The Planning Inspectorate

Appeal Decisions

Site visit made on 13 April 2021

by Paul Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 30 April 2021

Appeal A: APP/Z1510/W/19/3242033
Appeal B: APP/Z1510/W/20/3249936
3 Foley Paddocks, High Garrett, Braintree, Essex CM7 5NU

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeals are made by Mr & Mrs Sean and Jan Kenny against the decisions of Braintree District Council.
- The applications Ref 19/00851/FUL, dated 13 May 2019 and Ref: 19/02319/FUL, dated 23 December 2019, were refused by notices dated respectively 18 July 2019 and 10 March 2020.
- The developments proposed are (A) erection of detached part single storey/part storey and a half dwelling and garage and (B) erection of detached part single storey/part two storey dwelling and detached garage, revised from previously submitted and refused planning permission (Ref:19/00851/FUL).

Decisions

1. The appeals are allowed and planning permission is granted for (A) erection of detached part single storey/part storey and a half dwelling and garage and (B) erection of detached part single storey/part two storey dwelling and detached garage, revised from previously submitted and refused planning permission (Ref:19/00851/FUL) at 3 Foley Paddocks, High Garrett, Braintree, Essex CM7 5NU in accordance with the terms of the applications, Ref 19/00851/FUL, dated 13 May 2019 and Ref: 19/02319/FUL, dated 23 December 2019 and the plans submitted with them, subject to the conditions in the attached schedules.

Main Issues

2. The main issues in both appeals are:

   - Whether the proposed developments would be acceptable, having regard to the countryside location and the economic, social and environmental dimensions of sustainable development as defined in the National Planning Policy Framework (NPPF);

   - The effect on the character and appearance of the area and whether the design of the proposed houses would be acceptable; and

   - The effect of the proposed dwellings on the heritage significance of the adjacent Foley House, which is a non-designated heritage asset.

Reasons

Policy background

3. The development plan includes the Local Development Framework Core Strategy (CS) adopted in September 2011 and the Braintree District Local Plan Review (LP), which was adopted in July 2005. Both of these pre-date the National Planning Policy Framework (NPPF) of 2012 and its revision in 2019. An emerging replacement Local Plan 2013-2033 (eLP) is in course of preparation and reached examination stage, but a planned garden community close to Braintree was found to be marginal in terms of financial viability and thus undeliverable. As a consequence, a new spatial strategy is being developed and as part of that process, the Shared Strategic Section 1 Local Plan (SSS1LP) was adopted by Braintree, Tendring and Colchester Councils on 22 February 2021 which replaces a number of CS policies. Insofar as relevant to this case, policies CS9 and SP6 in the eLP are superseded, in part, by policy SP 7 in the SSS1LP: *Place-Shaping Principles*. The SSS1LP attracts full weight but other emerging policies can only attract limited weight at this time due to the current stage of the eLP.

4. Policy CS5 of the CS seeks to strictly control development outside settlement boundaries to uses appropriate to the countryside in order to protect landscape character, biodiversity and the countryside in principle. Policy CS7 seeks to provide future development in accessible locations that reduce the need to travel. Policy CS8 seeks to protect the natural environment, advising amongst other things that development must have regard to the character of the landscape. The SSS1LP encourages the highest possible standards of design whilst protecting the historic environment.

5. Policy RLP 2 of the LP restricts development to within towns and village envelopes unless it is for affordable housing. According to RLP 10, the density of development should be related to location of the site in relation to public transport and surrounding density and character. RLP 80 says development should not be detrimental to the distinctive landscape features and habitats of the area. RLP 90 sets out criteria to be met in terms of scale, density, design and layout.

6. The appellant refers to policy RLP 16 of the LP which advises that '*Where there is a defined nucleus of at least ten dwellings and where it would not be detrimental to the character of the surroundings, exceptions may be made to policies RLP 2 and 12 for the filling of a gap, for a single dwelling, between existing dwellings, in hamlets and small groups of dwellings…'.* In this case, the site does not comprise a 'gap' in the sense of a perceivable 'infill' space in a ribbon or row of houses. Moreover, the site is large enough to accommodate more than a single dwelling.

