is a coherence and harmony to the street scene which is reinforced by the position of buildings close to the back edge of the road. Area 3 is broadly typical of the character and appearance of the CA.
38. Area 3 is approached from the north along Station Road. The railway bridge is a strong and characterful feature in the street scene that is located within the CA and marks the entrance to it. Upon passing under the railway line the water meadows and river are prominent on one side with glimpsed views to the front of the historic buildings around the Swan Street junction. Although not within the CA, the appeal site forms an integral part of the street scene of Station Road. It is therefore a prominent feature in the setting of the CA. The commercial buildings within the appeal site are of very limited architectural value and out of scale with the finer grain of the CA. The roofs are of a low pitch and the extensive areas of glazing or open sided form are generally alien when compared to the architectural character of buildings found in the CA. The appeal site therefore harms the setting of the CA because it is a poor entrance feature that jars with, and undermines, its architectural and aesthetic interest.
39. The appeal scheme is for the erection of three buildings with retail and commercial development on the ground floor and residential above. All the blocks would appear assertively large relative to the traditional scale and massing of buildings within the CA. There is general agreement between the parties that the increase in height and massing would have some adverse impacts, the difference between them rests in the extent of that harm.
40. Blocks A and B would be especially jarring given the three-storey scale, which would result in them being seen above the railway bridge. The ridges would also be long and unbroken. The use of balconies would accentuate the height and afford the buildings an urban character. I also share the view of the Council that balconies on main elevations are not a typical feature of the CA and would appear incongruous in its setting.
41. The appellant's have sought to use height to mark the entrance to the CA, but that is not a feature used elsewhere. Height could be used to mark the corner, but the excessive massing of Block B is not necessary to achieve this and would appear discordant. Block C would also have an unattractive bulky forward projection at ground floor level. This feature would be deep and wide with large windows. It would therefore harmfully dominate the building and

appear strident. Accordingly, the proposal would jar with the architectural interest of Area 3 and the CA more generally.

42. In arriving at this view, I have carefully considered the positive aspects of the design, as there has clearly been an attempt to respond to the local context. For example, the buildings would step up from Roslyn Terrace and be positioned close to the back of the street. The elevations could also be finished in materials (brick and natural slate) that reflect the area. Gables have also been used to soften the massing and the brick work could be articulated with piers to provide some vertical articulation in a similar way to Kings Meadow Court. Conditions could be imposed to secure the detailing outlined in the Design and Access Statement so that the buildings have more richness and interest than shown in the visualisations. The windows, at least in the Station Road elevation, would follow a balance composition, although the asymmetrical subdivision would be at odds with the Essex Design Guide (EDG)¹³. Nevertheless, these aspects overall would not go far enough to comfortably integrate the proposal into the setting of the CA.
43. Historic photographs demonstrate that there was once a large brick-built warehouse type structure at the appeal site. The proposal would reflect elements of this. However, this building is long gone and does not form part of the baseline for the purposes of my assessment. Kings Meadow Court also provides some context as a three-storey building near to the rail line. However, it is set back from the road in large grounds. It also exhibits a more traditional appearance and detailing than the appeal scheme would. In any event, it is on the northern side of the rail bridge and therefore has less impact on the setting of the CA. Its presence does not justify the appeal scheme.
44. The flats at Ayletts Green are even more divorced from the setting of the CA and cannot be used to justify the appeal scheme. They are also appear lower in height and do not have projecting balconies. Although Grays Mill is a four-storey building within the CA, the appeal scheme would be some distance away and would not reflect its historic industrial character. The flats in Church Road are smaller than the appeal scheme would be and lack architectural quality. Rosslyn Terrace is a long building but is vertically divided through the articulation of different properties and is two storeys in height. None of these buildings would justify the harmful impacts of the appeal scheme.
45. It is also very important to note that the impact of the appeal scheme needs to be considered relative to the harmful impact of the existing buildings. The removal of these and the increase in soft landscaping would be a significant improvement to the setting of the CA. Nevertheless, for the reasons set out above, the net impact of removing the existing buildings and constructing the appeal scheme would not be neutral or positive. Overall, I share the view of the Council's Built Heritage Consultant that the net effect would be a low level of less than substantial harm. In accordance with Paragraph LPP57 of the LP, this harm should be weighed against the public benefits of the scheme.
46. In calibrating this balance, the Framework states that designated heritage assets are an irreplaceable resource that should be conserved for existing and future generations and that great weight should be given to an asset's conservation. Conservation in this context means sustaining, and thus not

¹³ The 'Windows' section of the EDG 2005 states that window subdivisions should be arranged symmetrically about the horizontal and vertical axes of the openings and use regular pane sizes.

harming, an assets significance. This is not an instruction to dismiss a proposal that would harm the significance of a conservation area, but it nevertheless provides a strong presumption in favour of preservation.

