



Appeal Decision

Site visit made on 11 June 2025

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th September 2025

Appeal Ref: APP/H1515/W/25/3360423

Land at Priests Lane, Priests Lane, Brentwood

- 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 Cala Management Limited against Brentwood Borough Council.
 - The application Ref is 24/00804/FUL.
 - The development proposed is demolition of existing pavilion and construction of 97 dwellings including access, car parking, cycle and bin storage, public open space, landscaping and associated works.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Cala Management Limited against Brentwood Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. Concern has been raised regarding whether the correct notice has been served with respect to the red line for the application. The Council validated the application and the appellant has indicated they are satisfied they have carried out the correct notification as required by planning legislation. I am therefore satisfied I can proceed to determine this appeal.
4. A completed planning obligation, dated 28 May 2023 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted. I will return to this in due course throughout the decision.

Background and Main Issues

5. The appeal is against the non-determination of the application. The Council has provided three putative reasons for refusal in their statement of case. Having had regard to the written evidence before me, the representations to both the application and appeal, and my observations at my site visit, I consider the main issues to be:
 - whether the proposal would have an acceptable effect on the living conditions of surrounding occupiers with regard to overlooking and loss of privacy;

- the effect of the proposed development on the character and appearance of the area; and
- whether the proposal makes appropriate provision for pedestrian and cycle connectivity.

Reasons

6. The appeal site is a former school playing field. It lies to the rear of properties on Priests Lane, and to the side of properties on Bishops Walk and St Andrews Place. There is a railway line, located in a cutting, forming the rear boundary of the site.
7. Priests Lane is characterised by large properties in spacious, well vegetated plots a number of which include mature trees. There is a degree of regularity to the scale of the plots, and dwellings typically face onto the highway, but set well back in generous front gardens which provide off-street parking. St Andrews Place consists of smaller, more modern but still well-sized dwellings in commensurate plots. Bishops Walk serves only a limited number of modern dwellings laid out in a more informal pattern.

Living Conditions

8. Plot 7 lies in the corner of the site. It would be sited so that it faces toward 24 St Andrews Place, identified as being 12m from the site boundary in the Council's officer report. This would afford direct views from the proposed dwelling at Plot 7 onto the side elevation of No.24 and into its rear garden. This would be a new relationship of overlooking given the position of the proposed dwelling perpendicular to No.24.
9. The appearance of the proposed dwelling was amended during the application process, to provide an obscure glazed, non-opening window serving bedroom 4 on the front elevation of the property and to provide a further window to serve bedroom 4 on the side elevation. This is an admission that the proposal would have an unacceptable effect on the living conditions of neighbouring occupiers. While obscure glazing is used to prevent overlooking, this is generally to non-habitable rooms such as the hall, stairs, or to bathrooms where the obscure glazing also serves to protect the privacy of the occupiers. It is not a common design feature to habitable rooms on the front elevation of a property. In any event, while this would address the overlooking to the window in the side elevation of No.24, it would not address the overlooking to the rear garden that would arise from bedroom 3. Nor would planting along the boundary ensure that there would always be effective screening.
10. There is an existing relationship of overlooking to the rear garden of No.24 from 25 St Andrews Place. However, this is a typical relationship between dwellings in built up areas. The same is true of the limited degree of overlooking that arises from the properties on Priests Lane. However, the new relationship of overlooking over the side of the property and its garden from the position of the proposed dwelling and consequent loss of privacy would result in unacceptable harm to the living conditions of occupiers of No.24.
11. The Council identified that the gardens to the plots along the boundary of the site with properties on Priests Lane would be somewhat less than the 15m recommended in the Essex Design Guide (EDG). However, the gardens of the

Priests Lane properties are expansive, and alone are well in excess of the 25m separation distance sought by the EDG. The relationship of overlooking between the properties would be acceptable and not result in an undue loss of privacy. While some properties may have facilities such as swimming pools and patios in the rear garden, this does not change what constitutes a reasonable degree of privacy in planning terms.

