
Appeal Decision

Site visit made on 8 June 2020

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th June 2020

Appeal Ref: APP/Z1510/W/20/3245504

197 London Road, Black Notley, Essex CM77 8QG

- 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 Jon Nash of Regent Square Ltd against the decision of Braintree District Council.
 - The application Ref 19/01575/FUL, dated 23 August 2019, was refused by notice dated 17 January 2020.
 - The development proposed is described as '12 dwellings scheme together with new vehicular and pedestrian access, associated car parking and landscaping'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have considered the appeal with reference to the revised Noise Impact Assessment dated 9 March 2020 (NIA). This was submitted by the appellant as additional evidence in response to the Council's request for an assessment in line with BS4142:2014. The Council were provided with an opportunity to consider this document and provide comments.

Main Issues

3. The main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the area;
 - The effect on the living conditions of future occupants of the appeal scheme and those of 197 London Road, with particular reference to light, outlook, privacy, the adequacy of outside amenity space and noise and disturbance; and
 - Whether the proposal would make adequate provision for surface water drainage, infrastructure and affordable housing.

Reasons

The effect on the character and appearance of the area

4. The appeal site encompasses 197 London Road (No. 197), a residential property with front and rear gardens and what appears to be a small field behind. It is positioned on the eastern side of the road within a stretch of

- linear ribbon development. In contrast, the western side of London Road generally comprises soft landscaping that screens estate housing beyond.
5. Save for the petrol station adjoining the appeal site, the development on the eastern side of the road is arranged in a discernible building line with the front elevations of the residential properties tending to address the road. The dwellings are set behind generously sized front gardens, which mostly include soft landscaping and areas to park cars. This provides a spacious frontage pattern to the appearance of the area. Although not uniform, there is nevertheless a regularity to the plot widths and the scale and massing of buildings. As such, there is a strong pattern to the layout of dwellings along the eastern side of London Road, which affords a pleasant suburban character to the area. This pattern of development is also found in Ludham Hall Lane to the north of the appeal site, which is also a public right of way.
 6. The appeal scheme would introduce a small cul-de-sac with a tight configuration to the rear of the frontage development along London Road. This would jar with the spacious and linear frontage pattern. That said, the development would not be prominent in views from London Road due to the screening afforded by No 197. However, the development would be clearly visible from Ludham Hall Lane over the roadside hedge, where the relatively compact form would appear strident, even though the amenity space and parking would meet local standards. There would be little room for meaningful mitigation in the form of soft landscaping on the boundary to filter and soften views of the development.
 7. The site context may change in the future if draft allocation BLAN114 is adopted and then constructed. However, the timeframe and configuration of this potential development is unclear and therefore this is not a matter that justifies the impacts the appeal scheme would have.
 8. Aspects of the proposal would facilitate a mews type character, such as the narrow width of the street, the position of the houses near to the edge of the carriageway and the discrete entrance off London Road. However, the proposed houses would be relatively tall, with some arranged over three floors, and therefore they would lack a sense of subservience to the frontage development that could otherwise make a mews concept spatially successful.
 9. The narrow entrance off London Road would diminish the legibility of the development and appear cramped. However, the demolition of No. 197, a solution indicated by the Council, would leave a discordant gap in the street scene. Keeping this property in situ would enable continuity to be retained to the frontage pattern of development. On balance, the narrowness of the proposed access would be an understandable compromise.
 10. The turning head would have properties arranged closely around it, but this is not untypical of a mews type arrangement. The turning head could also be softened by using a suitable surface treatment and soft landscaping. Similarly, parking on block is not uncommon in a mews arrangement as it allows a tighter built form. However, the positioning of a pergola at the entrance and garages off the turning head would increase the number of buildings and thus the sense of cramming in what would already be a comparatively tight layout. This would be compounded by the contrived first floor flying links, which would appear as a discordant means of squeezing in more floor space.

11. Save for the contrived links already discussed and the scale of some of the dwellings, the elevations of the properties would be unassuming and therefore provide the appearance of a small grouping of cottages. The use of matching doors and windows would provide harmony and cohesiveness and the bay windows would afford some basic detailing, as would the cills and brick plinths. Plots 6 and 7 would be pleasingly balanced and positioned to punctuate the view along the street. An appropriate pallet of external finishing materials could be secured through the imposition of a planning condition in the event the scheme was acceptable. On balance, the house types would provide a reasonable sense of place given the varied architectural context.
12. In conclusion, when taken as a whole, the proposal would result in a cramped and jarring development that would harm the character and appearance of the area. This would be contrary to Policies RLP3, RLP9 and RLP90 of the Braintree Local Plan Review 2005 (LP) and CS9 of the Braintree District Core Strategy 2011 (CS)¹. These policies together seek to secure development that respects the character and appearance of the area.