47. The proposal would result in a low level of harm to the setting of the CA as a designated heritage asset. This matter carries great weight. For reasons I go into, the public benefits of the proposal are of a high order. Overall, the benefits would be of sufficient force to outweigh the less than substantial harm that would occur. Accordingly, there would be no conflict with Policy LPP57 of the LP or Paragraph 206 of the Framework as harm to the significance of a designated heritage asset would have clear and convincing justification.

Whether the proposed development would be well designed and its effect on the character and appearance of the area

48. For the combination of reasons set out above, the proposal would have a net adverse effect on the setting of the CA by being a dominant and discordant addition to Station Road. It therefore follows that the proposal would harm the character and appearance of the area more generally, contrary to the principles of a well-designed place as set out in the National Design Guide. In addition, the Council have identified several other aspects of the proposal that it considers to be symptoms of a scheme that is not well designed.
49. The bin and cycle stores would be softened by green roofs and additional areas of intervening landscaping. They would also be functional, especially if bi fold doors are used. Furthermore, they would integrate into the scheme on account of the brick finish and the concept of using them to partially enclose the outdoor amenity space. That said, the placement and lack of regular spacing of the bin and cycle stores would appear haphazard, and the different lengths would result in a lack of composition in the street scene. Overall, this part of the scheme requires refinement.
50. I share the view of the Council that it would have been advantageous to provide frontages to Lane D and the approach road to the station. However, Station Road is the most important area to address, and the scheme would do this. That said, the street scene on the approach to the station lacks composition due to different setbacks, building forms and boundary treatments. This is unlike the flats in Doughton Road, which have dual frontages and a simple form. This would be unfortunate given the route to the station appears a well-used thoroughfare.
51. The use of 'hidden' flat roofs would affect the integrity of the architecture and is not something used at Kings Meadow Curt or Doughton Road. However, this would not be apparent from public vantage points and would not undermine the visual amenity of the design. Several trees would be planted throughout the development and there may be space for more as part of a landscaping scheme secured by condition. On balance, and when compared to the current situation, the internal streets would be adequately tree lined.
52. Vehicle speeds within the development would be low due to the short lengths of the lanes. As a result, these areas could be designed as 'shared spaces' and this would promote movement on foot. Although Lane A would be an unnecessary dead end, permeability would be provided through the site between the commuter car park and retail unit. All parts of the development save for the entrance into Block A would be subject to adequate levels of

natural surveillance, albeit mainly from upper floors when the commercial units are closed. Within the scheme the banks of parking would be broken up by trees and landscaping.

53. In conclusion, I do not share all the concerns raised by the Council but nor do I find that the proposal would adhere to all 10 characteristics of a well-designed place, failing against 'context' and aspects of 'built form'. As such, the proposal would be contrary to Policies SP7, LPP47 and LLP52 of the LP, which require development to be of a high standard of design that responds to local context. Paragraph 139 of the Framework states that a development which is not well designed should be refused.

The effect of the proposed development on highway safety

54. The local parking standards¹⁴ require a minimum of 1 space per one bedroom property and 2 spaces per two-bedroom property. Visitor parking is also required in addition to this at a level of 0.25 spaces per dwelling. The parking requirement for the residential part of the scheme is therefore 34 parking spaces plus 6 visitor spaces. The standards allow provision below the minimum if the development would be in an urban area that has good links to public transport. In this instance, the appeal site is located within the settlement boundary of Kelvedon, which could be considered an urban area in the absence of any alternative definition. It is also next to a rail station and therefore has good sustainable transport links. This may suppress the need to own a car.
55. However, the Parking Standards were prepared prior to the publication of the Framework. This states at Paragraph 111 that parking standards should consider local car ownership levels. This is because it is quite possible that future occupants may commute to work on the train but still own a car for personal convenience and because they can afford to do so. To address this point, the Transport Assessment has considered census data. This indicates that in the local census output area there is an average of 0.86 cars per flat. As a result, one space per dwelling would be acceptable when considering the location and local car ownership levels. The proposal would not however, provide any residential visitor parking spaces. As a result, there would be a shortfall of 6 parking spaces.
56. The commercial floorspace in Blocks A and B would be around 411sqm. The parking standard is a maximum of 1 space per 20sqm. This equates to a maximum of 21 parking spaces. The appeal scheme is proposing 5 parking spaces. There is little objective analysis underpinning this provision. For example, no comparables have been provided and it is unclear how many people travel to work by train in the local area. It is also a point of note that Kelvedon is a village with limited public transport links north to south. Therefore, unless workers live in the village or along the rail line, they would likely drive to work.
57. The retail element of the scheme is 423sqm. When applying a maximum standard of 1 space per 14sqm a maximum of 30 parking spaces should be provided. The scheme is proposing 9 customer spaces and 2 spaces for staff/deliveries. Again, there is limited evidence justifying this level of parking well below the maximum standard. Reliance is placed on the location next to the rail station, but it is unclear what proportion of customers would likely be

¹⁴ Essex Parking Standards Design and Good Practice 2009

commuters passing on foot or parked nearby. A comparison has been drawn with the Co-op supermarket in the High Street where 10 spaces have been provided. However, this is in a very central location and customers appear to have access to additional parking spaces at the Kelvedon Labour Club car park.

