



Appeal Decision

Hearing held on 11 and 12 March 2024

Site visit made on 12 March 2024

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2024

Appeal Ref: APP/Z1510/W/23/3331319

Towerlands, Panfield Road, Braintree, Essex, CM7 5BJ

- 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 outline planning permission.
 - The appeal is made by Unex (No. 10) Limited against Braintree District Council.
 - The application Ref: 23/01478/OUT was dated 31 May 2023.
 - The development proposed is described as: Erection of up to 150 dwellings with access to be considered.
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Decision

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

Applications for costs

2. At the hearing an application for an award of costs was made by Unex (No. 10) Limited against Essex County Council. This is the subject of a separate decision.

Preliminary Matters

3. The proposal was submitted in outline with all matters apart from access reserved for future approval. In addition to the site location plan, the application was accompanied by an Indicative Masterplan, Indicative Accommodation Plan, and a Green Infrastructure Strategy Plan. It also included three Parameters Plans relating to Build Form, Density, and Vehicular & Pedestrian Routes respectively. At the hearing it was confirmed that all of these drawings were indicative only. I have determined the appeal on that basis.
4. Although the appeal is made against the failure of the Council to issue a decision on the planning application, in its appeal submissions the Council included a report to its planning committee dated 28 November 2023. This sets out that, had it been in a position to do so, the Council would have refused planning permission for reasons relating to the location of the appeal site, the effect on the character and appearance of the area and the surrounding landscape, and whether the proposal would make suitable provisions for associated infrastructure. Concerns were also raised with regard to the adequacy of the application submissions in respect of whether the site could accommodate the proposed quantum of development in relation to urban design and site layout, drainage, the effect on existing trees, biodiversity net gain and ecological mitigation, and the effects on the highways network.

Initially the Council had raised concerns in respect of the effect of the proposed development on the setting of the Grade I Listed Panfield Hall. However, prior to the hearing opening the appellant submitted further information that addressed the Council's concerns, and this did not subsequently form a principal disputed matter at the hearing.

5. Following the submission of the Council's Statement of Case, it became apparent that the Council's five-year supply housing land position was likely to change. Consequently, further evidence in respect of this from both parties was considered at the hearing.
6. The Council's putative reasons for refusal identified that, to mitigate the effects of the development, financial contributions would be required for offsite highways works and/or contributions to encourage use of public transport, cycling and walking. It also identified contributions would be required to improve or provide primary healthcare provision; education provision; library facilities; outdoor sports provision; allotments; open space provision and maintenance; and mitigation measures in respect of increased visitor numbers in the Blackwater Estuary Special Protection Area (SPA) and Ramsar, the Dengie SPA & Ramsar and Essex Estuaries Special Area of Conservation (SAC). It is also set out that to comply with Policy LPP31 of the Local Plan 30% of the proposed units should be provided as affordable housing.
7. Before the hearing opened, an advanced draft of a Section 106 Agreement was provided which made provision for 30% affordable housing; for the provision and future management of open space, including an equipped children's play area; and for constructing private roads and drives within the development to a suitable standard for refuse collection vehicles and preventing claims for damages for such use for refuse collection purposes. The Section 106 Agreement also set out financial contributions for primary healthcare; ecological mitigation (including for the SPA and SAC); outdoor sports provision; allotment provision; expansion of primary and secondary education provision; and upgrading library facilities. In addition, it made provision for monitoring fees for the residential travel plan; financial contribution for public transport enhancements; and financial contribution for improvements to cycle and pedestrian links.
8. This was discussed at the hearing and the Council confirmed that the obligations in the Section Agreement would overcome their concerns in respect of these matters. The Section 106 Agreement was subsequently completed shortly after the hearing closed and was accompanied by a Community Infrastructure Levy Compliance Statement agreed by the main parties. This is consequently no longer a principal disputed matter.
9. A separate completed Unilateral Obligation (UU) was also submitted at the same time as the completed Section 106 Agreement. This sought to address concerns relating to capacity on the highway network. This matter will be covered in the section of the decision in respect of highways.
10. Before the hearing opened, I viewed the appeal site and the surrounding area from publicly accessible areas. In addition to the formal, accompanied, visit to the appeal site that took place on the second day of the hearing, on the morning following the close of the hearing I also walked the length of Public Footpath 25. This was unaccompanied by the parties, and I viewed the appeal

site from a number of viewpoints agreed between the parties during the hearing.

11. The appeal site is located to the north west of a residential development which is currently under construction and is known as Towerlands Park. This is an allocated Strategic Growth Location in the Braintree District Local Plan. This site is being developed in phases. Notwithstanding the description of the development used on the planning application form, it was agreed at the hearing that, in order to avoid confusion with Phase 2 of the existing Towerlands Park development, the appeal proposal would be referred to as Towerlands 2 and the existing, ongoing, development as Towerlands 1. I have adopted this approach in this decision.

Main Issues

12. The main issues in this appeal are:

- Whether the appeal site is an appropriate location for residential development having regard to the provisions of the development plan;
- The effect of the development on the character and appearance of the area and on the surrounding landscape in the vicinity of the appeal site;
- The effect of the proposed development on the safe and efficient operation of the highway; and
- Whether the proposed quantum of development can be provided on the appeal site having regard to design and layout and ecological effects.

