

Appeal Decision

Site visit made on 31 October 2016

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7th November 2016

Appeal Ref: APP/Z1510/W/16/3154500

Land between Nos 48-50, Goldingham Drive, Braintree, Essex CM7 1DD

- 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 Greenfields Community Housing Limited against the decision of Braintree District Council.
 - The application Ref 16/00445/FUL, dated 8 March 2016, was refused by notice dated 18 May 2016.
 - The development proposed is the construction of 2 No. 2 Bedroom semi-detached dwellings together with parking and access to the highway.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of 2 No. 2 Bedroom semi-detached dwellings together with parking and access to the highway at Land between Nos 48-50, Goldingham Drive, Braintree, Essex CM7 1DD, in accordance with the terms of the application, Ref: 16/00445/FUL, dated 8 March 2016, subject to the conditions in the attached schedule.

Main Issue

2. The main issue in this appeal is the effect of the proposed development on the provision of public open space including the effect on the character and appearance of the area.

Reasons

3. The appeal site encompasses part of a small parcel of publically accessible land located in-between two rows of terraced housing. The area provides access to the rear of the properties in the adjoining terraces. The southern boundary is marked by a wall with the busy A120 beyond. The appeal site has a frontage onto Goldingham Drive and is viewed in the context of this street scene, which is characterised by rows of terraced and semi-detached housing and bungalows interspersed by areas of amenity space.
 4. The appeal scheme is to erect two dwellings arranged in a semi and orientated to front Goldingham Drive. Parking would be provided to the rear of the properties with access from a driveway located to the side. The Council are concerned that the proposal would result in the loss of a public open space and a harmful impact upon the character and appearance of the area.
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5. It is common ground between the appellant and Council that the appeal site is not identified in the Council's Local Plan¹ (LP) as being a formal or informal public open space. Nevertheless, the Council suggest that the appeal site falls within the definition of an 'open space' in the National Planning Policy Framework. The definition of open space in the Framework is '*all open space of public value....which offer important opportunities for sport and recreation and can act as a visual amenity*'. The Planning Practice Guide includes a similar definition, predicated on the public value of a space.
6. The Framework, in Paragraph 75, states that existing open space should not be built on unless an assessment has been undertaken which has clearly shown the open space to be surplus to requirements or the loss would be replaced by equivalent or better provision. The appellant is not suggesting that there would be equivalent or better provision of open space.
7. Nevertheless, the appeal site is a narrow and awkwardly shaped parcel of land in close proximity to the flanking terraces, which would inhibit its use as a recreation and play area. As confirmation of this, there is signage around the site indicating that it is a 'no play area' and 'no ball games' are permitted. It is also devoid of play equipment. As such, it does not offer important opportunities for sport and recreation. Consequently, the appeal site does not mitigate for the small gardens serving the properties nearby. Thus, the site's public value as an open space in this respect is negligible.
8. In respect of visual amenity, unlike other open spaces in the estate, the appeal site has no feature trees, planting or hedges within it. Consequently, it is an unremarkable parcel of land of no particular visual interest. It provides some relief to the built form of the estate, but this is only in particularly localised views. In views along the road from the east the open space is barely visible. Nor is it readily apparent in views from Shakespeare Close. As such, the appeal site's public value as an area of visual amenity is not significant. I have not been presented with substantive evidence to suggest otherwise or that the space was integral to the original composition of the estate.
9. The proposed development would result in the space to the rear of Nos 38 to 48 Goldingham Drive being enclosed. Nevertheless, this area's apparent function is to provide space to enable access to the rear gardens. This function would not be altered by the proposed development. I consider the Council's concerns in respect of anti-social behaviour within this space to be over stated in the absence of substantive evidence to the contrary, such as problems in this respect at other similar locations in the estate.
10. Additionally, the appeal scheme would include a small grass area to the front of the proposed dwellings, which would continue to provide some relief to the built form of the estate in views along the street. Furthermore, the more valuable open space around the junction between Shakespeare Close and Goldingham Drive would be left unaffected. Thereby continuing to soften views along Goldingham Drive from the north east towards the appeal site. The proposed development would also retain space between the proposed houses and the terraces either side to prevent a long unbroken frontage, which would otherwise be out of character with the grain of development.

¹ Braintree District Local Plan Review 2005, Saved Policies RLP 140 and RLP 141

11. Consequently, I do not consider the appeal site is an open space of public value as either an area for recreation or as a space that contributes in a noteworthy way to the visual amenity of the street. Thus, Paragraph 75 of the Framework is not engaged. As such, there is no need for the appellant to demonstrate the appeal site is surplus to requirements or that its loss would be mitigated by equivalent or better provision.
12. I therefore conclude that the proposed development would not adversely affect the provision of public open space in the area. Moreover, the appeal site's contribution to the visual amenity of the street is not of any great significance and therefore its development for housing would not harm the character or appearance of the area. The proposal would therefore adhere to Policy CS9 of the Braintree District Core Strategy and Saved Policies RLP3, RLP9 and RLP90 of the Braintree District Local Plan Review 2005, which seek to protect the character of the existing street scene and the locality more generally. Aims consistent with the Framework.

Other Matters

13. I have been presented with a planning obligation that would secure the two houses as affordable units. However, I have not been presented with any policy basis for requiring this. As such, I have not taken the obligation into consideration. Likewise, I have not considered the planning obligation relating to the provision and management of open space, as I have not been presented with evidence to suggest this is compatible with the Community Infrastructure Levy Regulations or appropriate in light of the recent High Court decision², which has reinstated the Ministerial Statement that limits the circumstances in which a pooled contributions can be sought by a Local Planning Authority.

Conditions

14. I have had regard to the advice in the Planning Practice Guide and the conditions suggested by the Council. In addition to the standard commencement period, it is necessary in the interests of safeguarding the character and appearance of the area to add a condition requiring implementation in accordance with the submitted drawings as well as conditions requiring approval of materials and landscaping.
15. In the interests of highway safety, it is necessary to attach those conditions suggested by the Local Highway Authority. To protect living conditions, it is necessary to ensure boundary fences are erected and the construction is undertaken in a reasonable way. Permitted development rights should only be removed in exceptional circumstances and I am not satisfied this is the case. As such, I have not removed permitted development rights.

Conclusion

16. For the reasons given above, and having regard to all other matters raised, I conclude the appeal should be allowed.

Graham Chamberlain
INSPECTOR

² *Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council (Planning obligations and affordable housing & tariff-style contributions)* - 11 May 2016

Schedule of Conditions

- 1) The development hereby permitted shall commence before the expiration of three years from the date of this decision.
- 2) The development hereby approved shall be carried out strictly in accordance with the details shown on the following approved drawings (or any approved non material amendment to the drawings or any drawings submitted pursuant to a condition attached to this planning permission): Drawing Numbers 02, 03, 04 and 05.
- 3) No above ground works shall commence until samples of the materials to be used on the external finishes of the approved dwellings have been submitted to and approved in writing by the Local Planning Authority. The development shall only be implemented in accordance with the approved details.
- 4) Prior to their installation details of all gates / fences / walls or other means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The details shall include position, design, height and materials of the screen walls/fences. The gates / fences / walls as approved shall be provided prior to the occupation of the dwellings hereby approved and shall be permanently maintained as such.
- 5) No unbound material shall be used in the surface finish of the driveway within 6 metres of the highway boundary of the site.
- 6) No site clearance, demolition or construction work shall take place on the site, including starting of machinery and delivery of materials, outside the following times:-
 - Monday to Friday 0800 hours - 1800 hours
 - Saturday 0800 hours - 1300 hours
 - Sundays, Public and Bank Holidays - no work

No piling shall be undertaken on the site in connection with the construction of the development until a system of piling and resultant noise and vibration levels has been submitted to and agreed in writing by the Local Planning Authority and shall be adhered to throughout the construction process.

No burning of refuse, waste materials or vegetation shall be undertaken in connection with the site clearance or construction of the development.

Development shall not be commenced until a dust and mud control management scheme has been submitted to and approved in writing by the Local Planning Authority and shall be adhered to throughout the site clearance and construction process.

- 7) Prior to the occupation of the development hereby approved a scheme of landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall incorporate a detailed specification including plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying.

All areas of hardstanding shall be constructed using porous materials laid on a permeable base.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in the first planting and seeding seasons after the commencement of the development unless otherwise previously agreed in writing by the Local Planning Authority.

All hard surface areas agreed as part of the scheme shall be carried out before the first occupation of the buildings or upon the completion of the development whichever is the earlier.

Any trees or plants which die, are removed, or become seriously damaged or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season with others of a similar size and species unless the Local Planning Authority gives written consent to any variation.