

Appeal Decision

Site visit made on 10 November 2020

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2020

Appeal Ref: APP/Z1510/W/20/3250676

The Nook, Braintree Road, Tye Green, Cressing CM77 8HT

- 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 and Mrs Thomas against the decision of Braintree District Council.
 - The application Ref 19/00598/FUL, dated 1 April 2019, was refused by notice dated 12 March 2020.
 - The development proposed is the demolition of existing single storey garage and erection of 1.5 storey residential unit with car parking and access from the B1018.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposal on:
 - the character and appearance of the area;
 - the living conditions of future occupiers and occupiers of The Nook.

Reasons

Character and appearance

3. The appeal site comprises part of the rear garden of The Nook. Whilst fairly long, the garden of this detached bungalow tapers to the rear and is relatively narrow where the new dwelling is proposed. The northern boundary of the garden is marked by a well maintained, but slim, hedge. To the north of the garden is an agricultural field bounded by low hedges which allow clear views of the full depth of the garden of The Nook from a considerable length of Braintree Road. To the south of The Nook is a row of eight two-storey dwellings known as 1-8 Leyfield. These dwellings are not apparent in views from the north such that, beyond the bungalow and its detached garage, the remainder of the garden extending eastwards appears to blend into the countryside. The properties comprising The Nook and 1-8 Leyfield therefore, have a fairly compact, linear form. The properties, including the appeal site, fall outside of the village envelope as defined under saved Policy RLP2 of the Braintree District Local Plan Review (LP) and Policy CS5 of the Council's Core Strategy (CS).
 4. The proposed dwelling would be separated from The Nook by a retained rear garden for the existing dwelling together with four parking spaces. Consequently, the gap between the existing and new buildings would be
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considerably greater than the spacing between the existing bungalow and garage. Moreover, the new dwelling would be significantly taller, longer and deeper than the existing garage. Moreover, at 1½ storeys, the proposed dwelling would be notably taller than the existing bungalow and its gable ended roof would be more bulky than the hipped roof of the existing building. It would also be considerably taller than a building which could, potentially, be erected under permitted development rights, although there is no firm evidence of the appellant's intention to erect such a building. As such, the proposed dwelling would be far more intrusive in views from a significant length of Braintree Road to the north than other buildings on the appeal site or at 1-8 Leyfield.

5. The proposal would also extend built up development further east into an area which currently has the appearance of countryside. The compact, linear form of the existing properties comprising The Nook and 1-8 Leyfield would also be undermined.
6. The appellant takes issue with the Council's description of the appeal site as a 'transition from the field to the village'. It argues that the appeal site is a 'gateway' and that the landscaping for the proposed development could soften the entrance to the village. A 'gateway' implies an entry route from one area to another which, in this case, is Braintree Road. Whilst The Nook could be seen as framing this gateway, the proposed dwelling, by extending the apparent built up area further from the road, would if anything, weaken any impression of a gateway and detract from the focus of built development on the street scene.
7. The appeal submissions do not include detailed landscaping proposals. I recognise that a condition could be used to secure a landscaping scheme for the proposal with the aim of screening the proposed dwelling in views from Braintree Road. The proposed dwelling would be 1½ storeys high and the existing hedge on the site's northern boundary would not be tall enough to achieve this aim. Whilst the hedge could be reinforced and allowed to grow taller, the space available between the proposed dwelling and the boundary is quite confined. It is also proposed as a patio area for the dwelling and serves the main windows for the dining room and the only window for the kitchen.
8. Given these constraints, it has not been adequately demonstrated that sufficient space would be available to achieve planting which would be tall enough to effectively screen the proposed dwelling, integrate with the remainder of the boundary planting to provide a naturalistic edge to the built up area, whilst also allowing a reasonable amount of daylight to reach the north-facing dining room and kitchen windows. In these circumstances it would not be appropriate to leave this matter to be dealt with by condition.
9. The proposal would allow the parking at the front of The Nook to be repositioned behind the building. Whilst this would result in a slight visual benefit in close range views of the property, it would not overcome the concerns set out above.
10. Consequently, I find that the siting of the proposed dwelling would be at odds with the generally linear pattern of development on this side of Braintree Road. It would appear as a prominent and intrusive extension of built development in extensive public views, encroaching into an area which currently has the appearance of countryside. As such, the proposal would have a significantly

