
Appeal Decision

Site visit made on 4 February 2020

by R Lankshear BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 March 2020

Appeal Ref: APP/Z1510/W/19/3236608

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 against Braintree District Council.
 - The application Ref 19/00721/OUT, is dated 9 April 2019.
 - The development proposed is 62 one and two bedroom flats.
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Decision

1. The appeal is dismissed and planning permission for '62 one and two bedroom flats' is refused.

Procedural Matters

2. The planning application subject of this appeal was submitted in outline with the matter of landscaping reserved. I have therefore determined the appeal on this basis.
3. The appeal results from the Authority's failure to determine the planning application within the statutory timescale. The Council's jurisdiction to determine the appeal was taken away when the appeal was lodged. From the evidence before me, it appears that the Council would have refused the planning application had it been empowered to do so. I have considered the Council's submitted appeal statement and putative reasons for refusal in terms of defining the main issues below.
4. The appellant has raised concern with the manner in which the Council determined the application and previous proposals. This is a matter that would need to be taken up with the Council in the first instance and in determining the appeal I have only had regard to the planning merits of the case.
5. The Council's appeal statement and putative reasons for refusal make reference to a number of policies within the emerging Braintree District Publication Draft Local Plan (DLP). From the details before me, it would appear that further evidence is required before the plan can proceed to adoption and no additional material has been provided to me regarding the current status of any unresolved objections to the adoption of the plan. Having regard to paragraph 48 of the National Planning Policy Framework (the Framework), I consider that the DLP and the policies quoted within the putative reasons for refusal can be afforded only limited weight as they may be subject to change. As such I have considered the appeal against the current adopted development

plan policies contained within the saved Braintree District Local Plan Review 2005 (LPR) and adopted Braintree District Core Strategy 2011 (CS).

6. Planning permission has previously been granted for the erection of 48 flats under permission 15/01321/FUL, that appeared to be largely complete at the time of my site visit. From the information before me, the current submission includes the previously approved development as at the time of submission of the planning application which is the subject of this appeal, the works relating to this earlier permission had not been completed. I have considered the appeal on this basis.

Main Issues

7. The main issues are i) the effect of the development on the character and appearance of the area; and ii) whether the proposed development would make a suitable contribution for open space provision.

Reasons

Character and appearance

8. The appeal site forms part of a wider site that includes recently constructed residential units, that sits in a prominent location adjacent to Flitch Way and public footpaths running to the east and north. The site is in close proximity to open space including allotments to the east and John Ray Park.
9. The appeal proposal seeks to add a further 14 flats to the approved block of 48 flats through the addition of an extension to its eastern end. The lower floors of the proposal would largely follow the design and form of the existing block, although the predominantly glazed third floor would be set in from the elevations of the lower floors.
10. The existing block sits at an angle to the adjacent block to the south and currently maintains a significant visual separation from the boundary with the adjacent allotments. When viewed from Flitch Way, Station Approach and Station Road to the north, this separation affords visual relief and views through the site towards rising ground including John Ray Park beyond. This provides a pleasant green backdrop to the development site and maintains a separation and a degree of openness from the main mass of the building and the adjacent allotments and parkland. The appeal development would extend the host block to be in close proximity with the boundary of the site with the neighbouring allotments, and to the footpath running through the adjacent public open space.
11. When viewed from these vantage points, the appeal development would represent a significant and dominant addition, owing to its size and proximity to the boundaries. Although the top floor of the proposal would be predominantly glazed and set back from front, rear and side elevations, the proposal would add significantly to its mass and increase the horizontal emphasis of the resultant building. Furthermore, the proposal would visually fill the site, diminishing the relief that this visual gap currently provides. This in turn, would significantly reduce the sense of openness and the availability of views through the site, as referred to above.
12. For all of these reasons, I conclude that the appeal development would represent a dominant and visually oppressive form of development that would

cause significant harm to the character and appearance of the area. As such it would be at odds with the provisions of Policy RLP9 of the LPR that seeks, amongst other things, that new residential buildings shall create a visually satisfactory environment and be in character with the site and relate to its surroundings. It would also be contrary to Policy RLP90 of the same plan that seeks, amongst other things, to achieve a high standard of layout and design, in harmony with the character and appearance of the surrounding area including their form, scale and impact on the skyline in the locality. The appeal proposal would also be contrary to Policy CS9 of the CS that seeks to secure high standards of design that, amongst other matters, respects and responds to local context and creates good quality built environments in the public realm.

