
Appeal Decision

Site visit made on 14 October 2020

by D Peppitt BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th November 2020

Appeal Ref: APP/Z1510/W/20/3251873

Back House Croft, Bulmer Street, Bulmer, CO10 7EW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Rowe against the decision of Braintree District Council.
 - The application Ref 19/02254/VAR, dated 13 December 2019, was refused by notice dated 5 March 2020.
 - The application sought planning permission for the erection of 3 no. detached dwelling houses with detached garages comprising 2 no. 3 bedroom dwellings and 1 no. 4 bedroom dwelling without complying with a condition attached to planning permission Ref 17/01638/FU, dated 18 August 2017.
 - The condition in dispute is No 2 which states that: Except for details approved under conditions 3 and 4, the development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan Ref: PSD_BC_01; Block Plan Ref: PSD_BC_02; Site Plan Ref: PSD_BC_03; Proposed Floor Plan Ref: PSD_BC_04; Proposed Floor Plan Ref: PSD_BC_05; Proposed Elevations Plan Ref: PSD_BC_06; Proposed Elevations Plan Ref: PSD_BC_07; Proposed Floor Plan Ref: PSD_BC_08A; Proposed Floor Plan Ref: PSD_BC_09 A; Proposed Elevations Plan Ref: PSD_BC_10 A; Proposed Elevations Plan Ref: PSD_BC_11 A.
 - The reasons given for the condition is: to provide certainty.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council has referred to policies within the Draft Local Plan (2017). However, the examination has not been completed, and it is not clear whether there are unresolved objections. Therefore, I have only afforded it limited weight.

Background and Main Issue

3. Planning permission was granted on appeal¹ for the erection of 3 no. detached dwellings with detached garages, that would be reached by a shared drive from a single access onto Bulmer Street (the approved development). This appeal seeks to vary the condition in dispute, so that amended plans would replace the previously approved plans, to enable the 2 westernmost dwellings to be reached by a separate shared access onto Bulmer Street (the proposal).

¹ Appeal reference: APP/Z1510/W/18/3199016

Therefore, the main issue is whether the condition in dispute is necessary to protect the character and appearance of the area, which includes the setting of the Conservation Area.

Reasons

4. The appeal site is located at the end of a ribbon of properties at the western end of Bulmer Street. The appeal site is bordered by large hedges and trees which contribute to the verdant character of the approach towards the village. The significant screening from the trees and hedges helps to soften the effect of the development and obscures views into the site. Given the context of the surrounding countryside, this makes the development less stark and apparent. The appeal site is located close to, but outside the nearby Bulmer Conservation Area (CA).
5. The proposal would create an additional gap in the existing hedgerow which would disrupt the continuity of the hedgerow and landscaping. The creation of the additional access would open up views into the site from Bulmer Street. This would urbanise the site by making the dwellings and the associated driveways more readily visible and obvious, which would have a detrimental effect on the rural character. The appellants' plans and sketches show that the hedgerow by the shared access would be cut back and aligned with the visibility splays so there would be no need to reduce the height of the hedge by the south east boundary to Bulmer Street.
6. There is dispute between the parties whether the proposed access would require the removal of any trees. The approved plans for the scheme show that the area for the proposed access should be covered by extensive landscaping and trees. No detailed Tree Survey or Protection Plan has been submitted for this proposal. However, according to the Tree Protection Plan submitted under Application Reference 19/00331/DAC, Tree T7, which the Council states is a category B tree with moderate quality, would require removal for the additional access. However, as shown in the appellants' photographs, the significant oak tree and sycamore tree near the proposed access would be retained, so the proposal would not cause an unacceptable loss of existing trees.
7. Even so, the additional access would harmfully erode the verdant nature of the site, which would harm the character and appearance of the site and the surrounding area. I note that the appellant has suggested that the hedge would be continued within the site along part of the access. Nevertheless, views into the site would still be available from the street scene. I also acknowledge that part of the shared driveway would be replaced with landscaping. Whilst this would add further greenery within the site, it would not mitigate the harm caused by the proposal along the site boundary and on the street scene.
8. In terms of the nearby CA, having regard to paragraph 190 of the Framework, the effect of the proposal on the setting of the CA needs to be assessed. The CA has a mix of cottages, Victorian and modern houses and bungalows. The CA has a rural character, which is preserved through the thatched cottages and former agricultural buildings amongst this mix. The views toward the site from the CA are limited due to the distance and the screening effect of trees and hedges. Furthermore, the proposed access is at greater distance away than the entrance in the approved scheme. Given the site is already developed and the distance from the CA, the introduction of the additional access would not harm the setting of the CA.

9. Even so, the proposed development would harm the character and appearance of the site and surrounding area. Therefore, it would be contrary to Policies RLP2 and RLP90 of the Local Plan (2005) and Policy CS5 of the Core Strategy (CS) (2011). These policies, amongst other things, require development to be high quality and to respect the surrounding character and local context.
10. The Council also referred to Policy CS9 of the CS and Policy RLP95 of the LP. However, I have identified above that the proposal would accord with these policies.

Planning Balance and Conclusion

11. The appellant has suggested that the adopted policy cited by the Council in its reasons for refusal pre-dates the National Planning Policy Framework (the Framework) and that the presumption in favour of sustainable development is therefore engaged, which provides the context for the determination of the appeal.
12. Paragraph 11 of the Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
13. The appellant has suggested that the proposal would provide additional amenity space, give a better layout and enhance access to public transport. However, the impacts of these factors are limited as the proposal does not provide anything additional in transport terms to what already exists, and the additional benefit of amenity space and layout is limited due to the size and the loss of space caused by the new access.
14. In the context of the development plan, I have found that the proposed development would be contrary to Policies RLP2 and RLP90 of the LP and Policy CS5 of the CS. For this appeal, I have found these policies to be generally consistent with the relevant aims of the Framework and I attach substantial weight to them. I have found harm to arise in the context of the policies stated above, therefore, the proposal would not accord with the development plan when considered as a whole.
15. Whilst I have identified that the proposal would not harm the setting of the CA, it would harm the character and appearance of the site and surrounding area. I find that the adverse impacts of the development significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. Therefore, the proposal would not represent sustainable development.
16. As the proposal would harm the character and appearance of the surrounding area, Condition No 2 is necessary for certainty. So, I shall not vary or remove Condition 2.
17. Consequently, I conclude that the appeal is dismissed.

D Peppitt

INSPECTOR