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## Appeal Decision

Site visit made on 10 November 2020

**by J Davis BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 December 2020

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**Appeal Ref: APP/H1515/W/20/3250711**

**Eversley, Kingsley Road, Hutton, CM13 2SH**

- 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 De'ath, Wickford Developments Ltd against the decision of Brentwood Borough Council.
  - The application Ref 19/01512/FUL, dated 16 October 2019, was refused by notice dated 31 December 2019.
  - The development proposed was described as 'Planning approval is sought for the demolition and replacement of the existing detached dwelling, with 3 new detached dwellings, as well as the formation of two new vehicular accesses and crossovers and associated ancillary works.'
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Council has confirmed within their statement of case that the nearby Silver Birch Tree is not protected by a Tree Preservation Order and that Policy C7 of the Brentwood Replacement Local Plan (2005) was referred to in error. I have determined the appeal on this basis.

### Main Issues

3. The main issues in this appeal are:
  - The effect of the proposal on the character and appearance of the area,
  - The effect of the proposal on the living conditions of the occupiers of nearby dwellings and on the living conditions of any future occupiers of the development;
  - The effect of the development on the health of a nearby Silver Birch tree and the effect of this on the character and appearance of the area.

### Reasons

#### *Character and appearance*

4. The appeal site comprises a detached bungalow which is located in a large plot. The surrounding area is characterised by a mix of dwelling types and styles, including bungalows, chalet style dwellings and two storey dwellings. However, despite this variety there is a clear linear pattern of development with the

majority of dwellings facing onto Kingsley Road behind front gardens with spacious gardens to the rear. This gives the area a relatively open and spacious character and appearance, which is further enhanced by the presence of established trees within some of the gardens and within the highway verge.

5. The proposal is for the construction of three detached new dwellings, with plots 1 and 2 fronting onto Kingsley Road, and with plot 3 located to the rear of the frontage dwellings, accessed via a new driveway which would run between plots 1 and 2. The dwelling on plot 3 would be set well back from Kingsley Road although views of it would be obtainable from Kingsley Road through the gap in between the two proposed frontage dwellings. The dwelling would also be readily visible in views from the neighbouring properties and gardens and glimpses of it would be attainable from the adjacent public footpath.
6. The positioning of an isolated dwelling behind the frontage properties would be at odds with the predominant pattern of development in the vicinity of the appeal site, in which dwellings are arranged in a linear way and directly face the public highway. This proposal would introduce new built form and significant hard surface areas for access and parking into mainly undeveloped garden space that, at present, positively contributes to the open and spacious feel of the area. The introduction of a new dwelling into this largely undeveloped garden space would result in a form of development that is out of character with the surrounding area. This would be further emphasised by the creation of the long, uniform access which would also be a highly urbanising feature in this location.
7. The proposed new dwellings adjacent to Kingsley Road would be two storey in height and would generally be reflective of the height of other dwellings in the immediate area, including that of the adjacent semi-detached dwellings. I also find that the design approach would be appropriate having regard to the mixed character and appearance of the area. However, the proposed dwellings would be of considerable depth, and the long, uniform flank elevation of both dwellings would be exposed to view due to the positioning of the new access in between them, with very little space for meaningful screening. The extent of these elevations, in combination with the access road to plot 3, would be a further urbanising feature, which would be to the detriment of the street scene and the character and appearance of the area.
8. Taking into account all of the above, the proposal would thus detract from the open and spacious character of the locality and it would result in significant harm to the character and appearance of the area. Accordingly, the proposal would be contrary to Policy CP1 of the Brentwood Replacement Local Plan, 2005, (LP) which among other things, seeks to ensure that proposals are of a high standard of design, compatible with its location and surrounding development and would not have an unacceptable detrimental impact on visual amenity or the character and appearance of the surrounding area. The proposal would also conflict with the National Planning Policy Framework (the Framework) insofar as it requires a high standard of design.

#### *Living conditions*

9. The dwelling proposed on plot 3 would incorporate additional accommodation within its roof space which would be served by velux style windows on its rear elevation. The overall ridge height of the dwelling would be just under 6 metres. The occupiers of adjacent dwellings in Hall Green Lane would have

their rear outlook unacceptably dominated by the built form of the dwelling and its associated double garage, in what is currently a largely undeveloped, spacious garden setting. There would also be an increase in activity in this part of the site although I am not persuaded that this would be so intense in association with a single dwelling such that it would result in material harm to the living conditions of nearby occupiers in terms of noise and disturbance.