58. Notwithstanding the above, the Council are content to provide a discount of around 50% to the commercial and retail parking standard given the site's location next to the rail station. This approach does not appear to have any objective basis but would result in a requirement of 10 spaces for the commercial units and 15 for the retail. As a result, there would be a shortfall of 5 and 4 spaces respectively.
59. The shortfall in commercial parking could be addressed by the nearby chargeable car parks, including that operated by NCP. Various tariffs are available from daily to monthly rates and undisputed surveys provided by the appellant demonstrates there is capacity. It is not unusual for staff to have to pay for parking. The availability of these car parks would also address the shortfall in residential visitor parking. As a result, there would be a residual shortfall of four onsite parking spaces required by the retail premises.
60. The shortfall in retail parking spaces would be problematic as customers may be tempted to park on street for short periods as they nip into the shop to purchase items. During my site visit I observed cars parked on Station Road near to the railway overbridge and opposite the appeal site. This is despite there being waiting restrictions. There is nothing to suggest what I saw was untypical. There is consequently a risk that customers of the retail unit could park in this area, or the bays reserved for the residents of Rosslyn Terrace. Such illicit and inconsiderate parking could prejudice highway safety by increasing congestion in the vicinity of the railway overbridge and the junction to the station and appeal site. The need to keep parking clear of junctions was a matter identified in the Road Safety Audit despite there being no history of accidents. Speeds would be low but there remains a risk of minor collisions. The Local Highway Authority have not objected, but their comments do not address this specific matter.
61. In conclusion, the evidence before me does not justify the parking provision proposed. It follows that the appeal scheme would not accommodate the full parking requirement on site. As such, there is a risk that customers of the retail unit would park on Station Road in the area currently marked by single and double yellow lines. This illicit parking could increase the risk of collisions, and thus would undermine highway safety. The proposal would therefore be at odds with Policies LPP43 and Paragraph 115 of the Framework.

The living conditions of future occupants

Access to Blocks A, B and C and the private communal garden

62. It became apparent at the hearing that the door between the commercial area in Block B and the stairwell could be omitted from the scheme through the imposition of a planning condition. Accordingly, the Council's concerns about the security of the entrance to the apartments in Block B fell away. In respect of Block C, the entrance would be from the main street and therefore both safe and legible. Regarding Block A, the communal entrance to the upper floor apartments would lack legibility because occupants would have to pass through the undercroft and between park cars. There would also be limited natural

surveillance from the ground floor commercial unit. As such, I share the Council's view that this unnecessarily discrete entrance would be dark, uninviting and unsafe.

63. The Council have suggested that Block B should have a lift but as it is only arranged over three floors this would not be proportionate. Ramped access would be achieved to the outdoor amenity space as an alternative to the stepped access and therefore the Council's concern about a lack of level access is without merit.

The effects of noise

64. The appeal site is subject to noise effects from traffic along Station Road, a nearby vehicle body repair shop and trains on the rail line. The latter would result in the most notable noise impacts, and this would principally affect the occupants of Blocks A and B as confirmed in the Noise Impact Assessments.
65. The appellant's Noise Impact Assessment has concluded that with mitigation, the internal noise levels within the proposed apartments could be kept below the desirable design recommendations in BS 8233:2014 when accounting for all noise sources. The mitigation would be windows with a specific glazing specification to ensure noise insulation. The windows would have to be kept closed to ensure the mitigation is effective and internal noise levels do not reach a Significant Observed Adverse Effects Level (SOAEL). The PPG explains that a SOAEL effect should be avoided because it can cause a material change in behaviour, attitude or other physiological responses.
66. The Council agree that the noise environment within the proposed apartments can be made acceptable with the suggested mitigation, and I have no reason to disagree. There is, however, a concern that living conditions would be adversely affected if the windows must be kept closed because living in such a way risks overheating and a sterile environment devoid of natural ventilation.
67. To address this concern, the appellant commissioned a Thermal Modelling Assessment¹⁵ and this concluded that compliance with relevant thermal modelling software can be achieved by one of two methods. The first being a Hybrid Mechanical Ventilation and Heat Recovery (MVHR) cooling unit per apartment in the ceiling void comprising filters, heat exchanger, supply fan and extract fan. This would provide fresh air to the living spaces. The second option would be a MHVR ventilation system with enhanced solar glazing and external blinds with the requirement to open windows during the day.
68. The second option is of concern as blinds could affect the outlook and light levels in the apartments and opening the windows during the day could be problematic for some occupants, especially those closest to the rail line. As a result, future residents could be left with an unenviable choice between excessive noise or overheating. Accordingly, the Hybrid MVHR cooling units would seem the best option as the apartments having a pleasant internal environment in terms of noise, temperature and fresh air. I understand that the cost of running these would be similar to other white goods and would not therefore, be excessive. Moreover, a condition requiring the specification to be approved could ensure the units themselves do not result in harmful noise.