Sustainability aspects

7. The site lies outside the designated village of Higher and Lower Garrett in an area designated as countryside. It is not allocated for development in the eLP. Facilities in the area are limited. There is a reasonable bus service which could be used to access Braintree and Halstead and this is a factor in favour. A footway extends southwards towards Braintree but I saw that the A131 is very busy and this would not be an attractive option for many. For the same reason, cycling may well be perceived as too dangerous. For many journeys, occupiers of the proposed dwelling would have to use a motor vehicle. As such the proposed developments would conflict with the sustainable development aims of CS policies CS5 and CS7 and policy RLP 2 of the LP, as well as LPP 1 of the

eLP and SSS1LP policies. Having said that, the site is not isolated due to the extent of existing development nearby along the A131 and in Higher Garrett. It is relevant that the Council acknowledged in pre-application discussions that although many facilities are not within easy walking distance, the bus service and proximity to some services means that a single dwelling house would be considered sustainable in this location.

Character and appearance

8. Policy LPP1 of the eLP and the NPPF recognise the intrinsic character and beauty of the countryside. However, the site is surrounded on three sides by other buildings including Foley House (currently the subject of extensive refurbishment works) and other buildings originally associated with Foley House and now used for residential purposes including 1, 2 and 3 Foley Paddocks. Foley House is itself is flanked by residential development in Higher Garrett and along the A131 to the south. The site lies close to a distinct group of buildings associated with Foley House. Largely continuous ribbon development extends northwards from Braintree mainly on the east side of the A131. The development would not interrupt views through to open countryside from the A131 or noticeably compromise the perception of gaps in development on the west side of the road.

9. In terms of design, the scheme subject of appeal A would be architecturally interesting in terms of massing with a low eaves line and a varied ridge profile. The brick and stained timber walls and clay roof tiles would be sympathetic to a rural location and would be subordinate to the nearby historic building. Some elements would be designed to reflect the detailing of Foley House, which would help to ensure that the design blends in with local character. There are some challenges in terms of construction detailing at junctions, especially on the roof, which could lead to an excess of leadwork and difficulties of maintenance, but these can be resolved by the submission of details. I do not find that the design falls short of the high level of quality desired by policy.

10. With regard to the scheme subject of appeal B, this is different in orientation, presenting a smaller front elevation to the east. It also has a less complex roof and is simpler in plan form. It also would be subservient to the dominant bulk of Foley House. There is nothing to indicate that the scheme would conflict with the requirements of policy. I conclude on this issue that both proposals would comply with the design quality requirements of CS policy CS8, LP policies RLP 10, RLP 80 and RLP 90, policies LPP 55 and LPP 71 of the eLP and SSS1LP policies.

Heritage aspects

11. Foley House is a substantial 3 storey detached house built by Samuel Augustine Courtauld in 1885 as a family home. Its heritage significance stems from a number of external and internal architectural features typical of the late Victorian period including part-timbered gable ends, bay windows and a central timber staircase. Other smaller buildings including a former school/chapel nearby, built of the same materials, add to the architectural and historic interest of the house and its setting. The main building is now being redeveloped involving an increase in floor area and bulk. A brick wall along the western boundary of the appeal site is a physical link to other properties on the estate and hints at the previous domestic use of the house and has some heritage interest. Taking into account the changes which have occurred in the

past and which are ongoing, neither of the proposed dwellings would be close enough or so distracting as to prevent appreciation of the heritage significance of Foley House and its setting. Details of the boundary treatment and the roof and walls are important as the dwellings should not unduly dominate or distract and would be seen from Foley House. These aspects can be subject to conditions.

12. I do not find a conflict with the heritage protection objectives of the relevant parts of CS9, SSS1LP policy SP 7, LP policies, eLP policies or advice in the NPPF. Policy LPP 56 of the eLP mentioned to in the reasons for refusal concerns conservation areas, which do not apply in this case.