harmful effect on the character and appearance of the area. It would, therefore, conflict with LP Policy RLP2 and Policy CS5 of the CS which seek to confine new development to areas within defined village envelopes. It would also conflict with LP Policies RLP9 and RLP90 and CS Policy CS9 which require residential development to achieve a high standard of design and layout, to create a visually satisfactory environment, be in character with the site and to be in harmony with its surroundings. I deal with the status of these policies in the Planning Balance below

11. The first reason for refusal also cites Policies SP1, SP3, LPP1, LPP50, LPP55, and LPP71 of the Council's Draft Local Plan (DLP). Whilst the Plan is progressing towards adoption, the Council accepts that its policies cannot be afforded full weight. Policy SP1 concerns the presumption in favour of sustainable development. I deal with this in the Planning Balance. Policy SP3 identifies the means of meeting the area's housing needs and Policy LPP1 restricts development outside development boundaries. The appeal site does not fall within the boundaries defined in the emerging plan. To that extent, the proposal does not accord with the Plan's spatial strategy as required by Policy SP3. DLP Policies LPP50 and LPP55 largely reflect the considerations in LP Policies RLP9 and RLP90 and CS Policy CS9, with which I have already found conflict. Policy LPP7 deals with landscape character. Although the landscape in the vicinity of the appeal site is not subject to any landscape designations, the policy recognises the intrinsic character and beauty of the countryside and requires development to successfully integrate into the local landscape character.
12. The proposal would also be contrary to National Planning Policy Framework (the Framework) paragraph 124 which seeks high quality buildings and places, paragraph 127 which requires development to be sympathetic to its surrounding environment and landscape setting and paragraph 170 which requires the intrinsic character and beauty of the countryside to be recognised in planning decisions.
13. The Council's decision notice also refers to LP Policy RLP3 which deals with development within defined boundaries. Since the appeal site sits outside such boundaries, the policy is of limited assistance in my consideration of this issue. Nor is there substantive evidence to show that the proposal would conflict with LP Policy RLP56 which deals with vehicle parking provision.
14. Reference has been made to three appeal decisions relating to land to the south-east of 8 Leyfield. A proposal for six dwellings arranged around a shared access (Appeal ref APP/Z1510/W/18/3209721) was dismissed because the spread of development in depth would be incongruous with the linear pattern of development on this side of Braintree Road and would erode the contribution which the site makes to the village setting. These reasons are broadly consistent with my concerns regarding the current appeal proposal. A subsequent proposal for six dwellings arranged in a row along the front of the same site was allowed (Appeal ref APP/Z1510/W/19/3223769). In that case it was found that the proposed dwellings would be located between existing built development, would not encroach into the countryside and that views from the countryside would be restricted. Their siting distinguishes that proposal from the current appeal proposal, notwithstanding that the six dwellings would be taller.

15. The third decision allowed a single dwelling proposed to be located to the rear of 8 Leyfield (Appeal ref APP/Z1510/W/17/3170257). The position of the dwelling would be at odds with the local linear pattern of development. However, the Inspector in that case found that the dwelling would be in a '*secluded location set back from the road and thus would not be prominent in the streetscape*'. It was also found that the existing and proposed planting could be used to blend the proposal into its surroundings and provide an appropriate transition to the open countryside. I have already found that the current proposal would not occupy a secluded location, would not create an appropriate transition to the countryside and am concerned that it could not be satisfactorily screened by existing or proposed planting. Therefore, the earlier decision is readily distinguishable from the current appeal.

