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## Appeal Decision

Site visit made on 14 December 2020

**by M Chalk BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3 February 2021**

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### **Appeal Ref: APP/Z1510/W/20/3259075 200-202 Panfield Lane, Braintree, CM7 5RJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Christopher Goodwin against the decision of Braintree District Council.
  - The application Ref 20/00658/FUL, dated 17 April 2020, was refused by notice dated 13 August 2020.
  - The development proposed is described as demolition and replacement of 200-202 Panfield Lane, creation of new vehicular access, parking areas and associated landscaping.
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### **Decision**

1. The appeal is dismissed.

### **Procedural Matters**

2. The Council has submitted its emerging Local Plan for examination. As it is some distance from adoption, its policies only carry limited weight in the determination of this appeal.
3. The appeal site falls within the zone of influence of both the Blackwater Estuary Special Protection Area and Ramsar Site and the Essex Estuaries Special Area of Conservation. Therefore, as the effect of the proposal on habitat sites is potentially a determinative issue, I have elevated this matter to a main issue.

### **Main Issue**

4. The main issues are the effect of the development proposed on
  - Habitat sites,
  - The character and appearance of the area; and,
  - The living conditions of neighbouring residents, with particular regard to the occupiers of Nos 1 and 3 Pegasus Way.

### **Reasons**

#### *Habitat sites*

5. The need to protect habitat sites comes from national legislation rather than the development plan. Any proposals are therefore considered in the light of the Conservation of Habitats and Species Regulations 2017 (the Regulations). Prior to granting permission for a development that is likely to have a

significant effect on such a site, the decision maker must carry out an Appropriate Assessment of the implications of the development on the site. Permission can only be granted whether there would be no adverse impact on the integrity of the site, or where the adverse impact could be satisfactorily addressed through mitigation.

6. The Blackwater Estuary is valued as a habitat for birds, plants and invertebrates. The Essex Estuaries were designated due to providing a variety of habitats, including Atlantic salt meadows, mudflats and sandflats. Both sites are vulnerable to increased recreational pressure both from individual developments, and from the cumulative impact when taken with other developments.
7. The appeal proposal would result in a more densely occupied site, with eight bedrooms identified across the two proposed houses. This would be likely to result in increased recreational pressure on the designated sites such as recreational walking and dog walking. The proposal, taken in isolation and together with other development in the District, would therefore be likely to have a significant effect on the integrity of the sites. As such, it is necessary for me as the competent authority to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the habitat sites.
8. The Council seeks a financial contribution towards the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy to offset the adverse impacts of developments of the scale proposed. The appellant has paid the contribution for two new houses. However, this was made by direct payment rather than through a planning obligation or other appropriate mechanism for securing sufficient legal guarantee that the contribution will be used for its intended purpose. It is therefore not sufficiently legally enforceable to address my concerns as the decision maker.
9. In the absence of any secured mitigation to address the likely significant effect from the development, the appeal proposal would be likely to affect the integrity of the designated site. It therefore conflicts with the Regulations and the National Planning Policy Framework (the Framework).

#### *Character and Appearance*

10. The appeal site is in a predominantly residential area, with the immediate locality very mixed in terms of the character, scale and appearance of neighbouring dwellings.
11. The proposed houses would be of a similar height to most neighbouring houses, with ridgelines between those of the neighbouring houses at Nos 198 and 204 Panfield Lane. They would align broadly with the established building line in the immediate area, although the house on Plot 1 in particular would project forward at ground floor level. However, both houses would be set well back from the road, maintaining the general character of deep front gardens in the street scene, and the forward projections to both houses would not be unduly prominent.
12. The houses would project further into their plots than neighbouring dwellings. However, the deepest projections would be restricted to the ground floor, with the two-storey elements significantly shallower. These would project beyond the rear of the immediately neighbouring houses. However, due to their

separation from one another and the neighbouring properties at Nos 204 and 198 the proposed houses would not appear unduly prominent or uncharacteristic in their setting.

13. Given the significant local variety in terms of the character, scale and appearance of neighbouring dwellings in the vicinity of the appeal site, the development proposed would not be harmful to the character and appearance of the area. It would therefore accord with the requirements of Policy RLP90 of the Braintree Local Plan 2005 (the LP). This policy seeks, amongst other criteria, that the layout, height, mass and overall elevational design of buildings and developments shall be in harmony with the character and appearance of the surrounding area.

#### *Living Conditions*

14. Guidance in the Essex Design Guide recommends a separation distance of 15 metres from the rear elevations of proposed houses to the rear boundaries of existing houses. While that figure is only guidance, it is intended to preserve the privacy of existing occupiers. The properties at Nos 3 and 1 Pegasus Way lie perpendicular to the rear boundary of the appeal plot, with the areas immediately to the rear of these houses closest to the rear boundary of the appeal site. It is commonly the area immediately to the rear of a house that offers the greatest value to occupiers as a private amenity area.
15. The rear first-floor and second-floor windows would face onto the boundary to No 3 Pegasus Way at less than the recommended distance. While the house on Plot 2 would project a similar distance above ground floor level to the two-storey rear projection to the existing house, the house on Plot 1 would have windows to habitable rooms in the first and second floor facing the shared boundary at a much closer distance than are present in the existing house.
16. However, No 3 Pegasus Way has an outbuilding to its rear, adjacent to the shared boundary. This would provide additional screening from overlooking and loss of privacy from the new houses. On balance, therefore, the development would not cause unacceptable harm to the living conditions of neighbouring occupiers. It would accord with the requirements of Policies RLP90 of the LP and CS9 of the Braintree Core Strategy 2011. Together these policies require, amongst other things, that development result in no undue or unacceptable impact on the amenity of any nearby residential properties.

#### *Planning Balance*

17. There would be no unacceptable harm arising from the development proposed either on grounds of character and appearance or the living conditions of neighbouring occupiers. The development would accord with the requirements of Policies RLP90 of the LP and CS9 of the CS.
18. The Council cannot demonstrate a five year supply of housing land. Paragraph 11 of the Framework states that where there are no relevant development plan policies, or the policies are out of date, planning permission should be granted except where the application of policies in the Framework provides a clear reason for refusal.
19. If the matters of character and appearance and the living conditions of neighbouring occupiers were the only main issues there would be no harm that would significantly and demonstrably outweigh the resulting benefits of the

development proposed when assessed against the policies of the Framework taken as a whole.

20. However, as the appeal proposal would be likely to have a significant effect on the integrity of the Blackwater Estuary and Essex Estuaries designated sites, the application of policies in the Framework does provide a clear reason for refusal in this instance.
21. There is dispute between the main parties whether the existing building is used as a single dwellinghouse or two dwellings. However, even if I were to consider the building as a single dwellinghouse so that the development proposed delivered an additional unit of housing towards the Council's supply of housing land, this would not be of sufficient benefit to outweigh the harm to the integrity of the designated sites that would be likely to result from the appeal proposal.

### **Conclusion**

22. For the reasons set out above, the appeal fails.

*M Chalk*

INSPECTOR