The effect on living conditions

13. Plots 9 and 10 would be near a large mature oak tree, which would be positioned on the southern side of these properties. The tree would dominate the relatively modest rear gardens of these properties thereby reducing the outlook and diminishing the level of light. The harmfully inadequate living conditions this would engender would be compounded by leaf litter and the risk of branch shedding, which would further hamper the ability of future occupants to reasonably enjoy the rear gardens.
14. Plot 1 would be located directly behind No. 197 and therefore the rear garden serving it would be overlooked by the occupants of 195 London Road. This would result in a harmful loss of privacy because the garden of Plot 1 would be overlooked at a close range. Plot 1 would also dominate the rear outlook from No. 197 and the front outlook from Plot 6 would be dominated by the car port proposed to be located directly in front of this property.
15. The access road into the appeal site would pass the flank elevation of No.197. Two modest windows face onto this route. It is therefore unlikely that vehicles would be unduly audible from within the house if a suitable surface treatment was used. However, the noise from vehicles passing and repassing the garden of No. 197 would be very apparent to the occupants. This could be attenuated to an extent if a solid boundary, such as a wall, was provided in combination with additional landscaping to provide a defensible area. However, I have seen nothing of substance demonstrating the impact could be reduced to an acceptable level. Thus, based on the evidence before me, I am not satisfied the proposal would have an acceptable impact upon the living conditions of No. 197 in respect of noise and disturbance. That said, a residential redevelopment at the petrol station could proceed without a harmful impact on future living conditions because there would be space to create a defensible buffer.
16. There is a sewer easement running through the appeal site and the drawings show that it would be incorporated in Plots 3, 4, 10 and 11 under the parking

¹ The Council have also referred to Policies RLP2 and RLP56 and Policy CS5 but the relevance of these policies is unclear as the Council has not taken issue with the proposal's location outside the settlement boundary, its impact on the countryside or the amount of parking proposed

areas and rear gardens. Future occupants of these properties may be reluctant to cultivate these spaces or erect garden structures in case access was required in the future. However, Anglian Water has not objected and the evidence before me suggests this situation is not uncommon. Furthermore, the easement would not cover the entire gardens, leaving the areas directly behind the houses, where patios and sheds are likely to be constructed, unaffected. The appeal decision² referred to the Council in respect of this matter related to an outline case where the layout was not fixed. As such, the easement is not a constraint that should prevent residential development in this instance.

17. The adjoining petrol station has a car wash and valeting area to the rear as well as other plant, such as air conditioning units. The NIA has identified that this would have a significant adverse noise impact in the garden of Plot 12. However, it concludes that a timber framed fence to an approved specification would mitigate this noise impact by bringing it below the BS 8233 design range for gardens. The Council has not objected to the NIA as updated or the suggested mitigation and I have no other reason to disagree with the expert findings of the appellant's noise consultants. Accordingly, I am satisfied the evidence before me does not demonstrate the petrol station would have an unacceptable noise impact on future occupants of the appeal scheme.
18. Nevertheless, the absence of harm to the living conditions of future occupants in respect of noise and disturbance from nearby plant and the public easement would not mitigate for the harm that would otherwise occur. Therefore, the development would not provide adequate living conditions for future occupants and this would be contrary Policy RLP90 of the LP and CS9 of the CS³.

Whether the proposal would make adequate provision surface water drainage, infrastructure and affordable housing

19. The appellant has not provided details of surface water drainage, but the site is located in Flood Zone 1, is 0.4 hectares in size and there is no information before me to suggest it has any critical drainage problems or is at risk from other forms of flooding.
20. It is therefore unclear why the Council, advised by Essex SUDS, is seeking detailed drainage details at the application stage when this is a matter that could be addressed through a suitably worded planning condition, as advocated by the appellant. There is nothing of substance before me to indicate that the appeal scheme would be inherently incapable of providing an adequate surface water drainage solution that included a SuDS system. As such, the absence of details is not a matter weighing against the appeal scheme in this instance.
21. Policies CS10 of the CS seeks to ensure a good provision of high quality and accessible green space to meet the recreation, outdoor sport and amenity needs of the district. In order to do this, it requires new development to make appropriate provision taking into account any surpluses and deficiencies, as well as the condition of open space in the vicinity of the site. To this end the Council are seeking a financial contribution towards offsite open space.
22. However, I have not been presented with substantive evidence that demonstrates there is a deficiency in the quantity or condition/quality of open

² APP/Z1510/W/19/3223378

³ The Council has also referred to Policy RLP64, but this relates to land contamination and therefore its relevance to the matters in dispute is unclear

space near to the appeal site. Therefore, the Council has failed to demonstrate that the financial contribution being sought is necessary as per Regulation 122 of the CIL Regulations and Paragraph 56 of the National Planning Policy Framework (the 'Framework'). Accordingly, the absence of a mechanism securing the contribution does not justify dismissing the appeal.

