
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: 25 November 2020

Appeal Ref: APP/Z1510/W/20/3249182

Station House, Station Road, White Notley CM8 1RP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr M Taylor against the decision of Braintree District Council.
 - The application Ref 19/01795/OUT, dated 1 October 2019, was refused by notice dated 12 December 2019.
 - The development proposed is the demolition of garage and construction of 3 residential units.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application was made in outline with access and layout not reserved for further approval.

Main Issues

3. The main issues are the effects of the proposal on:
 - the character and appearance of the site and surrounding area;
 - the future of the oak tree adjoining the site;
 - the living conditions of future occupiers with particular regard to outlook and noise;
 - highway safety with particular regard to the proximity of the railway level crossing.

Reasons

Character and appearance

4. Station House forms part of a loosely spaced cluster of dwellings and agricultural style buildings adjoining White Notley railway station. Apart from Station House, the buildings are set back from the road and at least partially screened by planting. The appeal site includes the garden area to the side of Station House and has a frontage onto Station Road which is marked by mature boundary planting.
 5. The proposed dwellings would be arranged as a detached dwelling facing the road to the south of Station Road and, beyond that, a semi-detached pair
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positioned at right-angles to the road. A large part of the existing boundary planting would be removed and replaced by a 2m wide footpath, access and parking spaces. As such, the proposal would give the site a harder appearance and a more urban, densely developed character. This would be at odds with both the verdant existing appearance of the site and the relaxed spacing and well planted settings of the built development adjoining the station. The appellant argues that the density of the proposal (given as 30 dwellings per hectare) is typical of a village setting. However, the use of overall density figures on small sites such as this does not necessarily provide a reliable indicator of the character of the development and, in any event, the site is not within a village.

6. Whilst landscaping is reserved for future approval, the layout and access are not and they leave very little room to introduce substantial planting along the site frontage.
7. Planning permission has been granted for a single detached dwelling on the appeal site (Application ref 18/00801/FUL). That building would be set back from the road, would be sited considerably further from Station House than the closest buildings in the current appeal and the boundary hedge would be largely retained. It would, therefore, allow for the retention of far more of the existing rural character and appearance of the site than the appeal proposal. The appellant argues that the appeal proposal represents only an incremental increase in the amount of development on the site and that the additional hard surfacing and hedgerow removal is necessary to provide satisfactory parking and access. However, my concern is with the harmful effects of these aspects of the scheme, which flow from the increase in the number of dwellings proposed.
8. Consequently, the proposal would have a harmful effect on the character and appearance of the site and the surrounding area. As such, it would conflict with saved Policies RLP10 and RLP90 of the Braintree District Local Plan Review (2005) (LP) and Policy CS9 of the Braintree District Core Strategy (2011) (CS). Amongst other things, these policies require residential development to achieve a high standard of design and layout which reflects local distinctiveness, the density of development to be well related to the characteristics of the site and surrounding development and the provision of high quality landscaping.
9. The emerging Braintree District Publication Draft Local Plan (2017) (DLP) can only be given limited weight. Nevertheless, the proposal would not accord with Policies LPP37, LPP50 or LPP55 inasmuch as they have aims similar to the LP and CS policies cited above.
10. Nor would the proposal comply with National Planning Policy Framework (the Framework) paragraphs 124 or 127 which seek the creation of high quality places which are sympathetic to local character and the surrounding built environment and landscape setting.
11. The appellant argues that LP Policy RLP10 provides support for the proposal insofar as it requires the density of development to be related to access to public transport, shops and services. Although the appeal site is close to the railway station, it is not well related to bus services, shops or other services. As such, its level of accessibility does not justify development at a density which would have the damaging effects set out above.

12. The appellant has also drawn my attention to decisions on residential developments at Bulmer, Great Yeldham and Gosfield. In the appeal decision for four dwellings at Bulmer (Appeal ref: APP/Z1510/W/18/3199016) the Inspector was clear that the appeal site was screened from view by tall boundary hedges. Further, that it contributed little to rural character and appearance (paragraph 5) and that the *'proposed dwellings would be set back from the road with significant screening from trees and hedges, so views of the buildings would to some extent be obscured and softened by the vegetation'* (paragraph 11). These characteristics do not apply to the appeal proposal and therefore it can be readily distinguished from the Bulmer decision.
13. Braintree District Council granted consent for 33 dwellings at Great Yeldham (Application ref 18/00312/FUL). Whilst that site was outside the village envelope, the Council's report on the application considered that it was *'relatively centrally located within the village'* and that *'the development would appear well related to the existing settlement pattern.'* Nor does the report find that the proposal would have a harmful effect on the character and appearance of the area. I have found that the current appeal proposal would not have similar attributes. For that reason, the Great Yeldham decision does not provide a robust justification for the appeal proposal.
14. In the Gosfield appeal decision (Appeal ref APP/Z1510/W/19/3243946), the Inspector found that the limited harm to the character and appearance of the area could be mitigated by the use of conditions. The harm to the character and appearance of the area in the case of the current appeal would be more significant and, given the constraints of the site layout, I consider that it could not be adequately mitigated through the use of a landscaping condition.
15. I deal with the status of development plan policies and the benefits of the proposal in the Planning Balance below.