¹⁵ Dated July 2023. It therefore post dates the Thermal Overheating Report.

69. The PPG signifies that keeping windows closed most of the time can be a form of mitigation, albeit subject to the effect on living conditions. In this case, windows would need to be kept closed but the internal environment could be made comfortable. That said, occupants may still wish to open windows from time to time. For example, if they needed to clear smoke arising from burnt cooking or if a blast of fresh air was desirable. In such instances, residents may be prepared to tolerate the noise from passing trains during the day as part of a subjective judgment, as the impact would not be constant and would be short lived when it occurs. Moreover, future occupants may be willing to balance the convenience of living by the station with the inherent noise impact from doing so. On balance, internal noise levels would be acceptable.
70. Externally, the noise impact at all but approximately six balconies would exceed the desirable level recommended by the World Health Organisation (WHO). However, BS 8223:2014 states that an external noise limit need not be applied to balconies as they may simply be used to dry washing or grow plants. I see no reason to depart from this guidance in this instance.
71. The main part of the communal amenity space would likewise be subject to noise levels above that recommended by WHO because the built form has not been used to screen this area. Only a small portion of the communal garden area to the southeast of Block A would provide a noise environment within that recommended by WHO. This would be the only quiet external area available within the vicinity, as public open spaces are some distance away. Consequently, the appeal scheme would not provide adequate outdoor amenity space on account of the noise. This is a matter to consider in the overall planning balance given the wider benefits of providing homes in an accessible location by a train station.

The extent and design of external amenity space

72. Policy LPP52 of the LP states that the provision of private outdoor amenity space shall be provided having regard to the Standards set out in the Essex Design Guide (EDG) or its successor. The Council has adopted the 2005 version of the EDG as a supplementary planning document, albeit before the adoption of the LP, but not the successor version dating to 2018. It is therefore unclear what version of the EDG Policy LLP52 is referring to.
73. Nevertheless, the two versions of the EDG provide similar advice. The 2005 version explains that private communal gardens should be provided to serve the occupants of flats. The indicative standard is a minimum of 25sqm per two-bedroom flat, although balconies of 5sqm or more will count towards the provision. In respect of one-bedroom flats, the guidance is that a communal garden may be omitted if there is access to other local green space. The 2018 version restates this guidance in the 'Garden Size' section.
74. Regardless of which version is used, the EDG is guidance. In this respect it is a starting point used to inform a judgment as to the acceptability of external amenity space in the prevailing circumstances. In this instance, existing public open space is available at The Chase and Brockwell Meadows. There are also circular walks around the village. However, a public footpath does not function as a public open space and both The Chase and Brockwell Meadows are notable distances from the appeal site. As a result, the scheme should provide the maximum extent of private outdoor amenity space to ensure all future

- occupants have adequate access to outdoor space. The EDG explains that such areas should be enclosed and solely available to residents as a private garden.
75. Given the generous size of the four roof terraces proposed at Block C and the location away from the main noise sources, the future occupants of these flats would not need access to private communal amenity space. Accordingly, as a starting point, the private communal space should be in the region of 500sqm¹⁶. As each flat would have a balcony, the size of the private communal garden could be reduced by a further 100sqm¹⁷. However, I have already explained that the noise impact would be such that the majority of balconies would exceed daytime WHO noise guidelines and are therefore unlikely to be used as somewhere to sit out. Consequently, a reduction of around 30sqm could be justified to account for the six usable balconies. The private communal garden should therefore be around 470sqm in size.
 76. Drawing 5412 PA_08 Rev C purports to show the area of private communal garden and calculates it to be 615sqm. However, this includes small unusable areas to the front and side of Block B. As a result, the proposed private communal garden area would be the space between Blocks A and B and this, according to the appellant, measures 480sqm. The Council did not dispute this figure but have instead calculated the private communal garden to be around 225sqm. This is because the Council has excluded the area to the southeast of Block A on account of it lacking privacy.
 77. However, the Council are being generous in its calculations, as no part of the communal garden area would be private space reserved for the future occupants of Blocks A and B. This is because the space would not be enclosed or defined as a private space and therefore employees of the ground floor commercial units could use the area, as could members of the public or the residents of Block C if they were inclined to do so. As a result, no private garden space would be provided if the layout as proposed were implemented.
 78. That said, I share the view of the appellant that as part of a landscaping scheme required by condition, details of a means of enclosing the private communal garden could be required. The EDG indicates that railings could suffice, and this appears to be what was used at the flats in Aylett's Green. I am also satisfied that a condition could also be imposed seeking details of the landscaping within the communal private garden so that it includes hedging to screen it from the commercial premises and provides internal interest through additional planting and more nooks for seating.
 79. The bin and cycle stores would help define the space and provide some privacy. The EDG refers to 'smart infrastructure', such as waste disposal points, being integrated into communal areas. Moreover, the space would be naturally surveyed from upper floor windows and sunlight would penetrate different parts of the communal garden throughout the day. Thus, with some modest refinement the communal garden, which would be of an acceptable size, could be both private and adequately laid out.