23. The Council's emerging draft Local Plan currently includes the appeal site as part of a larger site allocation, which also includes the adjoining petrol station. The appellant does not have control over the petrol station, which appears to have recently changed hands and may be a viable going concern with an existing use value that exceeds the redevelopment value as a residential site. The latter points are matters that would need to be tested through the examination of the emerging LP and therefore I do not afford the draft policy relating to allocation BLAN633 anything more than very limited weight.
24. Therefore, as things currently stand there is no extant development plan policy allocating the appeal site and petrol station for residential development and requiring that any development comes forward in a comprehensive way. As such, the proposal is not seeking to artificially subdivide an allocated site and thus circumvent the affordable housing threshold in Policy CS2 of the CS. Therefore, the absence of affordable housing is not contrary to the development plan and material considerations, such as the emerging local plan, do not indicate a decision on this matter should be made otherwise than in accordance with the current extant development plan.
25. I therefore conclude that the drainage details are satisfactory and that the scheme makes adequate provision for affordable housing, which in this instance would be none. Moreover, the Council has not demonstrated that a financial contribution to open space would be necessary in this case. As such, I find that there would be no conflict with Policies RLP69 and RLP71 of the LP and Policies CS1, CS2, CS10 and CS11 of the CS.

Other Matters

26. Given my overall conclusion that the appeal should fail, there would be no future occupants that could increase recreational disturbance and thus harm the integrity of the Blackwater Estuary Special Protection Area. Accordingly, it is unnecessary for me to consider this matter further.
27. Plots 6-8 would have an outlook towards land that would be allocated for residential development under reference BLAN114 in the Council's emerging LP. Plot 8 would have a reasonably shallow garden which would be close to the boundary with BLAN114, although the existing boundary hedge would be retained. However, other than a plan showing the extent of the allocation, I have not been presented with anything of substance, such as a design brief or illustrative layout, that would suggest the configuration of Plot 8 would in any way harmfully prejudice the layout of the allocation were it to come forward or that the allocation could not be arranged to take account of Plot 8.
28. The evidence before me does not demonstrate the Council's emerging draft Local Plan is at an advanced stage of preparation and consequently there is potential for further amendments following consultation and examination. As such, the emerging policies referred to by the Council in its reason for refusal carry limited weight and have not been determinative in my assessment.

Planning Balance

29. The proposal would harm the character and appearance of the area and provide inadequate living conditions for future occupants and those of No. 197. Taken as a whole, it would be at odds with the development plan. A development should be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration of significance.
30. The Council are currently unable to demonstrate a five-year housing land supply at odds with Paragraph 73 of the Framework. The supply is presently around 4.51 years. The Council are therefore failing to significantly boost the supply of housing. In such circumstances, Paragraph 11 of the Framework states that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole.
31. As adverse impacts, the proposal would harm the character and appearance of the area and provide inadequate living conditions for future occupants and those of No. 197. This would be at odds with the development plan and Paragraph 127 of the Framework. Accordingly, these are matters of significant weight against the proposal.
32. Conversely, the proposal would deliver several benefits. It would contribute to housing supply and choice at a point in time when there is a shortfall. Due to the scale of the proposal it is likely the housing could be delivered quickly. However, the appeal scheme is not large and the Council's housing shortfall is modest. The Council is also actively seeking to remedy the housing deficit through the preparation of a new local plan, which is currently being examined. In the circumstances, the provision of housing is a moderate benefit.
33. In addition, the housing would not be isolated being surrounded by existing development and it would be reasonably close to local services. However, there is little evidence before me to suggest twelve additional households would have a notable economic or social effect. The proposal would provide some support to the construction industry, but this would be moderate in scale and duration. Thus, the weight I attach the potential socio-economic benefits is moderate.
34. When taken cumulatively, the adverse impacts of the appeal scheme would significantly and demonstrably outweigh its benefits. This is not a material consideration that indicates the appeal should be determined otherwise than in accordance with the development plan.

Conclusion

35. The proposed development would be contrary to the development plan taken as a whole and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Graham Chamberlain
INSPECTOR