
Appeal Decision

Site visit made on 10 March 2020

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2020

Appeal Ref: APP/Z1510/W/19/3242991
44 Cressing Road, Witham CM8 2NP

- 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 Ms Emma Kavanagh against the decision of Braintree District Council.
 - The application Ref 19/01318/FUL, dated 23 July 2019, was refused by notice dated 24 September 2019.
 - The development proposed is described on the application form as 'retrospective application for the retention of a single-storey outbuilding in the rear garden for use as catering business'.
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Decision

1. The appeal is allowed and planning permission is granted for retrospective application for the retention of a single-storey outbuilding in the rear garden for use as catering business at 44 Cressing Road, Witham CM8 2NP in accordance with the terms of the application Ref 19/01318/FUL, dated 23 July 2019, subject to the conditions set out in the schedule to this decision.

Procedural Matter

2. In their evidence the Council have referred to the policies of the emerging Braintree District Publication Draft Local Plan 2017 (PDLP). However, this plan has not yet been examined and found sound. Consequently, I have afforded these policies limited weight.
3. In addition to the above, the application form indicates that the proposed development has already taken place and I saw that this was the case at my site visit.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the area, and on the living conditions of neighbouring occupiers with particular regard to matters of outlook; and
 - the effect of the proposed development on the living conditions of neighbouring occupiers having particular regard to noise and odour.

Reasons

Character and appearance and living conditions of neighbouring occupiers (outlook)

5. The appeal site is situated within the long and narrow rear garden of a two-storey semi-detached dwelling. The surrounding area is predominately residential with most properties on this part of Cressing Road comprising two-storey semi-detached dwellings with back gardens similar to that of the appeal site. Several of these properties also have single-storey outbuildings or sheds in their back gardens.
6. The proposed outbuilding is finished in timber that has been painted black and has a white uPVC door and windows. It also has a flat felt roof and is located on the shared boundary with no. 46 next to a single-storey outbuilding with a pitched-roof belonging to that property. Whilst the proposal is slightly higher than the adjacent neighbouring outbuilding, this is not to such an extent for it to appear dominant or overbearing when compared to this building or other similar ones nearby. As a result, I consider that it does not have an adverse visual impact or that it is an overly large or dominant addition to the rear garden of no. 44.
7. Furthermore, whilst the proposal projects to the rear along the shared boundary with no. 46, its height, massing and the fact that it only projects a short distance past the adjacent outbuilding means that it also does not appear overbearing. For similar reasons, I also consider that it does not have an adverse impact on the living conditions of neighbouring occupiers with particular regard to loss of outlook even though it would be visible from the rear gardens and windows of their properties.
8. I therefore conclude, on this main issue, that the proposal does not unacceptably harm the character and appearance of the area or the living conditions of neighbouring occupiers having particular regard to outlook. Consequently, it accords with Policies RLP 11, RLP 17 and RLP 90 of the Braintree District Local Plan Review (adopted July 2005) (BDLP) and Policies LPP 38, LPP 50 and LPP 55 of the PDLP which aim to create good quality environments, ensure that new development is in harmony with the character and appearance of its surroundings, and not have an adverse impact on residential amenity, amongst other considerations.

Living Conditions of neighbouring occupiers (noise and odour)

9. The proposed outbuilding is used for the operation of a catering business which involves the preparation and cooking of food. At the time of my visit the business was in operation and food was being prepared. From the front of the property I could not hear any loud noise nor detect any noticeable odour. When I reached the location of the proposal whilst I could then hear some noise, I did not find it to be loud or disturbing. I also could not detect any noticeably strong odours emanating from the proposed outbuilding.
10. Whilst I acknowledge that my site visit represents but a snapshot in time, the evidence before me shows that the Council's Environmental Health Officer has raised no objection to the proposal and also that no noise, nuisance or odour complaints have been received in relation to it from neighbouring occupiers. Moreover, the Council have not submitted any substantive evidence (such as a formal notice) to show that the proposal causes any noise disturbance or odour

nuisance to its neighbours. As a result, I consider that the proposal does not cause unacceptable harm to the living conditions of neighbouring occupiers having particular regard to noise disturbance or odour.