Other matters

13. I have taken account of all the other matters raised including the potential for an effect on the privacy of nearby occupiers but do not find the appeal proposals would cause an unacceptable degree of overlooking.

Conclusions

14. The developments would lie outside any settlement area and there is a conflict with development plan policies which seek to limit new development in the countryside and protect its character. However the site is not remote or isolated and there are some facilities nearby. The Council has indicated that it cannot demonstrate a five year supply of deliverable housing sites as required by paragraph 73 of the NPPF. The most recent appeal decisions provided to me indicate that this has been the position for around 2 years. In these circumstances, paragraph 11 of the NPPF states that planning 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 NPPF taken as a whole. The conflict with development plan policies which seek to reduce the need to travel and respect the intrinsic character and beauty of the countryside attract full weight as these aims are consistent with the aims of the NPPF. However there is a reasonable bus service and some local facilities and the effect on the character of the countryside would be very limited. With appropriate conditions, there would be no harm to the heritage significance of the locally listed building.

15. The most important policies for the determination of these appeals are policies RLP 2, CS5 and CS7. Policies RLP 2 and CS5 pre-date and are not consistent with the NPPF and therefore less weight can be attributed to the conflict with these policies. There would be economic and social benefits from the proposed developments in terms of support for local services and construction activity. The provision of a single dwelling in terms of housing supply would be a small contribution but nevertheless carries significant weight. On balance, the limited harm that would result from these proposals would not significantly and demonstrably outweigh the benefits, assessed against the policies of the NPPF as a whole.

Conditions

16. Apart from the usual time limitation, the need to construct in accordance with the approved drawings and the need for approval of external materials, conditions are necessary to control boundary treatment, in light of the proximity of Foley House and the low fences that predominate in the immediate

area and assist in appreciating its setting. Details of roof junctions are required in connection with the appearance of the dwelling subject of appeal A. A restriction on working hours is put in place in view of the proximity of residential occupiers. A restriction on permitted development rights is necessary in view of the proximity of Foley House and the need for the schemes to remain subordinate in form.

17. For all the above reasons, the appeals should be allowed.

Paul Jackson

INSPECTOR

Schedule of conditions (Appeal A)

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) Except where altered by complying with other conditions, the development hereby approved shall be carried out in accordance with the following approved plans: NV.2023.01, 02, 03, 04, 05.

3) No development shall take place until details of the junctions between the roof planes, flashings and guttering to be used on the proposed dwelling at a scale of not less than 1:10, have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.

4) Prior to occupation of the new dwelling, details of the proposed boundary treatment including any gates shall be submitted to and approved in writing by the local planning authority. The boundary treatment shall be installed in accordance with the approved details and retained as such.

5) No development shall take place until details of the materials to be used for the external finishes of the proposed dwelling have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.

6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending, revoking and re-enacting that Order) no enlargement of the dwelling-house, as permitted by Classes A and B of Part 1 of Schedule 2 of that Order shall be carried out.

7) No site clearance or construction work shall take place including starting of machinery, outside the following times:- Monday to Friday 0800 hours - 1800 hours; Saturday 0800 hours - 1300 hours; Sundays, Public and Bank Holidays - no work.

Schedule of conditions (Appeal B)

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: NV.2023.10B, 11B, 12B, 13B.

3) No development shall take place until details of the materials to be used for the external finishes of the proposed dwelling have been (contd)

submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.

4) Prior to occupation of the new dwelling, details of the proposed boundary treatment including any gates shall be submitted to and approved in writing by the local planning authority. The boundary treatment shall be installed in accordance with the approved details and retained as such.

5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending, revoking and re-enacting that Order) no enlargement of the dwelling-house, as permitted by Classes A and B of Part 1 of Schedule 2 of that Order shall be carried out.

6) No site clearance or construction work shall take place including starting of machinery, outside the following times:- Monday to Friday 0800 hours - 1800 hours; Saturday 0800 hours - 1300 hours; Sundays, Public and Bank Holidays - no work.