The Planning Inspectorate

Appeal Decisions

Site visit made on 20 October 2020

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 December 2020

Appeal A: ref. APP/Z1510/X/20/3249821
Land to the rear of 13 Meadowside, Braintree CM7 5UG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by John Benson against the decision of Braintree District Council.
- The application ref. 20/00219/ELD, dated 3 February 2020, was refused by notice dated 19 March 2020.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- A certificate of lawful use or development is sought for the existing use of the site for storage separate from 13 Meadowside.

Appeal B: ref. APP/Z1510/W/20/3249829
Land to the rear of 13 Meadowside, Braintree CM7 5UG

- 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 John Benson against the decision of Braintree District Council.
- The application ref. 19/01874/FUL, dated 14 October, was refused by notice dated 4 December 2019.
- The development proposed is the demolition of a single storey garage and the erection of one two-bedroomed bungalow.

Decisions

Appeal A: ref. APP/Z1510/X/20/3249821

1. The appeal is dismissed.

Appeal B: ref. APP/Z1510/W/20/3249829

2. The appeal is dismissed.

Preliminary matters

3. For the avoidance of doubt, I should explain that in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended - which relates to an application for a lawful development certificate (LDC) - the planning merits of the existing development are not relevant, and they are not therefore an issue for me to consider My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Background

4. The appeal site is the southern part of the back garden of no. 13 Meadowside, from which it is separated by a timber panel fence. Access is from Montgomery Mews, a recent built small housing development of detached and semi-detached bungalows built on a former Council owned garage site. There is a timber detached garage just inside the appeal site entrance gates, and a dilapidated timber shed adjacent to it.

5. I note that a planning application for a similar development to that proposed in Appeal B was refused in 2018[1] for similar reasons to the case before me.

Appeal A

Reasons

6. The main issue for me to determine is whether the Council's decision to refuse the grant of a LDC was well-founded. In that regard the principal question is whether the use of the site for storage separate from 13 Meadowside has become immune from enforcement action as a result of the passage of time. In this case it must be shown that the claimed separate storage use has been continuous for a period of 10 or more years before the LDC application was made on 3 February 2020. In a case of this sort the burden of proof is upon the appellant to show that on the balance of probabilities this is the case.

7. Government guidance advises that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability[2].

8. I understand Mr Benson has owned 13 Meadowside since 1995. He lived there until 2002, when he divided the long back garden with a fence separating the part of the garden adjacent to the house from the southern part. He had built a detached garage at this southern end in 1997. After 2002 the house was let together with the smaller area of garden. The other part of the back garden was accessible from Arnhem Grove via the Council owned garage site, where the group of bungalows now are.

9. The appellant claims the detached garage was used to store classic cars and more recently vehicle parts and domestic paraphernalia, and that there has been infrequent storage of items outside the garage.

10. I saw that the site had recently been cleared of what had clearly been dense undergrowth, and there were several heaps of rubbish, and discarded fencing components. The timber panel fence separating the appeal site from the back garden of no. 13 appeared to have been recently renewed. The garage contained some used motor tyres, a low wooden cupboard and a chest of drawers, but little else.

11. Photographs of the inside of the garage put in by the appellant are undated and indistinct. They show little more than a chest of drawers, cupboard, a car tyre and a few cardboard or plastic boxes containing miscellaneous items that are difficult to identify. There is no evidence of classic car storage or any

[1] Decision notice ref. 18/01295/FUL, dated 13 September 2018.
[2] Planning Practice Guidance – 'Lawful Development Certificates' Paragraph 006 Reference ID: 17c-006-20140306.

significant storage of vehicle parts. Nor has anything significant been adduced to show for how long such storage took place, or whether it was continuous. While I accept the items shown are most probably personal belongings, such use for storage must as a matter of fact and degree be regarded as *de minimis*.