Reasons

13. The appeal site comprises part of an irregularly shaped field on the north west edge of Braintree and is approximately 8.5 hectares in area. At the time of the site visit the site was largely short mown grass. To the south east and south west boundaries of the site are well established belts of trees. On part of the north west boundary of the site there is a line of Poplar trees which are subject to a Tree Preservation Order.
14. The Braintree District Local Plan 2013-2033 (hereinafter the Local Plan) is in two sections. Section 1, which was adopted in February 2021, is the North Essex Authorities' (Braintree, Colchester, and Tendring) shared strategy and sets out strategic policies. Section 2, adopted in July 2022, contains policies specific to Braintree.

Whether the appeal site is an appropriate location

15. It is common ground that the appeal site is located outside, but just adjacent to, the development boundary for Braintree. Policy LPP1 of Section 2 of the Local Plan states that development outside development boundaries will be confined to uses appropriate to the countryside. Such uses must also protect and enhance valued landscapes, sites of biodiversity or geological value, and soils, to protect the intrinsic character and beauty of the countryside.
16. Neither the policy nor its supporting text explicitly sets out what constitute uses appropriate to the countryside. The supporting text to the policy does, however, set out that areas of the district which are outside development boundaries are considered to be within the countryside. It further sets out that

in order to protect the intrinsic beauty of the countryside, development outside the development boundaries is normally restricted to that which supports countryside uses. I am mindful that the supporting text is not a part of the policy, nor does it have the force of policy. Nevertheless, it is relevant to the interpretation of the policy to which it relates.

17. Both the National Planning Policy Framework (the Framework) and the Policies in the Local Plan draw a distinction between urban and rural, or countryside, areas. In order to apply these policies appropriately there must be a distinction between the two. The development boundaries in the Local Plan perform that function, delineating where built up areas end, and the countryside begins. Whilst the Framework does not preclude housing in the countryside, it does set out policies in respect of housing in rural areas. The Local Plan contains specific policies for certain kinds of development in the countryside including, amongst others, tourism development; replacement dwellings; rural workers dwellings; residential conversions; infill development in hamlets; and small-scale commercial development which involves the conversion and re-use of existing buildings. The Local Plan also allocates a number of sites within the development boundary for Braintree for large scale residential development.
18. It may appear artificial or contrived that an area of land can be within the countryside for policy purposes and yet adjoining land a few metres away is not. However, this difference is essential to provide certainty as to which policies are applicable to a particular development.
19. The Local Plan and the Framework have to be taken as a whole. Both draw a distinction between development in urban and rural/countryside areas and the Local Plan contains specific policies in respect of certain types of residential development in the countryside. The Framework also contains specific provisions in respect of rural housing at paragraphs 82 to 84. These latter relate to the provision of affordable housing on sites where residential development would not normally be permitted and to development in villages. None of these policies makes reference to large scale housing development.
20. It is common ground that the site is not isolated for the purposes of paragraph 84 of the Framework. The appellant contends that as the Framework does not explicitly preclude housing in the countryside and, because the appeal site is not isolated, large scale residential development is a use appropriate to the countryside.
21. Having regard to the above context, I do not agree. Despite the appellant's premise that the Council relied on Paragraph 84 in determining whether a large scale residential development would be a use appropriate to the countryside, the Council's appeal submissions, the putative reasons for refusal, and the Committee report that sought their endorsement, do not make any reference to this (or to Paragraph 80 as it was at the time of the report). The appellant, rightly, did not argue that the site qualified as a rural exception site or a community-led development exception site. Nor was it argued that housing development in Braintree would enhance or maintain the vitality of rural communities, or support services in a village nearby.
22. If the appellant's proposition is correct, this would be the antithesis of a genuinely plan led system and the concept of sustainable development that is set out in the Framework. It is also difficult to conceive of a set of

circumstances where a development of 150 houses might be required to support a use that would normally be expected to found in the countryside.

23. Policy SP3 of Section 1 of the Local Plan expects existing settlements to be the principal focus for additional growth across the North Essex Authorities area within the Local Plan period. It states that development will be accommodated within, or adjoining, settlements according to their scale, sustainability, and existing role within each individual district. The supporting text to this Policy sets out that in Braintree District, the growth will be mainly addressed via urban extensions with a number of new urban extensions to Braintree town.
24. It is, however, important to note that Policy SP3 is contained within Section 1 of the Local Plan. Section 1 predates the development limits and the housing allocations identified in Section 2, which was adopted the following year. Policy SP3 states that in Section 2 of its Local Plan each local planning authority will identify a hierarchy of settlements where new development will be accommodated according to the role of the settlement, sustainability, its physical capacity, and local needs. Section 2 of the Local Plan subsequently allocated a number of sites in Braintree for residential development. These did not include the appeal site. Policy SP3 is clearly a strategic policy to guide allocations rather than a basis for development control decisions and I do not find that the proposal gains any support from this. Nor does it gain any support in this respect from the Framework.
25. I therefore conclude that the appeal site would not be an appropriate location for new residential development having regard to the development plan and it would conflict with Policy LPP1 of the Local Plan.

