



Appeal Decision

Site visit made on 10 January 2022

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Appeal Ref: APP/Z1510/W/21/3275726

Land to rear of 27 Duggers Lane, Braintree, CM7 1BB

- 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 T Poulter against the decision of Braintree District Council.
 - The application Ref: 20/00478/FUL, dated 3 March 2020, was refused by notice dated 1 April 2021.
 - The development proposed is residential development of two three bedroom houses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An emerging Local Plan Section 2 (eLP) is moving towards the process of being examined. However, as the emerging policies are yet to be found sound and adopted, I therefore attach limited weight to its policies in my overall consideration of the appeal.
3. As part of the appeal, the appellant has submitted drawing number 21/2005/1, dated 13 March 2021, which is stated to demonstrate visibility splays of 43 metres. It is not clear to me that this drawing formed part of the application, or that interested people's views have been sought upon it. I therefore cannot be satisfied that no party would be prejudiced by my consideration of this drawing in the appeal. Consequently, I have determined the appeal on the basis of the scheme and the plans which were before the local planning authority when it made its decision.

Main Issues

4. The main issues are:-
 - i) the effect of the proposal on the character and appearance of the area with particular regard to the loss of green space;
 - ii) whether the proposal provides adequate living conditions for future occupiers of the proposed dwellings with particular regard to privacy;
 - iii) whether the appeal scheme would comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding; and
 - iv) the effect of the proposed development on highway safety.

Reasons

Character and appearance

5. The appeal site is an L-shaped area of garden land positioned to the rear of Nos 27 and 29 Duggers Lane. Dwellings along Duggers Lane are typically two-storey semi-detached dwellings with modest sized front gardens fronting the highway. Rear gardens are generous in length, with several plots extending to the edge of Mill Park Drive. By reason of the sloping topography of the land, the appeal site lies towards the bottom of the River Brain Valley in an area between two distinct and separate areas of residential development. Mill Park Drive is predominantly characterised by wide grass verges, blocks of dense woodland and open green spaces with residential development being positioned along its length to its far end. Overall, the area displays an attractive and verdant spacious character.
6. The appeal site occupies a highly prominent position adjacent to Mill Park Drive. As an undeveloped area of green open space, it supports an important landscape buffer providing separation and an important visual break between two urban residential areas. It makes a positive contribution to the spacious and sylvan setting of the area. This degree of spatial separation would be harmfully eroded as a consequence of the appeal scheme.
7. The proposal would introduce built development where there is presently none and the visual impact of the scheme would be substantial. The resultant loss of openness and a consequent intensification of built form would erode the open, spacious verdant character of Mill Park Drive and lead to a significant urbanisation of this area of land when viewed from the nearby highway and neighbouring properties.
8. Whilst there is no prevailing architectural type within the surrounding area, dwellings are predominantly of a modest scale and consist of a simple design. Albeit the individual scale of the proposed dwellings is not out of keeping with other properties within the locality, the cumulative effect of massing as a result of the proposed dwellings being so closely positioned to each other would serve to increase their prominence. I observed that dormer windows are not commonplace along Mill Park Drive and their inclusion together with excessive porch features would draw further attention to the proposed development which would be read as a dominant and incongruous addition to the streetscene. The content of the Essex Design Guide does not lead me to a different view.
9. Additional planting to the front boundary would do little to mitigate the effect of the development which would continue to remain highly visible within the streetscene through the access opening even once any additional planting had been given time to mature.
10. Accordingly, I consider that the appeal scheme would cause unacceptable harm to the character and appearance of the area. Thus, it would conflict with Policies RLP3, RLP9, RLP10, RLP80, RLP81 and RLP90 of the Braintree District Local Plan Review (2005)(LP) and Policy CS8 of the Braintree District Council Core Strategy (2011)(CS). Among other things, these policies require high quality development where it can take place without material detriment to the existing character of the area and successfully integrate into the local landscape. In addition, the proposal would conflict with eLP policies LPP1,

LPP37, LPP55, LPP70 and LPP71, although for the reasons explained above, the weight attributed to these policies is limited. It would conflict with the National Planning Policy Framework (the Framework) insofar as development should contribute to and enhance the natural and local environment.