10. The frontage dwellings would be provided with rear gardens that are commensurate in size to others in the local area. Whilst the access to plot 3 would be directly adjacent to one of the side boundaries of both dwellings, I do not consider that the use of the access in association with a single dwelling would be harmful to the living conditions of any future occupiers of the dwellings. Moreover, given the overall depth of the gardens of plots 1 and 2, and the absence of any first floor windows on the front elevation of plot 3, I find that the living conditions of any future occupiers of plots 1 and 2 would not be significantly compromised. Furthermore, whilst the frontage of plot 3 would be dominated by hard surfacing, this would not be seriously detrimental to the living conditions of future occupiers.
11. In conclusion on this main issue, the proposal would have a harmful effect on the living condition of occupiers of adjacent dwellings with regard to loss of outlook. Whilst I have not found any significant harm to the living conditions of any future occupants of the development, a lack of harm in this respect is a neutral consideration that does not weigh for or against the proposal. Overall, the proposal would be contrary to Policy CP1 of the adopted LP and paragraph 127(f) of the Framework which seek a high standard of design and amenity for existing users.

*Effect on the health of a nearby Silver Birch Tree*

12. The proposed access to plot 3 would be close to an adjacent Silver Birch tree which is located within the highway verge. The Council has confirmed that the tree is not the subject of a Tree Preservation Order and describe it to be of moderate amenity value and in good health.
13. From my own observations on site, the Silver Birch tree makes a positive contribution to the verdant character and appearance of the area. In support of the appeal, the appellant has submitted an Arboricultural Implication Assessment (AIA), Tree Survey and Constraints Plan, Arboricultural Method Statement and Tree Protection Plan as well as a tree planting specification. The Silver Birch is identified as being a category B tree. The AIA confirms that the front driveway and new hard surfacing of parking spaces collectively encroach 22% of the root protection area. Lowering of levels required for the installation of the new central driveway would be within 1.6 metres of the stem and the AIA concludes that the loss of roots has the potential to affect the health and stability of the tree. The AIA accordingly recommends the removal of the Silver Birch tree to allow the scheme to proceed, mitigated by appropriate replacement planting.
14. Replacement planting is proposed within the site, and two trees are also proposed either side of the new access to plot 3. Whilst replacement tree planting would have the potential to mitigate against the loss of the Silver Birch tree, in this case the trees would appear to be proposed within the highway verge, on land outside of the control of the appellant. In the absence of any substantive evidence to demonstrate that the replacement planting could

realistically be implemented, I conclude that the proposal would be likely to result in the loss of the Silver Birch tree which would have a harmful effect on the character and appearance of the area. The proposal would be contrary to Policy C5 of the Local Plan which requires that existing trees should be retained.

#### *Other matters*

15. The appellant refers to consistency in decision making and has drawn my attention to other sites for backland development in the Borough. Regarding the example at Barnston Way, I note that this was a redevelopment of a former garage courtyard and the circumstances relating to this proposal were somewhat different to those of the appeal site. With regard to the development referred to in the Ridgeway, I acknowledge that there are some similarities with the appeal scheme in terms of it comprising of backland development for a single unit. However, this proposal has a different context to the appeal site and appears to be located adjacent to other two-tier development, with a more informal access arrangement. In any event, I am required to determine the appeal on its own merits.
16. The Council does not dispute the appellant's contention that it is unable to demonstrate a five-year supply of deliverable housing. As such, the relevant policies for the supply of housing should not be considered up to date. I shall address the implications of this for the approach to decision making in the planning balance.

#### **Planning balance and conclusion**

17. Paragraph 11 of the Framework explains how the presumption in favour of sustainable development applies. As the Council cannot demonstrate a 5-year supply of housing land, in line with paragraph 11d) of the Framework, planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed.
18. Whilst the Framework refers to boosting significantly the supply of housing, the net increase of two additional units would only make a small difference. In respect of economic benefits, I acknowledge that future residents of the development would make use of local services and spend in local shops. However, as the scheme is for three dwellings the impact of this additional spend in the local economy would be limited. The scheme would also result in direct and indirect employment and create a demand for building supplies during the construction phase. Due to the short-term nature of these benefits, I give them only limited weight.
19. I have concluded that the proposal would not be harmful to the living conditions of potential future occupiers of the development. The lack of harm in this respect does not weigh in favour of the scheme, rather the impact is neutral.
20. In terms of adverse impacts, I have found that the appeal scheme would cause harm to the character and appearance of the area and would also harm the living conditions of the occupiers of nearby dwellings. It would therefore conflict with Policies CP1 and CP5 of the Brentwood Replacement Local Plan 2005. I attribute significant weight to this policy conflict.

21. Bringing all together in the final balance, I consider that the harm to the character and appearance of the area and to the living conditions of neighbouring occupiers, would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework when taken as a whole. The proposal therefore does not form sustainable development as defined in the Framework.
22. In conclusion, the other material considerations in this case do not indicate that the development should be determined other than in accordance with the development plan.
23. For the above reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*J Davis*

INSPECTOR