The size of Apartments A4, A5, A8, A9, B5, B8 and B14

80. Policy LPP35 requires adherence with the Nationally Described Space Standards (NDSS). The NDSS states that a one bed two-person home over a single floor

¹⁶ 20 flats x 25sqm

¹⁷ 20 flats x 5sqm (each balcony)

should be 50sqm in area. A one-bed property is a two-person home if the bedroom would be at least 11.5sqm. This is presumably because a larger bedroom makes it more likely that the flat would be occupied by two people. This was an approach taken by another Inspector in a recent decision¹⁸.

81. The Council has provided an analysis that suggests the one-bedroom Apartments A4, A5, A8, A9, B5, B8 and B14 would each have a bedroom of at least 11.5sqm but an overall floor area below 50sqm. The drawings therefore demonstrate a lack of adherence to the NDSS. However, the appellant stated at the hearing that a planning condition could be imposed that required minor amendments to the floor plans. This approach is supported by the PPG¹⁹. For example, the bedrooms could be made smaller by slightly adjusting internal walls and making the storage cupboards accessible from the living areas. The amended drawing would be as enforceable as any approved floor plan on any scheme. This would increase the likelihood that the one-bedroom flats would be occupied by a single person. Indeed, the flats would then exceed the minimum floor area of 39sqm for a one bedroom one person home. Thus, with a suitably worded condition the scheme would include generous one-bedroom one person flats that provide adequate internal space.

The outlook of Apartments C3 and C4

82. The outdoor amenity area at Apartments C3 and C4 would be private roof terraces. Both would be enclosed by a hit and miss brick wall intended to provide privacy but with some visual permeability. A glazed screen could be installed on the inside to prevent children climbing up the wall. The roof terraces would be around 56sqm in area and therefore of a generous size for two-bedroom apartments when considered relative to the standard for a two-bedroom house in the EDG. This would leave ample space for pot plants as well as a general sense of space when looking out from the large windows within the apartments. As such, future occupants would not feel enclosed, especially as they would be able to view the sky and the roof tops of nearby buildings. Accordingly, they would have an adequate visual connection to their surroundings, albeit with sufficient privacy. Apartment C4 would also be dual aspect. For these reasons, the outlook would be adequate.

The orientation of the single aspect flats

83. Policy LPP52 states that developments should avoid single aspect dwellings that are north facing. In this instance, Apartments B8 and B14 would be single aspect dwellings. I have also considered Apartments C1, C2 and C3 as single aspect homes on a precautionary basis because the Council is seeking obscured glass in the side windows of these properties. Apartments B8 and B14 would not be orientated due north. Instead, they would be northeast facing and would therefore have some direct sunlight in the early morning. Moreover, the windows would be large and there is nothing before me to suggest light would not penetrate the back of the rooms. Furthermore, the aspect would be towards the attractive water meadows. The same can be said of Apartments C1 and C2. Apartment C3 would be single aspect but it would face southwest and therefore benefit from evening sun. On balance, the living conditions in these flats would be adequate when considering their orientation.

¹⁸ APP/Z1510/W/23/3334698

¹⁹ Paragraph: 012 Reference ID: 21a-012-20140306

Privacy at Apartments C1, B9 and B15

84. It would be possible for the occupants of Apartment C1 to look into the bedroom windows in Apartments B9 and B15. This is on account of a side window in the living area of Apartment C1. The distance between windows would be around 11m. This is not unusual if compared to the layout of Aylett's Green. The housing in Rowe Close being an example. The tight layout of Aylett's Green appears to be a symptom of providing modest front gardens. That said, I observed that several properties had blinds down or net curtains to achieve heightened privacy. Conversely, other streets in the estate are wider and more akin to modern estates elsewhere in Kelvedon, where there are greater distances between properties. Even the High Street is marginally wider than Rowe Close. Therefore, on balance the properties would be uncomfortably close with the privacy of all three compromised. Nevertheless, this issue can be resolved by obscuring the glass of the relevant window in Apartment C1. Indeed, the window could be removed altogether to address residual concerns about the perception of being overlooked.