12. Plots 1 and 7 present side gables to these gardens. The EDG allows for this relationship where there are no windows in the flank elevation. While there are flank windows in this case, both serve bathrooms where obscure glazing and limited opening could be secured by condition. It also requires there to be no problems from overshadowing. I am satisfied that there would not be a harmful level of overshadowing to the rear gardens of the neighbouring properties given the length of those gardens.
13. The planting along the boundary of the site and the rear gardens of the properties on Priests Lane would be cleared within the site boundary, and a close boarded fence installed. The boundary planting provides an amenity for existing occupiers of the properties on Priests Lane who enjoy its verdant qualities. However, it makes only a limited contribution to the character and appearance of the area given its position to the rear of residential properties and the quality of the planting. These factors would not be sufficient to require its retention.
14. The proposed dwellings and layout would provide suitable living conditions for future occupiers of the proposed dwellings and flats. However this is to be expected of any well designed development and so would be neutral in my assessment.
15. Notwithstanding I have not found harm with respect to some plots, the proposal would not have an acceptable effect on the living conditions of neighbouring occupiers at 24 St Andrews Place with regard to overlooking and loss of privacy. It would therefore be contrary to Brentwood Local Plan 2016-2033 (adopted March 2022) (BLP) Policy BE14 which requires development to safeguard the living conditions of adjacent residents and avoid unacceptable overlooking and loss of privacy.

Character and Appearance

16. BLP Policy R19 allocates the appeal site, along with the adjacent land between the site and The Endeavour School to the rear of Bishops Walk, for 'around 75 new homes'. There is no prescription as to what 'around' means. The allocation includes an access point from Priests Lane and is immediately adjacent to Bishops Walk although not all of this is included within the appeal site.
17. The site allocation includes the existing access to Priests Lane. Immediately adjacent to this access is a mature oak tree. The Arboricultural Impact Assessment (AIA) acknowledges this as a mature, category A tree, with a potential lifespan of 40 years. It undoubtedly makes a positive contribution to the street scene. However, its position is such that the works necessary to construct a suitable access to the site would inevitably be within, and involve a substantial area of, the root protection zone of the tree. Further investigations by the appellant have revealed that the area affected would be close to half of the roots of the tree. They conclude that this would cause the terminal decline of the tree and its potential structural failure. I have no reason to disagree with this assessment.

18. However, the relationship of the tree to the site access would have been readily apparent when the suitability of the site for allocation was being assessed. It would also have been apparent that significant localised works would be necessary to construct an access suitable to serve the scale of development proposed. The removal of T23 would be a highly likely consequence of the allocation and so would not justify refusing the proposed development.
19. The submitted plans show the access road would have a footpath to both sides which would connect to the existing footpaths on Priests Lane. This would result in the loss of some of the existing hedge and grassed verge. These are also likely consequences of the site being allocated. The landscaping plans show hedge and shrub planting alongside the footpaths, along with the retention of a number of trees along the access. While some of this would be narrow, this is also an inevitable consequence of the allocation given the width of the access and the requirements to provide a safe and suitable access. The proposed landscaping would therefore be entirely appropriate.
20. The proposed access to the development would be entirely as expected from a site access in such a location. There would be mitigation from the surrounding vegetation and verges along Priests Lane. There would only be very limited losses of planting, all of which is to be expected as a result of the allocation. Consequently, the access to the site would be typical of that found in an urban area.
21. The proposed planting in the central landscaped area of the site includes, among others, extra heavy standard trees. These would be visible when looking from Priests Lane along the access road and so would assist in softening the built form of the proposal.
22. BLP Policy R19 does not impose any particular requirements with respect to the retention of the existing landscaping around the site. Again, were the retention of this fundamental to the acceptability of the allocation, it would be identified within the policy. While there would be the loss of some trees, including the category A T23 and Category B T2, the effect of these on the character and the appearance of the area would be limited. Furthermore, the proposed layout shows landscaping around the site, including tree planting and perimeter path. Centrally located open space, which would include play equipment would be provided within the site, as would additional open space that would provide sustainable drainage infrastructure and an appropriate buffer strip to the railway line. Open space would be secured through the planning obligation.
23. The proposed layout makes adequate provision for private garden spaces for the proposed dwellings, even those that are less than the 15m suggested in the EDG. For reasons I will come onto, appropriate parking provision is made within the development. The proposed dwellings would not appear unduly cramped. While the density of the site would be very different to that of the development facing onto Priests Lane, and somewhat different to that on St Andrews Place, it would be viewed as a discrete development typical of its time. While the proposal provides more dwellings than anticipated through the allocation of the site, in the absence of my finding harm as a result of the proposed density this would not be a reason to refuse the proposed development.