Character and appearance, and the effect on the landscape

26. The proposal is submitted in outline with matters relating to scale, layout, appearance, and landscaping reserved for future approval. The application was accompanied by an illustrative masterplan, several parameters plans and a Green Infrastructure Strategy Plan. These are indicative only and approval is not sought for these. Although a design code document was submitted with the application, this was the Design Code for Towerlands 1 and all of the illustrative material within it is with reference to and relates to the Towerlands 1 site and not to the appeal site.
27. In view of this, there is little information on which to gauge the effects of the proposal at this stage. The application was accompanied by a Design and Access Statement which sets out that the appearance of the built form of the proposed development would be based on the design code for Towerlands 1. The above notwithstanding, I have no reason to believe that it would not be possible to achieve an acceptable design and layout for the site at the reserved matters stage.
28. That said, it is also necessary to consider the more general effects of a large scale housing development on its immediate surroundings and the wider landscape.
29. The appeal site is part of a field of improved grassland. The remainder of the field beyond the site boundary forms an ecological mitigation area approved in connection with the Towerlands 1 development. The site lies in the countryside at the edge of the built up area of Braintree. The site is located on rising

- ground on the side of the valley of the River Pant and rises gradually from east to west.
30. On the south east and south west boundaries of the site well established belts of trees are present. Further well established trees are present together with a hedgerow on the boundary of the ecological mitigation area with Panfield Road. Panfield Road sweeps around the site boundary to its junction with Church End before turning north west, continuing as the B1053. Church End runs across the northern boundary of the site towards the village of Panfield to the west. A small group of houses is located at the junction of Church Road and Panfield Road. A field of a similar size to the field comprising the appeal site and ecological mitigation area separates the appeal site from the village of Panfield.
 31. On the east side of Panfield Road the landform drops more steeply to the wooded course of the River Pant before rising again to Bovingdon Road and continuing to rise beyond. Immediately to the south east of the appeal site is the Towerlands 1 site which is currently under construction. This sits on rising land above the present built up area of Braintree.
 32. To the south east of Towerlands 1, the built up area of Braintree runs along the valley side to the crossing point over the River Pant at Bocking Churchstreet. Here, there, is a cluster of buildings around the crossing point on the valley floor before the settlement becomes more linear, following Church Street, which rises up the valley side to join the A131 to the east.
 33. The field containing the appeal site is surrounded to the other three sides by open countryside consisting of a mosaic of small to medium sized fields and small blocks of woodland. Although the Towerlands 1 development is glimpsed through the trees and hedgerow travelling along Panfield Road, the immediate vicinity of the appeal site otherwise has a very rural character which becomes more pronounced once the appeal site itself is reached.
 34. The proposed development would insert a large area of built form into this locality. It would be set back from Panfield Road behind the tree screen and the ecological mitigation area. It would also be screened to an extent in views from the west on Church End by the existing tree belt on the south west boundary of the appeal site. Nevertheless, on the northern boundary of the appeal site itself there is a much lower degree of screening, and the built form and urban character of the proposed development would be much more evident at this point. Due to the stronger screening on the south eastern boundary of the site and the lesser visibility from Panfield Road, the development would not be read in conjunction with Towerlands 1 at this point. It would instead be perceived as an extensive, separate, and anomalous urbanised feature in the otherwise very rural surroundings. This would be harmful to the character and appearance of the area.
 35. The proposal would also result in the loss of a number of trees within the tree belt on the south eastern boundary of the site to accommodate the proposed access road. Whilst this would have a visual effect, overall, it would not significantly change the character of the area and the trees in question are not protected.
 36. It is accepted that no important landscape features would be lost as a result of the proposed development, given that the site is an ordinary agricultural field. The submitted Landscape and Visual Impact Assessment (LVIA) concludes that

there would be moderate adverse effects on the character of the Pant River Valley Landscape Character Area. The Councils primary concern in respect of landscape are the visual effect on views across the River Pant valley from the east. From Bovingdon Road, there are limited views of the appeal site due to the lower level of the road and presence of roadside hedgerows and trees along the course of the river. Where Bovingdon Road climbs the valley side and bends round sharply to the south of Bovingdon Hall, there is a glimpsed view of the appeal site from this higher elevation, but it would be fleeting.

37. Public Footpath 25 at is, however, at approximately the same elevation as the appeal site for much of its route. The effect on kinetic, or sequential views, for receptors using this public right of way is an important factor. I saw when I walked the route of this footpath that it is evidently well used, as a trampled earth track was present through the ground level vegetation. The route of the footpath commences at Bovingdon Road on the edge of Bocking Churchstreet and climbs up the valley side before running across the slope, broadly parallel to Bovingdon Road, and terminating at the roadside on the sharp bend to the south of Bovingdon Hall. The footpath is used primarily as a recreational route.
38. From Footpath 25 the existing development at Towerlands 1 is plainly visible across the valley. I recognise that at the time of my site visit the trees on the site boundary were not in full leaf, nevertheless, the buildings were visible in gaps and above the height of the trees. Due to the topography and the changes in elevation, Towerlands 1 appears visually isolated from the built form of the main settlement, which is perceived as being on the valley floor. This is due to the buildings on the valley side not being visible because the river valley swings round to the south. Once the footpath reaches the same elevation as the appeal site, the appeal site is also visible.
39. The built form of the proposal would be located on highest part of the site. Due to this location, the screening effect of the trees adjacent to Panfield Road would be reduced and the buffering effect of the ecological mitigation area much reduced. This is confirmed by the verified views and photomontages from viewpoints on Footpath 25 submitted to the hearing. These show that even after 15 years large elements of the development would be visible and that the new built form would be very visually prominent.
40. In some views, the development on the appeal site would be seen together with Towerlands 1. However, the information provided in respect of this development shows a large area of open space to the north west end of the development that runs up to the boundary of the appeal site. This would sever any visual continuity between the built forms of Towerlands 1 and 2 and lead to the latter being seen as an island of housing in the countryside, unrelated to the built up area of Braintree.
41. In views from the Footpath, the appeal site is currently perceived as part of the wider pattern of fields that make up the surrounding countryside. Whilst the landscape of the Pant valley is a man made landscape of managed farmland, it is nonetheless attractive. The existing Towerlands 1 development intrudes into this area and this intrusion would be exacerbated by the proposed development extending this intrusion, but in a fragmented way. The development would become slightly more screened over time, however, for the above reasons I do not agree with the findings of the LVIA that the longer term effect on views

from Footpath 25 would be a minor adverse one and that the initial moderate adverse effects would persist in the longer term.