11. The Council's reason for refusal cites a conflict with LP Policy RLP2 however, as the appeal site is located within the development boundary, I find no conflict with this policy. With regards to LP Policy RLP8, no specific conflict with this policy has been identified.
12. Policy SP1 of the Braintree District Local Plan Section 1 (2021)(LPS1) simply repeats the presumption in favour of sustainable development as set out in the Framework and as it determines the manner in which applications will be decided, I find no specific conflict. Policy SP6 concerns place shaping principles and the provision of infrastructure, services and facilities to serve the needs arising from a development and eLP Policy LPP70 refers to biodiversity. No specific breach of these policies have been referred to. In the absence of such, I do not find any conflict with these policies with regards to this main issue.

Living conditions

13. By reason of the site's topography, the appeal site sits well below the dwellings positioned along Duggers Lane and these properties would occupy an elevated position in relation to the proposed dwellings.
14. Despite the intervening distance between the existing and proposed rear windows of some 29 metres, taking the figure of the appellant which has not been disputed by the Council, and which would accord with the separation distances specified within the Essex Design Guide, the proposed dwellings would nonetheless be significantly overlooked by Nos 27 and 29 Duggers Lane.
15. Although window to window views would be at oblique angles, there would be clear and direct sightlines from windows within the neighbouring properties and their rear gardens across the patio area of Unit 2 and a significant portion of the proposed rear gardens of both Units 1 and 2. This would result in an unacceptable degree of overlooking thus impacting privacy and would make the outdoor space unpleasant for use by future occupiers.
16. The existing hedge and other soft landscaping along the rear boundary of 29 Duggers Lane would provide some limited screening. The provision of additional planting and the inclusion of a new boundary treatment in the form of a close boarded fence to delineate the rear boundary of No 27, which could be secured by an appropriately worded condition, would also provide some opportunity for screening.
17. However, the sloping nature of the land would limit the ability to provide any comprehensive screening and the proposed new planting would take some time to become established. Even once it has reached maturity, seasonal changes would affect the ability of foliage to provide year-round cover. Plants could easily be cut back, die or be removed. As such, I find the existing and new vegetation together with the proposed fencing would not overcome the harm that I have identified. The appeal scheme would materially compromise the living conditions of future occupiers.
18. Reference has been made to a nearby development at Mill Park Drive. However, I have little information relating to the particular circumstances of

this development and whether the circumstances are therefore comparable to the appeal proposal. As such, I consider a comparison to be of limited relevance in this instance. I have considered the appeal before me on its individual planning merits.

19. Whilst I accept that it is not uncommon to experience some overlooking within urban environments, the standard of living conditions that would result in this instance would fall well below an adequate standard.
20. The Council's reason for refusal makes reference to the existing landscape buffer playing an important role in promoting privacy and reducing overlooking views. However, to my mind, as an open area of garden curtilage at a lower level than the existing properties, the appeal site has a negligible role in providing privacy. In any event, no adverse harm has been identified with regards to the living conditions of neighbouring occupiers and as such I do not concur with the Council's view on this point. This does not alter my findings with regards to the living conditions of future occupiers.
21. Accordingly, I conclude that the proposed development fails to provide an adequate standard of living conditions for the future occupants of the proposed dwellings with regards to privacy. Thus, there would be conflict with LP Policy RLP3 and emerging policies LPP1, LPP37 and LPP55 of the eLP insofar as these policies require development not to cause undue or unacceptable impacts on amenities. There would also be conflict with the Framework insofar as it aims to create places with a high standard of amenity for future users.
22. The Council's reason for refusal on this matter also specifies LP Policies RLP2, RLP8, RLP9, RLP10, CS Policy CS8 and LPS1 Policies SP1 and SP6. However, as these policies are not primarily aimed at protecting the living conditions of future occupiers, I find no conflict with these policies in my determination of this main issue.

Flood risk

23. The appeal site is located within an area identified by the Environment Agency (EA) as Flood Zone 1 and Zone 2, which indicates that there is a low to medium probability of the site flooding. The Framework seeks to ensure that inappropriate development in areas at risk of flooding now, or in the future, should be avoided. It goes on to set strict tests to protect people and property from all sources of flooding and that where these tests are not met new development should not be allowed.
24. At footnote 55 of the Framework, it sets out when a developer will be required to provide a site-specific Flood Risk Assessment (FRA). This includes all proposals for new development (including minor development and change of use) in Flood Zones 2 and 3. The PPG explains what a FRA should establish including the risks of flooding from all sources, the potential to increase flooding elsewhere, measures to deal with these effects and risks, evidence to allow the application of the Sequential Test, if necessary and in relation to the Exception Test, if applicable. The application was not accompanied with an FRA and therefore there is little information regarding the matters outlined above.
25. Whilst the majority of the appeal site lies within Flood Zone 1, a portion of the site, namely the proposed access and parking areas would be sited within Flood Zone 2. Albeit the proposed dwellinghouses would be at a low probability of

flooding, the same cannot be said for the access and parking areas, which to my mind, are also important given that access and egress must be designed to be functional, including providing occupants with a safe route of access and egress in flood conditions. Consequently, I do not consider that the requirement for a FRA is diluted due to there being an absence of a dwellinghouse, or part of it, within Flood Zone 2.

26. My attention is drawn to the presence of residential developments nearby that are stated to be located within Flood Zone 2. However, there is little information before me regarding the circumstances of these developments including whether FRAs formed part of those applications. In any event, the mere presence of these residential developments does not justify the appeal proposal and the correct steps need to be undertaken so that an informed decision can be reached upon robust evidence. Reference is made to the '*Flood risk vulnerability and flood zone compatibility table (TP3)*' however, this table demonstrates when the Exception Test should be applied and does not negate the need to follow the requirements of local and national planning policy.
27. The appellant has suggested mitigation measures in the form of the Environment Agency's flood warning system. However, floods can occur quickly and with no warning. Therefore, I cannot be satisfied that there would be prior notification for all types of future flooding events and thus the appeal scheme fails to demonstrate the safe management of residual risks.
28. In the circumstances, and given the topography of the site, the presence of the nearby watercourse, the proximity of existing dwellings and the need to culvert the ditch between Mill Park Drive and the appeal site for access purposes, I consider that drainage should form a fundamental part of the design of the site and that it is not possible to conclude, in the absence of an FRA, that the proposal would not have an adverse effect on flood risk.
29. The comments of the EA are noted, however, their lack of objection stems from the proposal being perceived to have no impact upon their maintained flood defences. This does not absolve the need for a site-specific FRA which would fully assess the flood risk to and from the development site.
30. In conclusion, I attach significant weight to the importance of the consideration of flood risk as identified in the Framework. The absence of a site-specific FRA is contrary to CS Policy CS8 and eLP Policy LPP78 insofar as these policies seek to minimise exposure of people and property to the risks of flooding. In addition, it is contrary to the guidance provided within the Framework, the requirements of which are set out above.
31. Again, LP Policy SP1 is referred to within this reason for refusal however, for the reasons explained above, I find no direct conflict with this policy.

Highway safety

32. The Council's reason for refusal refer to the proposal being unacceptable in terms of '*highway safety, efficiency and accessibility*', however, little explanation is given. Nevertheless, I have had regard to the comments of the Highway Authority and my own observations at the site visit.
33. The proposed access to the appeal site would be taken from Mill Park Drive, a highway with a 30mph speed restriction, based upon the signage I observed nearby. It is located within a predominantly residential area and serves a

substantial housing development. At the time of my site visit, I saw there was some demand for on-street parking in the direction of the mini roundabout and the road was in frequent use with vehicles travelling in both directions. I appreciate that my site visit provided only a snapshot of highway conditions. However, there is nothing before me to suggest that what I saw was not typical.

34. Although the proposed access would be positioned at a right angle to the highway it would be positioned at a point where the road bends and where views of oncoming traffic would be partially obscured by the sharp bend in the road and the presence of a brick wall of the bridge. In the absence of any clear evidence that the requisite visibility splays from the point of the access can be provided, I cannot be satisfied that adequate visibility for vehicles to safely access and egress the site would be provided nor that the free flow of traffic would not be harmfully impeded.
35. Furthermore, on the basis of the evidence before me, it seems that part of the access and the land over which the visibility splays would be required over, appears to be land that is either outside of the appellant's control or the adopted highway. There is no evidence before me that any agreement has been reached with third party landowners to secure an arrangement for the use of the land for access nor for ongoing maintenance. Although this area is reasonably well maintained at present, areas covered by trees and vegetation that are neglected have the potential to impede views of vehicles emerging from the site and those travelling along Mill Park Drive. Thus, I find that the safety of the access could not be ensured for the lifetime of the development.
36. Overall, I consider that the proposal fails to demonstrate that the appeal scheme would provide satisfactory access and that highway safety would not be compromised as a result. There would be conflict with LP Policy RLP3, and emerging policy LPP1 of the eLP insofar as these policies require development to satisfy highway criteria. In addition, it would be contrary to the Framework which requires development to be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety.
37. Reference is also made to Policies DM1 and DM7 of the Development Management Policies as adopted as County Council Supplementary Guidance (2011). However, I have been provided with little information regarding this suggested conflict and it is not clear to me whether these policies form part of the development plan. As such, in the absence of any clear information, I attribute this matter no weight in my overall consideration of this main issue.

Planning Balance

38. It is common ground that the Council are presently unable to demonstrate a five-year supply of land for housing. In such circumstances, the Framework states that policies which are the most important for determining the application should not be considered up-to-date and paragraph 11 should therefore be applied.
39. The Council indicate a supply of 3.73 years which is to my mind a significant shortfall. Although the Framework refers to boosting significantly the supply of housing, the provision of two additional units would make only a negligible difference. When assessed against some of the core planning principles, the proposal would perform well in that it would be within the town boundary with

good access to services, facilities and public transport. In addition, it would make efficient use of under-utilised land.

40. In terms of its component dimensions there would be a small social benefit in providing two extra housing units. Economic advantages would arise from the construction and occupation of the dwellings. However, the harm to the character and appearance of the area, the inadequate standard of living conditions for future occupants and the harms arising as a consequence of highway safety and flood risk would be significant. Consequently, the environmental role of sustainable development would not be achieved.
41. When assessed against the policies in the Framework taken as a whole, the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits and the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by the material considerations including the Framework.

Other Matters

42. No adverse harm has been identified with regards to the living conditions of neighbouring occupiers nor the living conditions of future occupiers with regards to overshadowing or overbearing effect. In addition, the appeal scheme would provide the requisite number of parking spaces for a scheme of this size. However, the absence of harm is a neutral matter that weighs neither for nor against a proposal.
43. The appeal site is located within the zone of influence of the Blackwater Estuary SPA/Ramsar Site. The proximity of these European sites means that determination of the application should be undertaken with regard to the requirements of the Habitats Regulations 2017. Mitigation would be required in respect of the increased recreational disturbance on the integrity of habitats sites. The Council have adopted the Essex Recreation Avoidance Mitigation Strategy Supplementary Planning Document (SPD) which provides the process and mechanisms for securing the delivery of management and mitigation at the Protected Sites.
44. During the course of this appeal, the appellant asserts that a Section 111 financial contribution has been made to the Council. I have been provided with a receipt by the appellant, however, it is not clear to me whether this financial contribution relates to the development proposed at the appeal site nor whether it would adequately mitigate any harm to the SPA/Ramsar.
45. In any event, as the appeal is failing because of the harm which has been identified in relation to the other main issues, it is not necessary for me to come to a conclusion on the mitigation. The development is not going ahead and therefore any harm to the SPA/Ramsar would not occur. Therefore, I do not need to give any further consideration to this matter in this appeal.

Conclusion

46. For the reasons given above, I conclude that the appeal is dismissed.

E Brownless

INSPECTOR