Conclusion on living conditions

85. The appeal scheme would provide adequate living conditions when considering privacy, orientation, outlook, the size of the apartments, the size of outdoor amenity space and internal noise. However, the access into Block A and the level of noise in the communal garden would adversely affect living conditions. The absence of harm in respect of some matters would not outweigh the harm that would occur. Accordingly, there would be an overall conflict with Policy LPP52, which seeks to secure high standards of amenity for future occupants. This is consistent with Paragraph 135 of the Framework,

Employment land and parking policies

86. The supporting text to Policy SP5 of the LP has confirmed that Braintree District needs between 20.9 and 43.3 hectares of new employment land. Consequently, to achieve an adequate supply it is necessary to retain existing employment sites. To this end, Policy LPP2 of the LP states that all employment sites and buildings in current or recent use will be retained for such uses where they continue to offer a viable and sustainable location for such employment uses. Employment sites are defined in the glossary of the LP as 'workplaces'. There is no dispute between the parties that the appeal scheme would result in a net reduction in workspace of around 270sqm. Accordingly, the appellant must justify this loss with reference to the viability and sustainability of the location for employment uses.
87. The supporting text to Policy LPP2 explains that proposals for the redevelopment of employment sites must demonstrate a lack of viability and sustainability through appropriate marketing and viability testing. To this end, the appellant has submitted two viability reports by chartered surveyors and a statement submitted on behalf of Deal Limited, the business currently operating from the site. All conclude that the site is unviable. The Kemsley report also indicates that there would be a serious risk of little interest from the commercial marketplace. This suggests that marketing the site would probably be a fruitless exercise.
88. The Council's submissions are silent on the evidence relating to the viability and sustainability of the site for employment uses. During the hearing, the

Council confirmed that they were aware of the reports but did not wish to dispute the findings or advance alternative evidence to challenge the conclusions reached. Ultimately, the Council conceded that the scheme would not be at odds with Policy LPP2 as the appeal site is not a viable location for employment uses.

89. The conclusion in the preceding paragraph is also a material consideration when assessing the scheme against Policy LPP3. This policy requires the retention of certain uses, including vehicle repair premises, in designated Employment Policy Areas. The proposal would not achieve this as the existing use would not be retained. Thus, a conflict with Policy LPP3 would occur. However, the policy does not include in-built flexibility to review the merits of retaining land in Employment Policy Areas for the employment uses listed²⁰. This is arguably inconsistent with Paragraph 126 of the Framework.
90. Given that both the current vehicle repair business, and the appeal site more generally, have been accepted by the Council to be unviable, it would also follow that there is little point seeking to retain the site for the uses listed in Policy LPP3. As a result, the conflict with Policy LPP3 carries very limited weight in this instance and is not a determinative factor against the scheme.
91. In addition to being designated as an Employment Policy Area in the LP, the appeal site is also somewhat confusingly designated as a car park. Policy LPP43 of the LP states that proposals for alternative uses [of the car parks] will only be acceptable where the parking spaces are re-provided in an equal or better position to serve the main use, this being Kelvedon Rail Station.
92. The appellant has referred to a Lawful Development Certificate²¹ which outlines where commuter parking can lawfully occur. This does not however, confirm that commuter car parking has not taken place elsewhere in the site. Nevertheless, a sworn statement from the site operator explains that commuter parking does not occur in the application site and that any parking that does occur is either staff parking, vehicles for sale or customer vehicles awaiting work. No substantive contrary evidence is before me which would suggest the content of the sworn statement is inaccurate or lacking precision. My observations on site reinforce this. The Council also conceded the point at the hearing and confirmed they had no evidence to suggest the appeal site is a car park or has been used as one. As a result, the Council removed its objection. The evidence before me suggests it was prudent to do so.
93. In conclusion, and for the reasons set out above, the appeal site is an appropriate location for the proposed development when considering the policies in the LP concerned with retaining employment land and car parks.

The effect on the living conditions of the occupants of Rosslyn Terrace

94. The Council are concerned that the privacy of the occupants of the northern most property in Rosslyn Terrace would be harmed by the proposal. This is on account, it is submitted, of overlooking from the proposed side window in Unit C2. The window in C2 would be orientated to look towards the gable end of Rosslyn Terrace and therefore any overlooking would be at an oblique angle. This is unlikely to be harmful but even if it were, the opening could be finished

²⁰ The uses are listed (a) to (e) in the policy and include offices, general industry and storage, vehicle repairs, waste management and services for workers.

²¹ 19/01513/ELD

in obscured glass. This could result in Unit C2 having a single aspect, but I have already explained why this would not be harmful in this instance. The roof terrace at Unit C3 would be surrounded by a privacy wall and therefore overlooking would not be harmful. The side windows in Apartment C3 would be finished in obscured glass and if done correctly and fixed shut then there should not be any harmful perception of being overlooked.