42. Consequently, I find that the proposed development would cause harm to the character and appearance of the area and to the surrounding landscape. It would conflict with the relevant requirements of Policies SP3, SP7, LPP52 and LPP67 of the Local Plan which when read together seek to ensure that new development is of a high standard of design that responds positively to local character and context, recognises the intrinsic character and beauty of the countryside and is informed by, and sympathetic to, and successfully integrate into the character of the landscape.

The effect of the proposed development on the safe and efficient operation of the highway

43. The Highway Authority (HA), Essex County Council, objected to the planning application on the grounds that the transport Assessment which accompanied the application contained insufficient information to establish the effect of the proposal on highway capacity and safety. The HA also objected on the grounds that the Transport Assessment contained insufficient information regarding additional off-site works and of contributions to encourage the use of public transport, walking and cycling.
44. Prior to the hearing, further discussions took place between the HA and the appellant. The majority of the HA's concerns were resolved and incorporated into a Statement of Common Ground (the Highways SoCG) and the subsequent main Section 106 Agreement.
45. Again prior to the hearing, the HA set out in a Position Statement, dated 26 February 2024, that it no longer agreed to one provision of the Highways SoCG. This proposed an additional financial contribution to be paid in the event that a link road between Springwood Drive and Panfield Lane was not complete by the time of first occupation of the appeal scheme in order that first occupation would not be prevented. The HA withdrew its agreement to this provision because it did not reflect the approach taken at Towerlands 1 or a second consented development at Land West of Panfield Lane in that, when cumulative impacts were considered, the occupancy of the developments should be restricted until the completion of a link road between Springwood Drive and Panfield Lane. The HA's position at the hearing was that there should be no occupation of the appeal proposal until the link road was provided and available for use. The appellant maintained their position that the additional financial contribution would allow the appeal scheme to be occupied and not have an adverse effect on the highway network.
46. Access to the appeal site would be achieved from the estate road to be provided by the Towerlands 1 development. The Towerlands 1 site is subject to a restriction contained in a Section 106 that no more than 50 units can be occupied until such time as a link road from Panfield Lane to Springwood Drive, which is on land owned and being developed by a third party at Land West of Panfield Lane is constructed and available for use by the public. The Land West of Panfield Lane site has a similar restriction preventing the occupation of no more than 50 dwellings before the link road is provided.
47. It is not in dispute that there is no reserve capacity during peak periods at the Rayne Road/Pierrefitte Way/Aetheric Road traffic signal controlled junction.

This junction lies on the principal route between the appeal site, Towerlands 1, the Land West of Panfield Lane site, Braintree town centre, and the strategic road network (A120 and A131). The link road between Springwood Drive and Panfield Lane would provide an alternative route between Braintree town centre, the A120 and A131, the north-western part of Braintree town, and the north of the district. It would relieve pressure on the Rayne Road/Pierrefitte Way/Aetheric Road junction.

48. Whilst I was in the area, I had the opportunity to observe the functioning of this junction in the evening peak times. From what I saw, the junction is currently operating at close to, or above, capacity and, as a result, queuing and delays occur. I recognise that this is just a snapshot of the time that I was in the area, but there is nothing that would indicate that what I saw was not representative of the prevailing conditions.
49. At the time of the hearing there was no definitive timescale for when the link road would be provided and the land over which it is to be provided is not within the control of the appellant. Nor is there any indication that the link road would be provided within the timescales for commencing development if this appeal were to be allowed. I was advised that the developer of the Towerlands 1 site is seeking to vary the existing S106 Agreement for that site to remove the 50 dwelling cap. I was also advised that new highways assessments have been carried out and mitigation proposed, however, that evidence was not before me.
50. At the hearing, neither the appellant nor the HA could elaborate on what the appellant's proposed additional contribution would be spent on or how this would resolve the issue of insufficient capacity on the highway network. The submitted UU sets out a financial contribution to be used by the HA as it wishes on easing and or reducing traffic impact on the highway network and junctions and cites some examples of current initiatives that could be funded.
51. Nonetheless, leaving aside the vagueness of the wording allowing the HA to use the contribution as it sees fit, there is no evidence before me that would indicate that, even if the contribution were to be used in connection with the initiatives listed, this would alleviate the current capacity issues on the network. Nor is there any substantiated evidence before me which would demonstrate that, in the event the Council were to vary the cap on occupation at Towerlands 1, the proposed additional contribution would mitigate any adverse effects on the highway network.
52. As a result, I am not satisfied that the appeal proposal could be developed without having an adverse effect on the highway network. The development would therefore be harmful to the safe and efficient operation of the highway network. It would conflict with the relevant requirements of Policies SP6 and LPP42 which expect new development to facilitate sustainable modes of transport. It would also conflict with the Framework which expects significant impacts on the transport network to be mitigated to an acceptable degree.

