



Appeal Decision

Site visit made on 20 August 2019

by P Mileham BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2019

Appeal Ref: APP/Z1510/W/19/3228981

The Spinney, 27 Courtauld Road, Braintree, Essex CM7 9BE

- 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 Glenn Tully against the decision of Braintree District Council.
 - The application Ref 19/00223/FUL, dated 8 February 2019, was refused by notice dated 2 April 2019.
 - The development proposed is described as the proposed construction of 1 no. new dwelling together with associated car parking, garden amenity space and associated development.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Amended plans and a tree survey have been submitted to the appeal, which were not before the Council when it determined the application. While the appellant intends the additional documents to address the Council's reasons for refusal, including in relation to the position of the dwelling and the access, they incorporate some potentially significant changes to the proposed development. I cannot be satisfied that these documents have been subject to public consultation or, therefore, that no party's position in the appeal would be prejudiced by my consideration of them. Moreover, the appeal process should not be used to evolve the scheme. As such, I have determined the appeal on the basis of the application considered by the Council, upon which interested people's view were sought.
3. The Council has made reference to a number of policies in the emerging Braintree District Publication Draft Local Plan. While I am advised the examination is at an advanced stage, the plan is not yet adopted, I have not been provided with evidence of the extent to which there may be unresolved objections to emerging policies, and those policies may still be subject to some change. I can therefore only attach limited weight to them at this time.

Main Issues

4. The main issues are the effects of the proposed development on:
 - protected trees;
 - the living conditions of occupiers of adjoining properties; and

- highway safety.

Reasons

Protected trees

5. The appeal site comprises the mature gardens of The Spinney, which adjoins a number of important trees along its southern boundary that are subject to a group Tree Preservation Order (reference 3/91). The appeal proposal would result in the removal of a further area of dense shrubs and bushes that screen the boundary. The trees located along this boundary have extensive canopies which extend over part of the lawned garden area, albeit the proposal would not result in the removal of protected trees.
6. The siting of the proposed dwelling would be in close proximity to the boundary trees, and although the tree protection plan and tree report indicate the proposed dwelling would not encroach on the root protection areas, the proposed parking area would extend into the root protection area of one of the trees. The report indicates any potential harm to roots arising from excavation could be addressed through more sensitive excavation or construction techniques which is a matter which could be addressed by a condition requiring an appropriate method statement. However, the proximity of the proposed dwelling in relation to the trees would impact the amount of light available to rooms in the southern elevation. Whilst the proposed dwelling has been designed with four windows in the southern side elevation, I consider that the availability of light to the proposed kitchen and dining area would be adversely affected by overshadowing, particularly when the trees are in leaf. This is likely to lead to future pressure for works to the protected trees due to their location within the sun's path relative to those windows. Whilst future works to protected trees would be subject to a separate consenting regime, I consider that the proximity of the development would result in significant pressure for future works to the trees to be undertaken.
7. In light of the above, I consider that the proposal would harm protected trees contrary to Policies RLP80 of the Braintree District Local Plan Review (2005) and Policy CS9 of the Braintree District Local Development Framework Core Strategy (2011) which seek respectively to ensure that proposals are not detrimental to distinctive landscape features such as trees, and that they respect and respond to local context.

Living conditions of occupiers of adjoining properties

8. The appeal site would be located approximately 3.6 metres to the south of The Spinney, which has a large bay window on the ground floor of its southern elevation as well as a number of smaller windows. Although the appeal proposal has been designed with a hipped roof, it would still have a height of approximately 9.1 metres. The siting and proximity of the proposed two storey dwelling to the south elevation of The Spinney would result in the ground floor windows receiving very limited sunlight throughout the day, particularly during winter months when the sun is lower. As such, I consider this would harm the living conditions of occupiers due to the loss of light.
9. The close proximity would also dominate the side elevation of The Spinney, largely obscuring the outlook from the ground floor bay window as a result of the scale and bulk of the proposed dwelling. I consider this would be

overbearing to The Spinney and thereby cause harm to the living conditions of occupiers there.

10. The neighbouring property 'Ashlyns' adjoins the appeal site to the north and is separated from the site by an approximately 1.8 metres high close boarded fence. The proposed parking area is located in a lower part of the site which is a terraced area of garden that is currently bounded by a low retaining wall. At the time of my visit this area of the garden was already being partly utilised for parking for the appellant's vehicles. The parking area for the proposed dwelling would be substantially screened from the neighbouring property's ground floor window. However, an upper floor bay window which serves a bedroom would still overlook the appeal site. I consider that there is an adequate separation distance between the neighbouring property and the proposed parking area to minimise any impacts. Furthermore, the existing use of the appellant's front garden for parking means that the proposed development would only have a minimal effect on their living conditions as the screening provided by the existing boundary fencing limits the effects of vehicle movements and screens the ground floor room from the effect of headlights at times when there is little or no sunlight.
11. In light of the above, the proposed development would result in harm to the living conditions of occupiers of adjoining properties. As such, the development does not comply with Policies RLP62, RLP65 and RLP90 of the Braintree District Local Plan Review, and Policy CS9 of the Braintree District Local Development Framework Core Strategy which seek to avoid harm to nearby residents and to ensure that there shall be no unacceptable impact on the amenity of nearby properties.

Highway safety

12. The site would be accessed from the existing driveway of The Spinney which is framed by an approximately 1 metre high retaining wall on either side. Visibility to the left is limited due to the bend in the road. To the right, visibility is hampered by vegetation and an existing telegraph pole. Although the road was only moderately trafficked at the time of my visit, which took place outside peak hours and during the school summer holiday, the volume of traffic at peak times would be higher. Therefore, any intensification in the use of the access having regard to the distance of visibility splays could result in vehicles exiting the site posing a hazard to other road users, resulting in harm to highway safety.
13. As such, I conclude that the proposed development would result in harm to highway safety contrary to Policy DM1 of the Essex County Council Development Management Policies Document which seeks to ensure that proposals will not be detrimental to the safety of the highway network.

Other Matters

14. The proposal would bring about various benefits, including in relation to the local economy and through the provision of one additional dwelling to the local stock. The Council considers that as of 11 April 2019 it is able to demonstrate a 5 year supply of deliverable housing land, which the appellant disputes supported by a June 2019 appeal decision. However, even if I were to find that the Council does not currently have a 5 year land supply as indicated by the appellant, for the reasons set out above I conclude that the adverse impacts of

the proposal arising from harm in relation to protected trees, living conditions and highway safety would significantly and demonstrably outweigh the benefits, which would be very modest commensurate with the provision of a single dwelling.

Conclusion

15. For the reasons given above I conclude that the appeal should be dismissed.

P Mileham

INSPECTOR