95. The Council are also concerned that the scheme could intensify activity in Lane D thereby causing harm through noise and disturbance. In particular, residential parking spaces would be positioned opposite the side window of the end property in Rosslyn Terrace. Use of these spaces would generate light spill from headlights and noise from vehicles manoeuvring and idling, doors closing, and the bollards being lowered.
96. However, the noise and activity generated by the scheme needs to be considered in context. In this respect the appeal site includes noisy activities such as the use of pressure washers and power tools. It is not a quiet environment, especially given the nearby road and railway line. Moreover, the proposed parking spaces would be positioned in a similar location to the existing commercial car park. Lane D also serves the commuter car park and several other businesses, including a bus company. It is therefore already busy. The Transport Assessment suggests that the proposed residential use of the site would generate around 11 movements in the peak hours²². The parking spaces in Lane D would be a moderate proportion of this. This is an indicator that activity would not be constant or especially intense. For these reasons, I share the view of the appellant that the proposed position of the residential parking would not result in harmful noise and disturbance to the occupants of Rosslyn Terrace.
97. In conclusion, the proposal would not harm the living conditions of the occupants of Rosslyn Terrace when considering privacy and noise and disturbance. As a result, a conflict with Policy LPP52, in so far as it relates to this main issue, would not occur.

Other Considerations

The public benefits of the scheme

98. The appeal scheme would deliver 24 new apartments. This would not be a large contribution to the housing land supply, but it would help shore up the Council's position in the context of recent struggles to meet the five-year housing land supply requirement as set out in the Framework. That said, the Council is currently able to demonstrate an adequate supply and is therefore significantly boosting the supply of housing. Overall, this is a matter of moderate weight in favour of the proposal.
99. The appeal scheme would be located close to the rail station and within walking distance of the village centre. This could reduce carbon emissions associated with car use and promote the health benefits of active travel. Both the Council and appellant agree that significant weight should be given to this benefit. There is also agreement that substantial weight should be given to the benefit of reusing previously developed land more efficiently, as indicated by Paragraphs 124 of the Framework. In addition, the scheme would further the

²² This is based on 29 homes as originally proposed

Framework's aim of significantly uplifting densities in locations well served by public transport. However, it is unclear whether the proposal could achieve this aim without the building's being of the massing and height proposed.

100. Policy LPP35 of the LP and Policy HO4 of the Kelvedon Neighbourhood Plan (NP) indicate that there is both a general and local need for small homes of 1-2 bedrooms. The proposal would make a notable local contribution to this type of housing, and this should therefore carry significant weight in favour of the proposal. The appeal scheme could also directly create around 70 jobs, although this should be considered with some caution given the appellant's evidence that the site is unviable for commercial uses. There would also be local spending from future occupants, a boost to the construction sector, including smaller firms, and the retail premises would be a useful local facility supported by Policy BR6 of the NP. The NP also identifies the area as an 'aspiration site' for future redevelopment. The economic benefits collectively carry significant weight.
101. There is no substantive evidence before me that the contaminated nature of the site is currently resulting in any notable environmental consequences and the biodiversity net gain proposed would not be of a high level. These matters therefore carry limited positive weight. The scheme would result in a minor improvement to the visibility splays at Lane D and there may also be some minor ancillary benefits from the spending on open space secured through the planning obligation. A small financial contribution would also be made towards the provision of affordable housing. Overall, the benefits of the scheme would collectively carry weight of a high order.

Other matters

102. Given the outcome of my planning balance, it is unnecessary to undertake an appropriate assessment pursuant to the Habitat Regulations. Similarly, as the appeal has failed it has been unnecessary to address the other concerns of interested parties not already considered above. Anglian Water have indicated that there is no capacity at the Coggeshall Water Recycling Centre, but this matter could be addressed via a 'Grampian' type phasing condition as recommended in the PPG²³.

Planning Balance

103. The appeal scheme would not harmfully undermine the Council's policies aimed at retaining employment land and car parks. It would also safeguard the living conditions of the occupants of Rosslyn Terrace. That said, aspects of the proposal would prejudice the living conditions of future occupants, although the noise impacts would be balanced against the convenience of living close to a rail station. Moreover, I am not satisfied the evidence before me has justified the proposed level of parking for the retail floor space or the scale of the contribution towards the provision of affordable housing.
104. Furthermore, when considered as a whole the scheme would result in a low level of less than substantial harm to the setting of the CA and the character and appearance of the area more generally. As such, the scheme is not well designed. The proposal would also be in an area at risk of flooding without this

²³ Paragraph: 020 Reference ID: 34-020-20140306

being justified by a sequential test. My overall finding is that the proposal would be at odds with the development plan taken as a whole.

105. A proposal should be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the scheme would have cumulative benefits of a high order, especially those relating to the regeneration of a brownfield site close to a rail station. However, the flood risk policies alone provide a clear reason to refuse the proposal. Accordingly, it follows that the benefits of the scheme would not be of sufficient force to outweigh the totality of harm either.

Conclusion

106. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal has been dismissed.