24. The air quality effects of the proposal were assessed and found to be acceptable. No adverse geo-environmental or geo-technical constraints were identified. Mitigation measures would ensure there would not be adverse levels of noise experienced by future occupiers of those properties closest to the railway line.
25. The proposal would have an acceptable effect on the character and appearance of the area. It would therefore be in accordance with BLP Strategic Policy BE14 which requires proposals to deliver attractive and accessible places.
26. BLP Policy HP03 applies to proposals for new residential developments not allocated in the plan and so is not directed at this allocated site.

Pedestrian and Cycle Connectivity

27. BLP Policy R19 does not require access to the site other than via Priests Lane. While it refers to access points in the plural, there are no other locations where the site directly accesses Priests Lane. The appeal site does not include the land adjacent to Bishops Walk however there is no requirement in the policy for the site to come forward as a whole. However, the proposed layout also provides provision for vehicular access to the remainder of the allocation, which would enable connection to Bishops Walk. This is sufficient to comply with the allocation policy.
28. It would ideally be preferable for pedestrian and cycle connectivity for there to be access to St Andrews Place. However, this is not a requirement of BLP Policy R19. Were this fundamental to the acceptability of the allocation, it would be a requirement of the policy, and ability to secure this access addressed during the examination of the local plan. As such, there is also no requirement for the appellant to have engaged in discussions with the neighbouring landowner(s), meaningful or otherwise.
29. Furthermore, the Council has not provided any substantive evidence to show that this lack of connectivity would deter pedestrians or cyclists. At my site visit, I observed that St Andrews Place would only provide a quicker route onto Priests Lane for future occupiers who lived in close proximity to any access to it. There would otherwise be very little in terms of the actual distance travelled. Nor would there be any material difference to the qualitative aspects of the routes.
30. The planning obligation includes a quietway cycle routes contribution. It also provides for cycle parking and supporting facilities at nearby railway stations, along with other contributions towards public realm improvements which include pedestrian enhancements.
31. I therefore conclude that the proposal would make appropriate provision for pedestrian and cycle connectivity. It would therefore be in accordance with BLP Policy R19 which requires the development to provide vehicular access points via Priests Lane and provide connections to identified routes.

Other Matters

32. There is an undoubted benefit from the delivery of housing. The proposal would provide a policy compliant level of affordable housing equating to 35% of the dwellings proposed which would be an additional benefit.
33. Despite the provision of open space on the site and the biodiversity net gain that would be provided, there would be an overall loss of habitats and hedgerows. The

planning obligation provides for the delivery of off-site biodiversity net gain, ensuring the compliance with the relevant policies in the BLP and the statutory requirements of Schedule 7A of the Town and Country Planning Act 1990.