Living conditions

16. The Council considers that the use of rooflights at the first floor level of the proposed dwelling would not provide a suitable outlook for future occupiers and would harm the amenity of the occupiers of The Nook. However, the rooflights would be positioned fairly low in the roof and there is no firm evidence to demonstrate that they would not be at eye-level for first floor occupiers. At least one rooflight would be provided in each bedroom and the bathroom. Therefore, I consider that the rooflights would provide an adequate outlook for future occupiers.
17. The Council has not provided substantive evidence to indicate how the use of rooflights in the proposed dwelling would harm the living conditions of the occupiers of The Nook. The Council considers that the use of dormer windows would be preferable, but has not provided policy support for this position. It also suggests that rooflights were used to limit the visual impact of the proposal. I have already found that the bulk of the roof would contribute to the harm to the character and appearance of the area. However, of themselves, the rooflights would not cause additional harm.
18. Therefore I find that this aspect of the proposal would not conflict with LP Policy RLP90 to the extent that it requires proposals to not have an unacceptable impact on the amenity of nearby residential properties or CS Policy CS9 insofar as it requires proposals to contribute towards the quality of life and be capable of meeting the changing future of occupiers. Nor would it conflict with DLP Policies LPP50 or LLP55 to the extent that they have similar aims. The second reason for refusal also refers to LP Policies RLP2 and RLP3, and DLP Policies SP1, SP3 and LPP1. I deal with the presumption in favour of sustainable development (Policy SP1) in the Planning Balance. The other policies concern housing supply and spatial strategy matters and are of very limited assistance in the consideration of this issue.

Other Matters

19. The appellant has expressed concern regarding the length of time taken by the Council to determine the application. However, my decision is based on the planning merits of the proposal.

Planning Balance

20. I have found that the proposal conflicts with relevant policies of the development and there are no policies in support of the proposal (I consider

- DLP Policy SP1 below). As such, the proposal conflicts with the development plan as a whole.
21. The parties agree that the Council cannot demonstrate a five year supply of housing land. The supply is considered to be in the region of 4.5 years. There is nothing to suggest that any of the considerations in footnote 6 of Framework paragraph 11 apply in this case. Therefore, in accordance with footnote 7, the development plan policies most important for determining the appeal are out of date. In these circumstances paragraph 11(d)ii applies and the test is whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
 22. I have found that the proposal would have a significantly harmful effect on the character and appearance of the area. Consequently, it would not accord with Framework paragraphs 124, 127 and 170.
 23. Framework paragraph 59 seeks to significantly boost the supply of housing and states that it is important that a sufficient amount and variety of land comes forward. This is particularly relevant where there is a shortfall in the five year supply. Nevertheless, the proposed provision of a single dwelling would make a very modest contribution to the supply of housing and, as the review of appeal decisions above finds, new housing land is available on other sites in the immediate vicinity. The Framework also encourages the effective use of land, while safeguarding the environment (paragraphs 117 and 127). Since the proposal would harm the character and appearance of the area, this limits the weight to be attached to making effective use of the appeal site. The appellant has not identified other benefits of the proposal.
 24. I have found that the proposal would not have a harmful effect on the living conditions of future or nearby residential occupiers and there are no other substantive objections to the proposal. However, the absence of other further harm does not amount to a positive benefit in favour of the proposal.
 25. Overall therefore, I consider that the significant harm to the character and appearance of the area significantly and demonstrably outweighs the modest benefits of the proposal, when assessed against the policies in the Framework taken as a whole. The proposal does not, therefore, benefit from the presumption in favour of sustainable development set out in Framework paragraph 11 and DLP Policy SP1.
 26. Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. I have found that the proposal conflicts with the development plan as a whole. Whilst Framework paragraph 11 is a material consideration, I have found that it does not weigh in favour of the proposal in this case. Nor do other material considerations weigh in its favour. Therefore, notwithstanding that the development plan policies most important for determining the appeal are out of date, material considerations do not indicate that the appeal should be determined other than in accordance with them.

Conclusion

27. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR