



Appeal Decision

Site visit made on 2 July 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2019

Appeal Ref: APP/Z1510/W/18/3219006

Former Riverside Centre, St Johns Avenue, Braintree, Essex CM7 1FQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 Mr Robert Crow of Parkland Developments Riverside Ltd against Braintree District Council.
 - The application Ref 18/01515/FUL, is dated 3 August 2018.
 - The development proposed is 62 one- and two-bedroom flats.
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Decision

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

Procedural Matters

2. The appeal is submitted in outline with details of access, layout, scale and appearance sought. Landscaping is a reserved matter.
3. The appeal results from the Council's failure to determine the planning application within the prescribed period. There is no formal decision on the application, as jurisdiction over that was taken away when the appeal was lodged. The Council has set out reasons for refusal within its appeal statement and I have treated those concerns as the basis of the decision the Council would have made, had it been empowered to do so.
4. The appeal site benefits from planning permission 15/1321/FUL for the erection of 48 one and two bedroom apartments. Although the application form indicates that the building works have already been carried out, I understand that it is the erection of the 48 apartments which was in the process of being constructed at the time of my site visit.
5. The development plan consists of the Braintree District Local Plan Review (2005) and the Core Strategy (2011). It is on the basis of these adopted policies that I have based my decision. The Publication Draft Local Plan has been submitted for examination but remains unadopted. I therefore afford the emerging policies limited weight.

Main Issues

6. The main issues of the appeal are:
 - The effect of the proposal on the character and appearance of the area; and

- Whether the proposed development would make suitable contribution for affordable housing and open space; and
- Whether the proposed flats would provide satisfactory living conditions for future occupants, having regards to the provision of space and light.

Reasons

Character and appearance

7. The appeal site forms part of the Braintree swimming pool site which has been redeveloped for residential purposes. There is an allotment to the east of the site and John Ray Park, significant public open space, to the south. The appeal site occupies a prominent location with a public footpath bounding the site which provides pedestrian access to the town centre and railway station. A block of 48 apartments has already been constructed within the site which sits at an angle to the block of apartments to the south. The angle of the buildings and the limited horizontal extent of the block of 48 apartments gives a staggered effect which provides a sense of openness and maintains views from Station Approach/Flitch Way towards John Ray Park.
8. Saved Policy RLP 9 of the Braintree District Local Plan Review (LPR)(2005) states that new residential and mixed-use buildings shall create a visually satisfactory environment and be in character with the site and relate to its surroundings, amongst other things. Saved Policy RLP90 seeks to ensure that the layout, height, mass and overall elevational design of buildings and developments is in harmony with the character and appearance of the surrounding area; including their form, scale and impact on the skyline in the locality. Policy CS9 of the Braintree District Core Strategy (Core Strategy) (2011) seeks to ensure that development respects and responds to the local context, amongst other things.
9. The proposed building would extend the block of 48 apartments further to the east, which would significantly diminish the sense of openness on the approach from Station Approach/Flitch Way. This would result in an overly dominant feature which would harm the character and appearance of the area. In addition, the horizontal extent of the building and dominance of parking would result in a harmful sense of enclosure within the site. This would harm the character and appearance of the area, contrary to Policies RLP 9 and RLP 90 of the Local Plan and Policy CS9 of the Core Strategy, the requirements of which are set out above.

Affordable housing and open space contributions

Affordable housing

10. The appeal scheme forms part of the 'Riverside Development' which was granted planning permission for the erection of 121 no dwellings and a 62-bed residential care home. The appellant submitted subsequent applications to revise the approved scheme allowing 55 one and two bed 100% affordable apartments and the erection of 48 one- and two-bedroom apartments in place of the care home. The associated Section 106 agreement for the 48 apartments permission, reference 15/01321/FUL, did not require affordable housing provision.

11. Policy CS2 of the Core Strategy sets out that a target of 30% affordable housing provision will be sought on sites in the urban wards of Braintree. The Policy also states that the local planning authority will take economic viability into account where it is proved to be necessary to do so. Policy LPP 33 of the DLP also sets a target of 30% in the main towns, including Braintree. Policy CS11 of the Core Strategy sets out that the Council will secure provision for infrastructure services and facilities by development contributions through legal agreements and planning obligations, amongst other things.
12. The Council states within its appeal statement that it does not wish to seek further on-site affordable housing provision but has requested a contribution towards off site provision. The commuted sum requested would include a contribution for all 62 of the apartments. Significantly, it would be possible for the appellant to construct the 48 one- and two-bedroom apartments without providing any affordable housing contributions. I therefore do not consider that it would be reasonable to request affordable housing contributions for the units which have already been granted planning permission.
13. Furthermore, the Riverside Development has already made provision far in excess of the Council's own requirements set out in Policies CS2 and LPP 33 of 30%. Whilst the appeal scheme has been submitted for 62 apartments, I do not consider that it can be assessed in isolation since it would form an intrinsic part of the Riverside Development. Given the above, I consider that requesting further contributions would be unreasonable in this instance and would therefore fail to meet the tests set out in Paragraph 56 of the National Planning Policy Framework (the 'Framework')(2019).

Open Space

14. Policy CS10 of the Core Strategy seeks to ensure that there is a good provision of high quality and accessible green space by requiring new development to make appropriate provision (taking into consideration surpluses and deficiencies and condition of the different open space typologies within the vicinity of the site). The Council made reference to Policy LPP53 of the DLP which deals with provision for open space, sport and recreation and Policy LPP82 which sets out infrastructure delivery and impact mitigation. Since these policies are subject to change, I afford any conflict with them very limited weight.
15. The appellant has entered into a legal agreement for the 48 apartments permission, reference 15/01321/FUL, which would provide a financial contribution towards open space prior to occupation for the purposes of providing surfacing and amenity improvements within John Ray Park, Braintree.
16. Although the viability assessments submitted by the main parties conclude differently in terms of affordable housing, both assessments take into consideration the provision of a financial contribution towards open space and indicate that, with a contribution towards open space the scheme would be viable. Whilst open space provision has already been made in respect of the Riverside Development, the appeal scheme would create an additional 14 units. The appellant states that he accepts that an additional payment for open space requirements on the additional 14 units. Whilst the appeal has been submitted for non-determination, it was open to the appellant to provide a planning obligation through the appeal process. No obligation has been received to date.

17. I acknowledge that the scheme is a short distance from John Ray Park, the River Brain and its walk areas along with the 'Flitch Way', a walking and cycling route. Nevertheless, the appeal scheme would place additional pressure on nearby public open space. Furthermore, I have no substantive evidence that the contribution which would be secured by the S106 relating to planning permission 15/01321/FUL would still be provided. Thus, in the absence of a Planning Obligation, the proposal would fail to make adequate provision for open space, contrary to Policy CS10 of the Core Strategy.

Living conditions

18. The appeal scheme would comprise a mixture of one- and two-bedroom flats. The flats would be single aspect, half of which would face north. Whilst some of the flats would face north, windows into the rooms would allow sufficient light into habitable rooms and would allow a reasonable outlook. Emerging Policy LPP55 states that developments should avoid single aspect dwellings that are, amongst other things, north facing. Since the Policy is subject to change, I afford the conflict with it very limited weight.
19. Policy LPP 37 of the emerging Braintree District Publication Draft Local Plan (DLP)(2017) states that all new development should be in accordance with the national technical housing standards. The Council has raised concern that one of the one-bedroom properties on each floor would provide for 42sqm of internal accommodation, however, the appellant has confirmed that this would be for a 1 bedroom, 1 person dwelling and would therefore comply with the National Space Standards. As such there would be no conflict with emerging Policy LPP37 in this regard.
20. Policy RLP9 of the LPR states that new residential and mixed-use building shall create a visually satisfactory environment, amongst other things and Policy RLP90 of the LPR states, in part, that the Council seeks a high standard of layout and design in all developments. Emerging Policy LPP50 has similar aims in this regard. Policy CS9 of the Core Strategy states that the Council will promote and secure the highest possible standard of design and layout in all new development.
21. Although there would be conflict with Policy LPP55 of the DLP the policy is subject to change and I therefore afford conflict with it limited weight. The proposed flats would provide satisfactory living conditions for future occupants with respect to space and light and there would therefore be no conflict with Policies RLP9 and RLP90 of the LPR, Policy CS9 of the Core Strategy, the requirements of which are set out above.

Other Matters

22. The Council has referred to Policy RLP 19 of the LPR in its Statement. However, the Policy relates to sheltered housing and, since the appeal scheme would be for open market housing, has therefore not been determinative in my decision.
23. Natural England has confirmed that the site falls within the 'Zone of Influence' for one or more of the European designated sites scoped into the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy. The proposal's effect on European designated sites is not relied on as a reason for refusal of permission. Had the appeal not failed for other reasons, the

proposal's effect on the European designated sites is a matter to which I would have given further consideration, in accordance with the Habitats Regulations.

24. The appellant has raised concerns regarding the Council's handling of the application prior to the submission of this appeal. However, in determining the appeal I can only have regard to the planning merits of the case, so am unable to give any weight to this particular concern.

Conclusion

25. I acknowledge the contribution that the appeal scheme would make to the supply of homes in the District, in an area with good access to a range of facilities including public transport. However, I have found that the appeal scheme would cause significant harm to the character and appearance of the area and would fail to make adequate provision for open space. Thus, for the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed, and planning permission should be refused.

M Savage

INSPECTOR