34. Priests Lane is used by through traffic. The Transport Assessment (TA) acknowledges that the modelled junctions are operating at, or close to capacity and that there is queueing. However, the proposed development would result in only a small increase in these, and the extent of development beyond the level proposed in the allocated policy smaller again. Mitigation is also proposed, through transport related contributions in the form of a sustainable transport contribution, residential travel plan and travel pack and improvements to convert a mini roundabout to a signalised junction, in addition to the pedestrian and cycle contributions. These would also be secured through the planning obligation.
35. BLP Policy BE13 requires proposals to take account of the Essex Parking Standards – Design and Good Practice. Parking provision within the development accords with this, other than for the 13 two-bedroom flats, where only one parking space per dwelling is proposed. I have no reason to dispute the local highway authority's view that this would be appropriate given car ownership trends and the data in the TA. Given the proposed layout of the site, and the length of the access from Priests Lane, I consider it unlikely that the proposal would give rise to additional on-street parking.
36. Further social infrastructure contributions would also be secured through the planning obligation for the NHS, indoor and outdoor sports facilities and playing fields, and libraries. However these would be to meet the needs generated by the development and so would be neutral in my assessment. There is no reason to think proper provision for utilities could not be made. Energy and carbon reduction savings have been demonstrated and could be secured by condition.
37. A Flood Risk Assessment and Drainage Strategy was submitted and demonstrates that the site could be appropriately drained and that flood risk would not be increased anywhere else. The potential for archaeology has been assessed and could be controlled by condition.
38. This appeal is to be determined on the planning merits of the proposal before me. Concerns with the manner in which the Council dealt with the proposal or the decision to appeal against the failure to give notice of the decision do not go to the planning merits of the proposal.

Planning Balance

39. The Council has not disputed that their published housing land supply is 5.01 years. This proposal is identified in the five year housing land supply. I am aware that in dismissing this appeal, there would be a realistic possibility that this site would not deliver within the anticipated timescale and the further delay would mean that the site would not be completed within 5 years. This, along with any other delays in delivery, would have the potential to reduce the Council's supply to slightly below five years.
40. Where a Council cannot demonstrate a deliverable supply of housing land, paragraph 11dii of the Framework would be engaged. This sets out that planning permission should be granted unless the adverse impacts of doing so would

significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, having regard to key policies.

41. Paragraph 131 of the Framework is unequivocal that the creation of high quality places is fundamental to what the planning and development process should achieve. Paragraph 135 is also clear that decisions should ensure that developments will function well and create places with a high standard of amenity for existing and future users.
42. The proposal undoubtedly would provide clear benefits from the delivery of housing, as anticipated by its allocation in the BLP. There would also be economic benefits of development during the construction and occupation stages of the development. I attach moderate weight to these benefits. A policy compliant level of affordable housing would also be provided and I attach significant weight to this. There would be energy and carbon efficiency measures which would be environmental benefits attracting limited weight.
43. The proposal would have an acceptable effect on the operation of the highway network, subject to a residential travel plan and off-site highway, pedestrian and cycle enhancements. Contributions would be made towards meeting the demands generated by the development on indoor and outdoor sports facilities, playing fields, libraries and the NHS. Biodiversity net gain and open space would be secured. The layout of the site would be acceptable, as would the design of the flats and dwellings which would also provide acceptable living conditions for future occupiers. There would be an acceptable effect on the character and appearance of the area and on the living conditions of the majority of surrounding residents. However these are to be expected of any well designed development and so would be neutral in my assessment.
44. However, these benefits do not significantly and demonstrably outweigh the harm that would be caused to the existing occupiers of No.24 from the adverse effects of overlooking that would arise from the extremely poor siting of Plot 7. It is wholly unnecessary for this adverse effect to have occurred which is beyond the effects that would reasonably be necessary for the site to be developed in a manner consistent with the allocation.
45. Consequently, even if the Council were unable to demonstrate a deliverable supply of housing land, the proposal would not benefit from the presumption in favour of sustainable development.

Conclusion

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

Jennifer Wallace

INSPECTOR



Costs Decision

Site visit made on 11 June 2025

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th September 2025

Costs application in relation to Appeal Ref: APP/H1515/W/25/3360423

Land At Priests Lane, Brentwood, Essex, CM15 8HG

- 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 Cala Management Limited for a full award of costs against Brentwood Borough 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 demolition of existing pavilion and construction of 97 dwellings including access, car parking, cycle and bin storage, public open space, landscaping and associated works.
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Decision