12. Looking at the claimed use of the whole site in the appellant's ownership in the light of the judgement in *Burdle*[3], the southern area of the garden has clearly been made physically and distinctly separate from the area close to the house by erection of the fence, and this was probably done more than 10 years before the LDC application. However, I do not consider any identifiably different main purpose of the southern area has been established – either in terms of an activity that has materially changed the character of the site to any significant degree, or the period for which such activity may have been continuous. It follows that the appeal site should not be regarded as a separate planning unit from the remainder of the appellant's site. Furthermore, I do not consider the use can be regarded as within Use Class B8 – that is, use for storage or as a distribution centre. This is classified in The Town and Country Planning (Use Classes) Order 1987, as amended, as a general industrial use – which to my mind does not imply storage of personal effects.

13. I appreciate the house may have been let to tenants since 2003. However, that does not help in establishing a material change of use of the appeal site itself.

14. Overall I find that the appellant's evidence of use is sparse and not sufficiently precise to show on the balance of probabilities that use of the appeal site has changed from a residential use incidental to use of the dwellinghouse to a separate use for storage. The appellant has not discharged the burden of proof, and I therefore consider the Council's decision was well-founded.

APPEAL B

Reasons

15. From all that I have seen and read I consider the main issue in this case to be the effect of the proposed development on the character and appearance of the appeal site and the area in its vicinity.

16. The bungalow would stand roughly centrally within the plot, both longitudinally and laterally, and occupy rather less than half its overall depth. As the Council say the private amenity space at the back of the bungalow would be about 77 square metres, which I understand would meet the standard for a 2-bedroom dwelling set out in the Essex Design Guide.

17. The prevalent form of housing in the vicinity is semi-detached two-storey houses with spacious back gardens along Meadowside, and a mixture of similar house and bungalows along Arnhem Grove, all set within broad streets with generous grass verges and green areas.

18. The bungalow on the appeal site would appear cramped between the houses on the two principal streets, and would in particular reduce the back garden of no. 13 to a degree that would be highly incongruous in comparison with dwellings in the surroundings. The back garden of no. 13 may well be slightly

[3] *Burdle & Williams v SSE and New Forest RDC* [1972] 1 WLR 1207.

larger than the Essex Design Guide standard, but that does not justify the cramped setting for that house or for the proposed bungalow.

19. I have come to the conclusion in Appeal A that the appeal site has not become a separate planning unit. As a result the proposed bungalow site would sub-divide the site of no. 13, and there would be two dwellings each on a cramped plot out of place in terms of the character of the area.

20. The appellant has sought to make a comparison with the recently built bungalows on the former garage site. However, these have open frontages and are well spaced from the backs of houses on Meadowside.

21. I appreciate that for decision making purposes the Council do not have an up-to-date local plan, and that the housing land supply position for the 2020-2025 period is 4.52 years assessed according to the government's standard methodology. In such a situation National Planning Policy Framework (NPPF) paragraph 11 – the 'tilted balance' - comes into play.

22. National policy of particular relevance in this case relates to quality of design. In that regard NPPF Paragraph 127 advises that development should add to the overall quality of its area, have a visually attractive layout, and be sympathetic to local character – including the surrounding built environment. In my opinion the design of this proposal would result in significant harm to the overall quality of this area of Braintree as a result if its layout, and to the character of the locality. I consider these factors significantly and demonstrably outweigh the benefit of providing one additional dwelling.

23. Overall, I consider the proposed bungalow would cause significant harm to the character and appearance of the appeal site and the area in the vicinity. The development would not accord with the development plan, in particular with Policy CS9 of the Council's Local Development Framework Core Strategy and policies RLP 3, RLP 9 and RLP 90 of the Braintree District Local Plan Review. These include aims to control the design of development within town development boundaries, protect the character of settlements and ensure it is in harmony with existing surrounding development; control the design and layout of development so that it is in character with its site and surroundings, and to achieve high standards of layout and design, reflecting local distinctiveness.

Conclusions

24. For the reasons given above I conclude on Appeal A that the Council's refusal to grant a certificate of lawful use or development in respect of the existing use of the site for storage separate from 13 Meadowside on land to the rear of 13 Meadowside, Braintree CM7 5UG was well-founded and that appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

25. Furthermore, again for the reasons given above, I conclude that Appeal B should be dismissed.

Stephen Brown

INSPECTOR