11. I also acknowledge the Council's point that the extractor fan to the rear of the proposed outbuilding directly faces the shared boundary with no. 46. However, given its size, the fact that the neighbouring outbuilding is located between the proposal's extractor fan and the rear garden space of no. 46, and the fact that no complaints have been received from its occupiers, I fail to see how the proposal has any unacceptable adverse impact in this regard. In any event, I consider that any unacceptable adverse impact can be sufficiently mitigated via the imposition of a suitably worded condition requiring the installation of a flue in the roof of the proposed outbuilding in order to direct any odours away from the neighbouring property.
12. I also note the Council's point that the catering use is not small scale and on my visit I did observe that the outbuilding had large fridge-freezers and cooking equipment, and that the sign-written van parked outside to the front stated that all occasions could be catered for such as weddings, funerals, barbecues, christenings and corporate events (occasionally necessitating the hiring of waiting staff for larger functions). However, given the size of the outbuilding, its modestly-sized food preparation area and the fact that the only person doing any of the preparation and cooking of food appears to be the Appellant, I also fail to see how the scale of the catering business can be considered 'industrial' or indeed how the premises is a significant source of noise or odour.
13. Additionally, it would also be reasonable to think that a catering company with relatively modest-sized food preparation and cooking facilities, and a usual staff compliment of one person would only on rare occasions cater for extremely large functions. In any event, I consider that any unacceptable adverse impact on neighbouring residents in this regard can also be adequately mitigated via the imposition of an appropriately worded condition restricting the hours of operation for the machinery used for the catering business.
14. I therefore conclude, on this main issue, that the proposal does not unacceptably harm the living conditions of neighbouring occupiers having particular regard to noise disturbance or odour. Consequently, it accords with Policies RLP 11, RLP 17 and RLP 90 of the Braintree District Local Plan Review (adopted July 2005) (BDLP) and Policies LPP 38, LPP 50 and LPP 55 of the PDLP which aim to create good quality environments, and ensure that new development does not have an unacceptable adverse impact on the amenities of adjoining residential properties, amongst other considerations.

Conditions

15. The Council has suggested several conditions that it considers would be appropriate two of which are similar to those originally suggested by the Appellant¹. I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the suggested wording.

¹ See Appellant's statement of case, page 12.

16. For the avoidance of doubt and in the interests of proper planning I have imposed a necessary condition to ensure that the development is retained in accordance with the approved plans. Whilst this standard condition was not originally suggested by the Council (or the Appellant) its imposition should not come as a surprise to either party.
17. In order to protect the living conditions of the occupiers of neighbouring properties I have imposed conditions restricting the use of the outbuilding to the Appellant, restricting the hours of machinery operation, and requiring the submission of a scheme for the installation of a flue to the roof of the proposed outbuilding to the local planning authority for approval.
18. In addition to its being necessary for protecting the living conditions of neighbouring occupiers, I have imposed condition 2) to prevent the building from being used in future for purposes which would be less acceptable in a residential area, and to enable the local planning authority to have control over the intended future use of the outbuilding. The condition will also ensure that the development can be enforced against if the requirements are not met.
19. In addition to its being necessary for protecting the living conditions of neighbouring occupiers, I have imposed condition 4) to ensure that details of a scheme for the installation of a flue to the roof of the proposed outbuilding are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the flue installation before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met. I have also given the Appellant longer than the 6 weeks originally suggested by the Council to submit this scheme in order to allow more time in light of the current COVID-19 epidemic which may have affected the day-to-day operation of the catering business.

Conclusion

20. For the reasons given above I conclude that the appeal should be allowed.

C Coyne

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be retained in accordance with the approved plan: Existing Plans, Section, Elevations and Site Block Plan (drawing no. FBD00110/01).
- 2) The catering business use hereby permitted shall be carried on only by Ms Emma Kavanagh. When the premises cease to be used by Ms Emma Kavanagh the catering business use hereby permitted shall cease and all materials and equipment brought on to the premises in connection with the use shall be removed.
- 3) Electrical or mechanical machinery shall be operated on the premises only between the following hours:
09:00 – 17:00 Mondays - Fridays
and shall not be operated at any time on Saturdays, Sundays or on Bank or Public Holidays.
- 4) Unless within 3 months of the date of this decision a scheme for the installation of a flue to the roof of the outbuilding, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 6 months of the local planning authority's approval, the use of the outbuilding for commercial catering shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the use of the outbuilding for commercial catering shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.