Graham Chamberlain

INSPECTOR

Richborough

APPEARANCES

FOR THE APPELLANT

Lisa Skinner	LSA Planning, Director - Planning Consultant
Staszek Stuart-Thompson MA(Hons) M.Arch RIBA RIAS	Wincer Kievenarr - Architect
Phil Branton MCIAT	Wincer Kievenarr - Architect
Clive Bentley MIOA MCIEM BSc (Hons) CEnv CSci MEnvSe	Sharps, Acoustics LLP - Noise Consultant
Glen Richardson	Carta Jonas, Associate Partner - Urban Design
Steve Handforth MSc IHBC	Handforth Heritage, Director - Heritage Consultant
Rob MacKay	Kelvedon Village Developments Ltd, Director

FOR THE LOCAL PLANNING AUTHORITY

Melanie Corbishley BA (Hons) MATP	Braintree District Council, Senior Planner
Mr Lee Smith-Evans BSc MA	Urban Design Consultant
Laura Johnson MSc	Senior Built Heritage Consultant
Dr Andrew Golland MRICS PHD (Development Economics)	Andrew Golland Associates Limited

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

- Appeal decision APP/Z1510/W/23/3334698
- Council's analysis of bedroom sizes and compliance against the NDSS
- Extracts from the Essex Design Guide – 'Private Space' and 'Garden Size'
- Accommodation schedule prepared by Wincer Kievenaar
- Historic photographs of the site and Kings meadow Court
- Copy of Planning Obligation dated 18 June 2024
- Final list of suggested planning conditions



Costs Decision

Hearing held on 18-19 June 2024

Site visit made on 19 June 2024

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2024

Costs application in relation to Appeal Ref: APP/Z1510/W/24/3336760 Deals of Kelvedon, Station Road, Kelvedon, Essex CO5 9NR

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Kelvedon Village Developments Ltd for a full award of costs against Braintree District Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for a development proposal described as 'Demolition of existing buildings, mixed use development comprising 24 residential apartments with ground floor commercial space within Blocks A and B and a retail unit in Block C with associated access, parking and landscaping'.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. In this instance, the application was made in writing and briefly supplemented verbally at the hearing. The applicant submits that the Council's putative reasons for refusal have not stood up to scrutiny and that some could have been addressed through further dialogue and engagement. As aggravating factors, the applicant engaged in pre-application discussions and sought to work with the Council, but only received limited feedback and a protracted assessment which ultimately resulted in the appeal having to be lodged to receive a decision.
4. The PPG explains that the failure to produce evidence to substantiate each reason for refusal on appeal places an authority at risk of a substantive award of costs. Similarly, the reliance on vague, generalised or inaccurate assertions about a proposal's impact, or raising concerns on a planning ground capable of being dealt with by conditions, can also result in an award of costs.
5. Taking the Council's putative reasons for refusal in turn, it is apparent from my formal decision on the appeal that the Council's concerns regarding flood risk, the inadequacy of the financial contribution towards the provision of affordable housing offsite, the effect on the setting of the conservation area, the noise impact from the railway line on outdoor amenity space, the access to Block A

- and the lack of parking for the retail unit were properly reasoned and grounded in policy. The Council did not act unreasonably in raising these matters.
6. Similarly, and despite me not sharing its view, the Council's concerns relating to the effect of the proposal on the future occupants of the proposal were broadly well founded as matters of planning judgment, as were the concerns regarding the effect on the living conditions of the occupants of Rosslyn Terrace and the extent of parking.
 7. However, during the hearing the Council confirmed that it had not grappled with the applicant's evidence relating to the viability and sustainability of the site as employment land or the lack of public parking at the appeal site. Ultimately, the Council did not seek to defend its concerns on these points. Had they considered the evidence sooner and in detail, then this point could have been resolved before the appeal was submitted. There had been ample opportunity to do so. Accordingly, the Council acted unreasonably, and this behaviour resulted in the appellant being put to wasted expense addressing these points in the build up to the hearing and during it.
 8. Similarly, if the Council had approached matters more proactively, then some of the concerns relating to the design of the scheme and the living conditions of future occupants could have been addressed through suitably worded conditions. This being the size of the apartments, which could have been addressed through minor revisions to the floor plans, securing the enclosure of the communal garden, so that it is private space, and safeguarding privacy from certain windows by obscuring the glass. By failing to consider conditions the Council acted unreasonably and put the appellant to unnecessary expense in addressing these points.
 9. In conclusion, it is apparent from a reading of my decision on the appeal that most of the Council's concerns were reasonably made and supported by the evidence of experts. However, that was not universally the case. As a result, I find that some of the Council's actions were unreasonable and resulted in wasted expense for the applicant. A partial award of costs is therefore justified.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Braintree District Council shall pay to Kelvedon Village Developments Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the Council's second putative reason for refusal (relating to the loss of allocated employment land and public car parking) and those points that could have been addressed by condition as identified above; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Braintree District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Graham Chamberlain
INSPECTOR