Oak Tree

16. A mature oak tree is located just to the south of the appeal site. It is a fine example of the trees which characterise field boundaries in the area. The tree is prominent in views on the approach from the south and helps to partially screen the Fambridge Chase properties. Therefore, the tree makes a positive contribution to the landscape character of the area and the setting of the cluster of buildings around the station. The appellant has advised that the tree is subject to a Tree Preservation Order.
17. The appellant has submitted an Arboricultural Report (Andrew Day dated 14 May 2019). However, the tree protection plan attached to the report shows a different site layout from the appeal plans. It is, therefore, unclear whether the report's conclusions and recommendations are applicable to the appeal proposal. Moreover, the report states that implementation of the proposals would require the tree to be selectively reduced and lifted. The oak tree falls outside the appeal site boundary and there is nothing to suggest that the appellant has control over the tree or land on which it is situated. Consequently, it has not been demonstrated that the tree works which the report says are necessary could be undertaken by the appellant.
18. Notwithstanding the discrepancy over the layout shown on the tree protection plan, it is clear that the appeal proposal would encroach into the root protection area (RPA) of the oak tree. The report also surmises that the roots could be

greater than 600mm deep and proposes different actions depending on whether they are more or less than 25mm in diameter. If they are more than 25mm in diameter, a special foundation design may be necessary. The report also advises that new hard surfacing within the RPA should be placed on top of the existing surface. No ground level information has been submitted with the appeal to demonstrate that this would be feasible whilst creating a safe vehicular access which could be properly drained. In the light of all these uncertainties, I am not convinced that the appeal proposal could be constructed without having a material impact on the long-term health of the tree.

19. The report also states that the shadowing from the tree should not be a concern because of the orientation of the site and the canopy clearance. However, the tree is some 18m tall (report appendix 3) and somewhat less than that distance away from the nearest proposed dwelling in a south westerly direction. As such, I consider it likely that the tree would cast sufficient shadow over the front of the nearest dwelling to lead to pressure from the occupier to have the tree lopped or reduced in size. Such works could significantly reduce the contribution which the tree makes to the landscape character of the area.
20. The appellant confirms that the tree is outside of the appeal site but states that the design of the layout could provide sufficient separation distance to ensure that the tree would not be under threat. The fact that the tree is outside of the appeal site does not obviate the need to ensure its protection. Furthermore, layout is a matter for approval at this stage and therefore, my decision must be based on the submitted plans, rather than a notional layout which may be able to achieve an adequate separation distance.
21. On the basis of the available evidence therefore, I find that the proposal would pose a threat to the long-term future of the oak tree, the loss or substantial reduction in size of which would be harmful to the landscape character of the area. Consequently, the proposal would conflict with Policies RLP80 and RLP81 of the LP and Policy CS8 of the CS which require development to retain and protect existing landscape features, including trees. It would also conflict with DLP Policies LPP55 and LPP71 where they have similar aims.
22. The proposal would not comply with Framework paragraph 127 insofar as it requires development to be sympathetic to its landscape setting or paragraph 170 which requires planning decisions to recognise the intrinsic character and beauty of the countryside, including trees.

Living conditions of future occupiers

23. The rear elevation of plot 2 would directly face the flank wall of plot 3 at a distance of some 9m. This flank wall would span the full width of the rear of plot 2 and, even if it were single storey in height, the gable end would have the appearance of an imposing blank wall. Viewed at such close range, I consider that the wall would have a detrimental effect on the living conditions of the future occupiers of plot 2 by reason of restricted outlook.
24. The second reason for refusal also states that insufficient information had been provided to demonstrate that internal noise levels in the proposed dwellings would comply with British Standard and World Health Organisation guidelines having regard to the proximity of the railway line. The appeal submissions

include a Noise Report (Philip Acoustics February 2020) which finds that the internal noise levels would comply with the relevant standards provided that relatively straightforward noise mitigation measures are incorporated into the external walls and glazing. Such measures could be secured by condition.