13. I acknowledge that Policy RLP19 of the LPR is quoted within the related putative reason for refusal. However, having assessed the content of this policy I do not consider that it is of direct relevance to the appeal proposal and as such attribute this little weight.

Open space contribution

14. Policy CS10 of the CS seeks to ensure a good provision of high quality and accessible green space and requires new development to make appropriate provision for publicly accessible green space or improvement of existing space. Policy RLP138 of the LPR explains that where individual developments would not warrant a directly associated open space provision, but where cumulatively there would be a requirement for open space over time, commuted payments to provide open space will be required.
15. From the information before me, the appellant has previously entered into a legal agreement under planning permission 15/01321/FUL that provides a contribution towards open space provision for the previously permitted 48 units. As such the appeal is supported by a draft Unilateral Undertaking (UU) that seeks to make a contribution as specified by the Council, arising from the requirements of the additional 14 units proposed under the appeal development. However, the UU before me is unsigned and includes a number of omissions and is therefore incomplete. Although I acknowledge correspondence from the appellant's lenders, given that the submitted obligation is incomplete, I can only afford this little weight.
16. In the absence of a completed legal agreement, I am not persuaded that any requirements and pressures on public open spaces, including the adjacent John Ray Park, arising from the appeal development would adequately be mitigated. As such the appeal proposal would be contrary to the aforementioned aims of Policy CS10 of the CS and LPR Policy RLP138 and the provisions of Policy CS11 of the CS that seeks to provide facilities that cater for the needs of the community.
17. Policies CS10 of the CS and RLP90 of the LPR are referred to in the associated putative reason for refusal although having assessed their content, I am not persuaded they are of direct relevance in this instance.

Other Matters

18. Comments received from Natural England confirm that the appeal 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. Although this is not proposed as a putative reason for refusal, had I been minded to allow the appeal it would have been necessary for me to undertake an Appropriate Assessment of the development in order to confirm its effect and need for mitigation. I would have also required a consultation response from Natural England. However, even if there were no likely significant effects to ecology resulting from the proposals, that would be neutral in the planning balance rather than representing a positive factor weighing in favour of allowing the appeal.

Planning Balance and Conclusion

19. It has been brought to my attention that as a result of the publication of the Housing Delivery Test results that the Council cannot currently demonstrate a five year supply of land for housing development, indicating a position of 4.51 years. It follows by virtue of footnote 7 of paragraph 11 of the Framework that the tilted balance applies.
20. For the reasons detailed above, I have found that the appeal development would be harmful to the character and appearance of the area and would not adequately provide towards public open space. This has led to conflict with various development plan policies as detailed previously. I consider that these policies constitute the most important policies as referred to by paragraph 11(d) of the Framework. I further consider that these policies are consistent with the Framework, including paragraph 127 relating to design and as such are not out of date for the purposes of paragraph 11. It follows that the conflict with them carries full weight.
21. Against the harm and conflict with the development plan outlined above has to be balanced the benefits of the proposal. I acknowledge that the provision of 14 additional residential units of the type proposed in a suitable location would add to the Council's five year supply and be a positive factor in terms of the social limb of sustainability and have economic benefits.
22. However, when assessed against the policies in the Framework taken as a whole, the adverse impacts would, to my mind, significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development.
23. For all the reasons given above, and having considered all matters raised, I conclude that the appeal should be dismissed and planning permission refused.

Robert Lankshear

INSPECTOR