1. The application for an award of costs is partially 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. The application is made on substantive grounds. The initial costs application refers to the Council failing to substantiate its reasons for refusal and for failing to take considerations such as housing land supply into account. However the appeal is against the failure of the Council to determine the application. The Council has not sought to argue against the principle of the proposed development and its initial officer report to committee refers to the Written Ministerial Statement of 30 July 2024 and explicitly refers to the 'most acute housing crisis in living memory'. The importance of housing delivery was therefore part of the information before the committee in its initial discussion of the application and in its decision regarding putative reasons for refusal.
4. Brentwood Local Plan 2016-2033 (adopted March 2022) (BLP) Policy R19 clearly allocates the site for development and the evidence before me demonstrated that allocation included the existing access point to Priests Lane. The oak tree (T23) at that access point is a large, mature tree which would have been fully apparent at the time the site was allocated. The access road is largely unmade and it is evident that any use of this access to serve the allocation would require considerable construction works. The evidence submitted to the appeal showed that investigations had been carried out to establish if the tree could be retained. No evidence to counter this was submitted. The Council, in defending this claim, has pointed out the proposal provides only one access point. However, there was no requirement for the allocation to come forward as a whole and this access point is

included within the allocation. While the loss of T23 is unfortunate, it is an inevitable consequence of the allocation of the site, a fact which is acknowledged in the comment from the Council's arboricultural consultee. Nor is it apparent how, given the width of the access, the layout of surrounding development and the need for suitable visibility, how any replacement planting could be sited proximate to Priests Lane. As such, relying on this as a putative reason for refusal would equate to preventing development which should clearly be permitted having regard to the development plan. This amounts to unreasonable behaviour on the part of the Council and the applicant has been put to wasted expense in responding to this.

5. Putative reason for refusal 3 concerned the lack of pedestrian and cycle connections via St Andrews Place and Bishops Walk. BLP Policy R19 does not require the allocation to come forward as a whole. The proposed layout allowed for a connection through to the remainder of the allocation. I also note that the appellant offered a contribution in their original statement of case towards further connection works if and when the remainder of the allocation came forward. While this does not feature in the signed planning obligation, the Council has signed the obligation. They have not provided any evidence to demonstrate that they sought to have this clause re-introduced or that there were any further discussions in this regard.
6. I noted the open nature of some of the land adjacent to the site at St Andrews Place. However, the committee report confirms this land is in private ownership. While BLP Policy R19 refers to access points via Priests Lane, a second access point would be via the remainder of the allocation. There is no reference to St Andrews Place, nor does the allocation provide any direct connection to the highway. There is no reason that the appellant should be required to provide a further access along this boundary, or for them to provide evidence of negotiations towards securing this. Notwithstanding, the site layout would clearly allow for access to be provided in the future. The Council behaved unreasonably in putting forward this third putative reason for refusal, and the applicant has been put to wasted expense in defending it.
7. The Council does refer to BLP Policy HP03 with respect to its second putative reason for refusal. There is an inherent inconsistency in the Council's rebuttal which acknowledges that the policy does not apply to this proposal as the site is allocated, but then suggests it helps to understand the reasons for a design led approach. BLP Policy R19 sets out the specific policy requirements for this site, and any further understanding of the design approach required for development is set out in BLP Strategic Policy BE14. The Council therefore behaved unreasonably in this respect. However, the wider concerns the Council expressed regarding the density of the proposed development were a legitimate exercise of planning judgement in light of the allocation policy and the advice in the Essex Design Guide, even though I did not reach the same conclusion in my decision. It was therefore necessary for the design approach to the site to be addressed by the appellant. I therefore find that this has not resulted in any wasted expense to the applicant.
8. The Council has clearly mis-represented paragraph 11c) of the National Planning Policy Framework in its response to this claim. However, this did not form part of their case in defending the appeal and represents only a brief paragraph in their response to this claim. Consequently, I do not find this to be unreasonable behaviour.

Costs Order

9. 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 Brentwood Borough Council shall pay to Cala Management Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to putative reasons for refusal 1 and 3; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Brentwood Borough 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.

Jennifer Wallace

INSPECTOR

Richborough