25. The Council's appeal statement does not take issue with the findings of the report, although it does maintain concern regarding discrete noise events such as closing doors, persons leaving the station, train horns and construction and maintenance activity. The railway platform is on the north side of the line and therefore noise from closing doors would, to a degree, be shielded by the train itself. There is no formal parking at the station and the trains run hourly only and do not run after 0400 hours. This would limit the level of disturbance from comings and goings. Noise from train horns is likely to be short-lived and noise from construction and maintenance activity infrequent. Consequently, I consider that the occupiers of the proposed dwellings would not experience undue noise and disturbance from the railway line.
26. Nevertheless, by virtue of the poor outlook which would be experienced by the occupiers of plot 2, the proposal would not provide satisfactory living conditions for future occupiers. It would, therefore, conflict with LP Policy RLP90 and CS Policy CS9, as well as DLP Policies LPP50 and LPP55. These policies require development to offer a high standard of design and layout and quality of life. Nor would the proposal accord with Framework paragraph 127 which requires development to promote health and well-being and achieve a high standard of amenity for future users.

Highway safety

27. The proposal would re-use existing access points just to the south of Station House and close to the site's southern boundary. However, in both cases, the use of the accesses would be intensified due to the extra movements generated by the occupiers of the proposed dwellings. Whilst the site is close to the railway station, I have already found that it is not well-served by other public transport, shops or services. Therefore, it is unlikely that the number of movements generated by each dwelling would be especially low.
28. The access point serving Station House and plot 3 would be close to the level crossing. A vehicle approaching from the north may need to wait in the narrow carriageway for traffic coming in the opposite direction to clear before turning into the access. This poses the risk that vehicles following the turning vehicle could be backed up on the level crossing when a train is approaching. Vehicles exiting the access and turning north into the narrow carriageway would have little time and space on the approach to the level crossing. They may still be on the opposite side of the road when reaching the crossing, leading to the risk of missing the barrier and inadvertently crossing when a train is approaching, or to conflicts with vehicles approaching from the north. Therefore, the proximity of the closest access to the level crossing has the potential to lead to significant highway safety risks.
29. The appellant makes the point that approval has been given for a single dwelling using access points in similar positions to the appeal proposal. However, notwithstanding that the approved dwelling would be larger than the appeal dwellings, the increased number of dwellings would add materially to the number of vehicle movements at the site and, therefore, to the risks identified above.

30. The Council has also expressed concern that the proposal would reduce the visibility of the level crossing signal for vehicles approaching from the south. However, the proposed dwellings would be set back from the carriageway further than Station House and a 2m wide footpath would be created along the site frontage. Notwithstanding my concerns regarding the effect of the proposals for this boundary on the character and appearance of the area they would, if anything, improve the visibility of the level crossing signals on the approach from the south.
31. Nevertheless, this would not overcome the highway safety risk posed by the proximity of the closest access to the level crossing. Consequently, the proposal would conflict with Framework paragraph 108 which requires proposals to provide safe access and paragraph 109 which presumes against development that would result in an unacceptable impact on highway safety.
32. In reaching this conclusion, I have had regard to the absence of an objection from the highway authority. However, my decision is based on the available evidence, including the objection from Network Rail, and my site visit.

Other Matters

33. I have had regard to the other concerns expressed locally, but they have not led me to a different overall conclusion.

Planning Balance

34. I have found that the proposal conflicts with relevant policies of the development plan and there are no policies in support of the proposal. As such, the proposal conflicts with the development plan as a whole.
35. The parties agree that the Council cannot demonstrate a five year supply of housing land. 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.
36. I have found that the proposal would have a harmful effect on the character and appearance of the area, the future of the oak tree, the living conditions of future occupiers and highway safety. Consequently, it would not accord with Framework paragraphs 108, 109, 124, 127 and 170.
37. 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 three dwellings would make a modest contribution to the supply of housing. The Framework also encourages the effective use of land, while safeguarding the environment and ensuring safe and healthy living conditions (paragraphs 117 and 127). Since the proposal would cause harm in each of these respects, this limits the weight to be attached to the benefit of making effective use of the appeal site.
38. The appellant has submitted a Biodiversity Enhancement Strategy which recommends some straightforward measures to increase the biodiversity value

of the site. Such measures are supported by Framework paragraph 174 and would be a modest benefit of the proposal. The appellant points out that the proposal would provide adequate private garden space and parking for future residents. However, the absence of other further harm does not amount to a positive benefit in favour of the proposal. The appellant has not identified other benefits of the proposal.

39. Overall therefore, I consider that, taken together, the harms which I have identified significantly and demonstrably outweigh 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.
40. 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

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

Simon Warder

INSPECTOR