Whether the proposed quantum of development can be provided having regard to ecology and design

53. It is proposed to construct up to 150 dwellings on the site. The application included an indicative masterplan for the site and several parameter plans that are also indicative.

54. Whilst these drawings are indicative and not binding, the masterplan drawing does illustrate that 150 dwellings could be accommodated within the site. Given that layout, appearance, and landscaping are all matters reserved for future approval, issues such as urban design, provision of parking, separation distances, provision of street trees and internal landscaping are subjects that would be addressed as part of any reserved matters submissions.
55. The application predates the mandatory 10% biodiversity net gain (BNG) requirement for major developments. Local Plan Policies LPP52 and LPP66 do, however, encourage BNG. No baseline information has been submitted as part of the proposal. The appellant suggests that this BNG requirement could be conditioned. Whilst it would be helpful to understand the current biodiversity value of the site at this stage, as neither the Policy LLP52 nor Policy LPP66 set a target to be achieved, in the event that permission were to be granted, a suitably worded pre-commencement condition could be used.
56. Local Plan Policies LPP50 and LPP52 expect amenity open space and landscaping to be provided within developments but does not set any specific standards. The Council's Open Space Supplementary Planning Document 2009 identifies that the average occupancy rate per dwelling in Braintree District is 2.36 persons and that 4-5 square metres of informal space is required per person within housing areas. Applying this 5 square metres to the proposed 150 dwellings (354 inhabitants) results in an amenity open space requirement of 1,770 square metres or 0.17 hectares. I am satisfied that, even taking the submitted drawings as indicative, that this could be achieved within the proposed development.
57. The appeal proposal would result in the loss of part of the ecological mitigation area agreed in connection with the Towerlands 1 development in order to provide the access road into the appeal site. Parts of the agreed ecological mitigation area are also directly adjacent to what is shown as amenity open space to the south west of the appeal site on the indicative masterplan.
58. Ponds were provided in the ecological mitigation area for Towerlands 1 in order to compensate for ponds which supported great crested newts that were lost as part of that development. Whilst the ecological information provided in respect of the appeal proposal identifies that these new ponds are not yet suitable for supporting newts in the fullness of time they will be. The proposed access road would sever a potential commuting link for newt populations to the south of the appeal site to the new ponds. Whilst an access track for maintenance through the tree belt to the south east boundary of the site may have been contemplated as part of the ecological mitigation area, this is unlikely to be of a similar character to an adoptable highway. It would also be much less frequently trafficked.
59. An engineered, and frequently used, access road with kerbs and road drainage would present both an obstacle and danger to amphibians. This could be addressed by the introduction of technical solutions such as wildlife tunnels under the road this. However, compensating for the loss of part of the ecological mitigation area may require compensatory land within the appeal site. Whilst this might reduce the developable area and the overall number of dwellings that could be accommodated, this would be a matter for the developer to address as part of the detailed design of the scheme.

60. Queries were also raised in respect of commuting routes for bats. No bat survey has been undertaken and so the extent of bat activity in the area is an unknown quantity, although the ecological surveys identify a moderate suitability of the site for commuting bats. Dependent on the bat species present (if any), commuting routes would be largely restricted to the linear vegetation features on the site boundaries. The proposed access road would result in a break in one of these linear features. Street lighting also has potential effects on bats.
61. Whilst it was suggested that a bat “hop over” could be incorporated into the road design these have to be created to suit the particular bat species present. There was also a question raised over whether the highway authority would adopt a road featuring a “hop over” facility.
62. In the absence of specific evidence in respect of bat activity it is not possible to determine what effect this may have on the quantum of development proposed. Street lighting can be designed to minimise the effect on bats. Whilst far from ideal, it would be possible to condition any permission to be designed to accommodate any bat species found to be present. If this resulted in a reduction in the overall number of units that could be accommodated, then again this would be a matter for the appellant to address as part of the detailed design at the reserved matters stage.
63. I have also noted that the matter of whether sustainable drainage could be accommodated has been agreed and is no longer in dispute.
64. From the evidence before me, I am satisfied that it would be possible to accommodate the general quantum of development proposed on the site whilst still taking account of requirements for open space and ecological mitigation. In this respect the proposal would not conflict with the relevant requirements of Policies SP7, LPP35, LPP43, LPP52, LPP63, LPP64, LPP65, LPP66, and LP76 of the Local Plan. Taken together these seek to ensure that new development meets high standards of urban and architectural design, provide appropriate on site amenity space, make suitable provision for parking, provide a good standard of amenity for future occupiers, and make suitable provision for green infrastructure, biodiversity, and sustainable drainage.

Other Matters

65. The appeal site is in the vicinity of Panfield Hall which is a Grade I Listed Building. It is now common ground between the parties that the proposed development would not cause harm to the setting of the Listed Building.
66. From the evidence provided and from what I saw when I visited the site, there is little intervisibility between Panfield Hall and the appeal site due to the screening effect of tree belts both on the appeal site boundary and closer to Panfield Hall. There is also no indication in the evidence that there is a historical connection between Panfield Hall and the appeal site. For these reasons I would agree with the parties that the proposal would not cause harm to the setting of the Listed Building.
67. Approximately 85 letters of representation were received from interested parties. Many of the points raised have been covered above. I have had regard to these representations, however, there is nothing in these that would lead me to a different overall conclusion.

Housing Land Supply

68. The Council's latest position statement for 2023-2028 claims that there is a supply of 5,070 dwellings which are projected to be completed during that period. This equates to a 5.8 year supply of deliverable sites against a total requirement of 4,367 homes, or an average annual target of 873 homes. On the council's figures, this amounts to a surplus of 703 units. The appellant disputes this, suggesting instead that the Council can only demonstrate 4.19 years supply.
69. The Framework set out that a deliverable site should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In respect of sites for major development that have outline planning permission, these should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. The Planning Practice Guidance on Housing Supply and Delivery sets out some examples of the type of evidence required to demonstrate deliverability.
70. The appellant identified 6 sites with full planning permission but not yet under construction, totalling 7 units, on which it is claimed the permission has expired. At the hearing the Council confirmed that two of these sites have in fact been completed or the permission implemented. The remaining 5 units should, however, be omitted from the five year supply. A further 2 units should be removed resulting from an outline permission where the reserved matters were not submitted within the relevant time period.
71. The main focus of the dispute is on large sites with outline planning permission and sites with a resolution to grant permission. 11 sites from the Council's trajectory are disputed. Although the appellant cites the lack of a planning performance agreement (PPA) in most of their assessments of the deliverability of these sites, it should be noted that there is no requirement for developers or local planning authorities to use these. A PPA would undoubtedly give greater certainty as to when a reserved matters application would be approved. However, the lack of a PPA does not necessarily indicate that a site with an undetermined reserved matters application will not deliver any housing in the relevant period.
72. Beyond the grant of outline planning permission little progress has been made at the sites at Small Acres, Hatfield Peveral; Land north of London Road, Kelvedon; Land East of Braintree Road, Tye Green, Cressing; and Land West of Boars Tye Road, Silver End. Although two of these sites are quite small, in the absence of any persuasive evidence of progress, it cannot be assumed that these would deliver houses quickly. These sites should be omitted from the housing supply, thereby reducing the surplus to 275 units.

Land East of Broad Road Braintree 140 Units

73. This site has an outline planning permission for up to 1000 units. A phasing scheme and landscape ecology management plan have been approved. A Reserved Matters application has also been submitted for the approval of the layout, scale, landscape, and appearance for a section of spine road from the approved access point. Although a phasing scheme has been provided this does not attach any timescales to the phases. Whilst progress does appear to be occurring on this site, given the need to provide road infrastructure in

advance of housing and that this does not yet appear to be in place the potential number of units in the Council's trajectory is perhaps optimistic. That said, given the progress thus far it is likely that some units would be delivered from the site towards the end of the five year period. A figure of 40 units in the final year would potentially be more realistic.

Land South of Gilda Terrace Braintree 119 Units

74. Following an outline planning permission granted in 2021, Reserved Matters were submitted in January 2023 for 119 dwellings. This application is yet to be determined. A discharge of conditions application was submitted for approval of landscaping details. A full application was also submitted in December 2023 for a footway and cyclepath link between the residential development and a long distance path linking Braintree to Bishop's Stortford. Given that the Reserved Matters application has been pending for over a year it is not clear when this site might progress. Whilst the submission of an Initial Notice under the Building Regulations could be seen as a statement of intent, again the Council's trajectory is optimistic as until the reserved matters are approved works cannot progress. Allowing for the discharge of any relevant conditions, it is likely that delivery would commence later in the five year period and again 40 units is more realistic.

Land off Bournebridge Hill Greenstead Green 150 units

75. Outline permission was granted in November 2022 for development of up to 200 homes subject to shorter time limit conditions to speed up housing delivery from the site. Whilst there has been a request for pre-application discussions on Reserved Matters, a reserved matters application has not yet been submitted. A full application has been submitted and is pending consideration for the construction of cycle and pedestrian links, nonetheless, this is not clear evidence of a realistic prospect of housing being delivered. This site should be excluded.

Land North of Maldon Road Hatfield Peverel 110 units

76. Outline permission was granted for this site in November 2021, again subject to shortened timescales for submission of reserved matters and commencement. Reserved Matters have been submitted by also including details relating to the discharge of certain conditions from the outline permission. Whilst the reserved matters application has yet to be determined and the site is in the process of being marketed, there is nonetheless a realistic prospect of some delivery from this site within the five year period. Again, approximately 40 units is a reasonable figure for one year's delivery.

Phase 4 Land Northeast of Rectory Lane Rivenhall 210 units

77. This site is part of larger development. Outline planning permission for up to 230 homes was granted in January 2023. A Discharge of Conditions application has been submitted and approved for the Design Code and the Council state that a PPA is in place for the reserved matters. The same developer has also developed the other phases of the site. I am satisfied that there is a realistic prospect of the 210 units identified by the council being delivered in the five year period.

Phase 5 of Lodge Farm site Hatfield Road Witham 110 units

78. This site is also part of on-going larger site. There have been formal pre-application discussions between the developer and the Council about the proposed reserved matters submission for the final phase. An application has been approved that shows an illustrative layout for this site. Although there is not yet a reserved matters submission, there is a history of delivery on the remainder of site over a number of years by a national housing developer and there is progress being made toward site assessment and the submission of an application. This site should be included.

Land at Woodend Farm Witham 190 units

79. Outline planning permission for up to 400 homes was granted in July 2022. A series of discharge of conditions applications have been submitted and reserved matters have been approved for the installation of the spine Road with associated footpaths, cycleways and bus turning head. Reserved Matters on open space have been submitted and are pending consideration. A phasing plan was approved in June 2023. There is sufficient evidence that the site is progressing and that there is a realistic prospect of completions from this site in the five year period. This site should be included in the five year supply.
80. A site for 54 units at Mount Hill recorded initially as a resolution to grant outline permission is also challenged. Outline permission has since been granted, however, there is no indication of when any reserved matters on this site may be submitted. This site should be removed from the five year supply.
81. The above would result in a further 453 units being removed from the trajectory, resulting in a shortfall of 178 units. From the evidence put to me in this case, the Council can only demonstrate a supply of 4.79 years. Consequently, the proposal falls to be considered in the light of Paragraph 11(d) of the Framework.

Planning Balance

82. I have found that the proposal would be development outside the development boundary for Braintree and as such would conflict with the Council's spatial strategy for the location of new development. I have also found that the proposal would cause harm to the character and appearance of the area and to the surrounding landscape, and that it would be harmful to the safe and efficient operation of the highway. These are, to my mind important matters, and as such the development would be contrary to the development plan when taken as a whole, notwithstanding that it may comply with other policies within the plan.
83. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the determination of planning applications and appeals must be made in accordance with the development plan unless material considerations indicate otherwise. The Framework is capable of being a material consideration.
84. Paragraph 11 d) of the Framework sets out that planning permission should be granted 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.

85. The proposal would provide up to 150 houses which would help to address the shortfall in housing supply. The Framework seeks to significantly boost the supply of housing. That said, the Council's shortfall against the five year housing land supply is a modest one. I am also mindful that the number of houses that currently have planning permission exceeds the five year supply, and that the supply position could change if clearer evidence of delivery were to be shown. The benefit of allowing extra houses has to be seen in the context of the relatively recently adopted local plan and a relatively small deficiency in supply with the possibility that the supply position could change for the better in the future. Nevertheless, the provision of additional housing together with a policy compliant level of affordable housing carries moderate weight in favour of the proposal. There would also be other moderate, short term economic benefits arising from employment during the construction period and from potential increased expenditure on local services.
86. Weighed against this, the proposal would not be in a suitable location for housing and would represent an encroachment of large scale housing into the countryside. There are no policies in the local plan which would support housing in this location. This would undermine the planned approach to development. The Framework states that the planning system should be genuinely plan led and as the local plan is relatively recently adopted, the departure from the local plan weighs significantly against allowing the appeal.
87. The proposal would also cause lasting harm to the character and appearance of the area and the surrounding landscape. This is contrary to the expectations of the Framework that new development will add to the overall quality of the area, be sympathetic to local character, including the landscape setting, and to recognise the intrinsic character and beauty of the countryside.
88. It has not been demonstrated any significant impacts of the development on the transport network could be mitigated to an acceptable degree or that the cumulative residual effects would not be severe.
89. These factors both weigh heavily against the proposal. Overall, on balance the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.
90. The Section 106 Agreement includes a payment to mitigate the effects of recreational disturbance on the Blackwater Estuary Special Protection Area and the Essex Estuaries Special Area of Conservation. However, as the appeal is to be dismissed, there is no need to undertake an appropriate assessment or to have regard to the Conservation of Habitats and Species Regulations.

Conclusion

91. The proposed development would be contrary to the development plan and there are no other material considerations, including the provisions of the Framework, which outweigh this finding. For the above reasons, I conclude that the appeal should be dismissed, and that outline planning permission should be refused.

John Dowsett

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Charles Banner KC	Counsel for the Appellant
Jason Parker	Planning consultant
Magnus Magnusson	Planning consultant
George Bates	Highways consultant
Adrian Simms	Highways consultant
Sam Wanner	Ecology consultant
Abby Stallwood	Landscape consultant
Adrian Harris	Unex
David Snaith	Unex
Tony Brewster	Unex

FOR THE LOCAL PLANNING AUTHORITY:

Wayne Beglan	Counsel for the Local Planning Authority
Kathryn Oelman	Principal Planner, Braintree District Council
James Remington	Landscape Services, Braintree District Council
Kathy Carpenter	Senior Planner, Braintree District Council
Nigel Cowlin	Landscape consultant
Matt Bradley	Essex County Council (Highways)
Neil Harvey	Essex County Council (Ecology)
Joanna Lilliot	Senior Solicitor, Holmes & Hills

INTERESTED PARTIES:

Andrew Connolly	Local resident
Cllr Michael Staines	Braintree District Council
Cllr Lynn Jeffries	Braintree District Council
Cllr Anne Cole	Panfield Parish Council
Cllr Paul Summers	Panfield Parish Council
Cllr Julia Hill	Panfield Parish Council

DOCUMENTS SUBMITTED AT THE HEARING

Document 1	Statement of Mr Andrew Connolly
Document 2	Statement of Cllr Michael Staines
Document 3	AVR Verified Views 7 March 2024
Document 4	Notes and Clarifications on aspects of the 3 rd Edition Guidelines on Landscape and Visual Impact Assessment (GLVIA3)
Document 5	Batchelor Enterprises Ltd v North Dorset District Council [2003] EWHC 3006 (Admin)
Document 6	Journal of Planning & Environment Law Commentary on Batchelor Enterprises Ltd v North Dorset District Council [2003] EWHC 3006 (Admin)



Costs Decision

Hearing held on 11 and 12 March 2024

Site visit made on 12 March 2024

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2024

Costs application in relation to Appeal Ref: APP/Z1510/W/23/3331319 Towerlands, Panfield Road, Braintree, Essex, CM7 5BJ

- 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 Unex (No. 10) Limited for an award of costs against Essex County Council.
 - The appeal was against the failure of Braintree District Council to issue a notice of its decision within the prescribed period on an application for planning permission for a development described as: Erection of up to 150 dwellings with access to be considered.
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Decision

1. The application for an award of costs is refused.

Preliminary Matters

2. The appeal was made against the non-determination of a planning application for residential development submitted to Braintree District Council as the Local Planning Authority. Essex County Council are the Highway Authority for the area. Due to the nature of the proposed development, the Local Planning Authority were required to consult the Highway Authority under the terms of Article 18 of The Town and Country Planning (Development Management Procedure) (England) Order 2015. As a result of the consultation, the Highway Authority raised an objection to the planning application on the grounds that the Transport Assessment that accompanied the application contained insufficient information to enable it to establish the likely impact of the proposal on highway capacity and safety.
 3. Whilst the main parties were preparing their submissions for the hearing, the appellant sought to agree a statement of common ground with the Highway Authority on various matters. A highways statement of common ground was agreed on 16 February 2024 and submitted to the Planning Inspectorate (PINS). This was a separate document from the main statement of common ground agreed between Braintree District Council, as the Local Planning Authority, and the appellant. The main statement of common ground was agreed on 9 February 2024.
 4. On 20 February 2024 the Highway Authority contacted PINS and the appellant to advise that it was necessary to amend the submitted highways statement of common ground. The appellant declined to agree to amend the statement.
 5. On 26 February 2024 the Highway Authority submitted a position statement to PINS and the appellant setting out why it no longer agreed with one point in
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the highways statement of common ground. This point related to a proposed obligation to be included in a Section 106 Agreement should the appeal be allowed. The point was regarding a contribution towards public transport, cycling, and walking in the event that a link road on third party land was not available for use at the time when the first unit of the proposed development was ready to be occupied. The appellant subsequently submitted a Unilateral Undertaking which contained this obligation.

6. A representative of the Highway Authority attended the hearing and gave evidence in respect of highways matters as part of the Local Planning Authority's witness team.

The submissions for Unex (No. 10) Limited

7. The costs application was made orally at the hearing.
8. It was unreasonable for the Highway Authority to agree a statement of common ground on the link road only to depart from this without any explanation of its change of position.
9. To raise this at a late stage was unreasonable and has resulted in unnecessary or wasted expense to address this at the hearing.

The response by Essex County Council

10. The response was made orally at the hearing.
11. The highways statement of common ground fulfils its purposes. It deals with various matters in sections. All of the other sections remained of utility to the hearing.
12. The Highway Authority's change of position was communicated quickly and dealt with a single discrete point. This point was one which it would have been necessary to deal with in any event.
13. It is not unreasonable to change a position and promptly communicate that. It might have been unreasonable to wait until the hearing to do so. The appellant was able to address the question at the hearing and the Highway Authority acted responsibly in the circumstances.
14. The appellant's application does not identify any part of the costs guidance that identifies this as unreasonable.

Reasons

15. 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.
16. The Highway Authority was not a principal party to the appeal. It was acting in its role as a statutory consultee. The PPG sets out that where a local planning authority has placed significant weight on the view of a statutory consultee in its reasons for refusal, the local planning authority may request the statutory consultee attends a hearing, or makes written representations, to defend its position as an interested party. Whilst this appeal was against non-determination, the Council cited highways grounds in its putative reasons for the deemed refusal of planning permission.

17. The PPG also sets out that where a statutory consultee exercises a power to direct a planning authority to refuse planning permission, it will be treated as a principal party at the appeal and may be liable for an award of costs if they behave unreasonably. Highway authorities no longer have the power to direct a local planning authority to refuse planning permission on highways grounds.
18. Although the Highway Authority was thus an interested party, it was neither a principal party to the appeal, nor a Rule 6 party. In these circumstances, the PPG advises that it is not anticipated that awards of costs will be made in favour of, or against, interested parties, other than in exceptional circumstances.
19. Notwithstanding the above, the Highway Authority advised the appellant 4 days after agreeing to the statement, and some 20 days before the hearing opened, that it required an amendment. The appellant declined to entertain this request on the following day. Subsequently, the Highway Authority provided PINS and the appellant with a written position statement setting out why it could no longer agree with Section 2 of the highways statement of common ground. This was provided 14 days before the hearing opened.
20. Section 2 of the highways statement of common ground proposed a solution to the issue of the provision of the link road on third party land. However, this would still have been a matter that would have required discussion at the hearing in order for the Inspector to determine whether the proposed obligation satisfied the relevant tests, irrespective of whether it was agreed by both parties.
21. The Highway Authority sought to amend the statement of common ground when it became aware of an oversight on its part. It is not unreasonable to seek to rectify an agreement based on an inaccurate premise. When it became aware of this oversight, the Highway Authority sought to advise the appellant as soon as practicable. This was both very shortly after the statement was agreed and well in advance of the hearing opening. The Highway Authority did not seek to resile from any other matters covered by the statement.
22. From the correspondence that I have seen, the appellant did not give the Highway Authority any reason for declining the request to amend the statement of common ground other than the statement of common ground had already been signed and the appellant saw no need to change it.
23. Within this context, whilst the Highway Authority seeking to change its position on one point may perhaps have been inconvenient for the appellant, I do not find its actions to have been unreasonable or amount to a lack of co-operation. Nor do I consider that it has been demonstrated that there are any exceptional circumstances which might lead to an award of costs being made against an interested party to an appeal.
24. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

John Dowsett

INSPECTOR