



Appeal Decision

Site visit made on 8 November 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2022

Appeal Ref: APP/Z1510/W/22/3295454

Beechcombe, St-Peters-In-The-Field, Braintree CM7 9AR

- 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 & Mrs Corkerry against the decision of Braintree District Council.
 - The application Ref 21/01543/FUL, dated 11 May 2021, was refused by notice dated 13 January 2022.
 - The development proposed is described as proposed 1.5 storey dwelling with three bedrooms.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr & Mrs Corkerry against Braintree District Council. This application is the subject of a separate Decision.

Procedural Matters

3. Since the Council's decision was issued, the Braintree District Local Plan (2022) (the BDLP) has been adopted. It supersedes the policies of the Braintree District Local Plan Review (2005) and the Braintree District Local Development Framework Core Strategy (2011). This is reflected in my findings below. Both parties have had the opportunity to comment upon the implications of this for their respective cases through the appeal process.
4. The Council's reason for refusal alleges the development would fail to preserve the character and appearance of the Braintree and Bradford Street Conservation Area (the BBCA) contrary to section 72(1) of the Planning (Listed Buildings & Conservation Areas) Act 1990 (LBCAA). The appeal site boundary adjoins that of the BBCA, but the proposed operational development lies outside the BBCA.
5. Section 72(1) requires in the exercise, with respect to any buildings or other land in a conservation area, of any functions..., special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The appellant is of the view that the proposed development forms part of the setting of the BBCA. The Council has not subsequently disputed this. I have had regard to this in setting out the main issues below.

Main Issues

6. The main issues are:

- the effect of the proposed development upon the setting and significance of the Grade II Listed Church of St Peter;
- the effect of the proposed development upon the setting and significance of the BBCA; and,
- whether or not the proposed development would provide satisfactory living conditions for the future occupiers of the proposed dwelling with particular reference to daylight and sunlight.

Reasons

The Church of St. Peter

7. Section 66(1) of the LBCAA requires special regard is had to the desirability of preserving the setting of a listed building or any features of special architectural or historic interest which it possesses. Paragraph 199 of the National Planning Policy Framework (2021) (the Framework) requires when considering the impact upon the significance of a designated heritage asset, great weight should be given to the asset's conservation. Harm to the significance of a designated heritage asset requires clear and convincing justification (paragraph 200). Harm to the significance of a designated heritage asset can derive from development within its setting.
8. The Church of St. Peter (the Church) was designed by the Victorian architect J.T. Micklethwaite, and built in the late nineteenth century. It derives its special architectural and historic interest from its simplicity, partly due to not being completed to its intended design due to lack of funds, although it was richly fitted with fine woodwork and stained glass. It includes a variety of well-preserved windows including eastern and western 5-light windows with decorated tracery's, a 3-light window, clerestory quatrefoils, and a range of smaller windows.
9. The Church was once experienced in a much more open setting. However, much of the subsequent development now within its setting including residential properties and the Council offices, is set away from and retains space around the Church. While there are a number of buildings within its setting, it is still viewed and experienced as a prominent and high status building with relatively open and generally well vegetated immediate surrounds and setting. This aspect of its setting makes a significant positive contribution to its setting and significance.
10. Its position close to the eastern side elevation, mature landscape features and its relatively open and undeveloped nature, means the appeal site makes a positive contribution to the setting and significance of the Church. Its proximity to the church and an intersection of highways including a footpath means the appeal site is sensitively located. The spacious verdant surrounds and filtered visibility of the Church above and through mature vegetation, and its relationship with the appeal site, is appreciable from various vantage points and sections of St. Peter's-In-the-Field, St. Peter's Road and the Braintree and Bocking Public Gardens (the public gardens).

11. The appellant has conscientiously sought to address an Inspector's concerns of a previous development¹, through this significantly smaller dwelling, with a simpler design and reduced massing. The previous Inspector assessed the development before him in making a negative finding upon. In principle a dwelling upon the appeal site could take many manners of forms. The Inspector did not express a finding specifically in respect of whether the principle of a dwelling on the appeal site would be acceptable or not. Although it might be the Council's view, the Council's reasons for refusal do not refer to the principle of development, and this is not a scheme for outline planning permission. My assessment is upon this appeal scheme that is before me before me, upon its own merits and impacts, so the matter of principle, is not a determinative one.
12. The new dwelling would have a similar ridge height to the host property. I could see that the close proximity of the new dwelling to the front boundary would result in a marked urbanisation and enclosure of the Church setting. Its height, scale and proximity would still markedly harmfully diminish the positive contribution of the appeal site to the setting and significance of the Church. This would be highly apparent in proximity of it from St. Peter's-In-The-Field and St Peter's Road.
13. The new dwelling would not be over-dominant or compete with the Church. However, it's height and width would still significantly inhibit the visibility and appreciation of a significant proportion of the simple eastern elevation which frames the 5-light window referred to in the listing description, from a significant area of the public gardens to the east, in short and medium range views. It would clearly divide the relationship between the Church and public gardens. Therefore, it would harmfully affect the way in which the listed building is experienced, and conditions could not mitigate the harm.
14. The Council's first reason for refusal states the harm is exacerbated by previous development in the curtilage of the former vicarage. I have had regard to it insofar as it contributes to the current setting. As they pre-date this proposal, I do not find the existing dwellings exacerbate the harm. As significant established dwellings between the appeal site and vicarage, I do not find harm to significance of the original vicarage.
15. However, for the reasons set out above the proposed development would be harmful to the setting and significance of the Church of St. Peter. This harm would be limited, and it would be less than substantial harm. However, it would not preserve its setting, in conflict with the aims of the LBCAA. It would also conflict Policy SP7 of the Braintree District Section 1 Local Plan (2021) (the S1LP) and Policy LPP57 of the BDLP insofar as they aim to preserve and enhance the setting of heritage assets.

The BBCA

16. I have noted the conclusions of the Inspector for the previous appeal, however, I am not bound by them. There is no operational development proposed within the BBCA boundary. Therefore, I do not find harm under section 72(1) of the LBCAA. However, the development is within the setting of the BBCA.

¹ Appeal decision Ref. APP/Z1510/W/16/3147581

17. The BBCA integrates historic thoroughfares and spaces within and to the north of the town centre. It derives its significance from the generally well-preserved historic and period buildings of differing styles and ages, on and rear of historic thoroughfares, and mature landscape features front and rear of buildings and thoroughfares. The part of the BBCA within the vicinity of the appeal site primarily derives its significance from the layout, mature vegetation and open space of the public gardens which provides a formal open green space close to the town centre. They are of historical importance, due to their association with the Courtauld textile manufacturing family. They were initially laid out in the nineteenth century and are contemporary with and have an established historic relationship with the Church.
18. The setting of this part of the BBCA contributes to its significance as it provides a backdrop of period and more modern buildings in a layout that is generally sympathetic to the BBCA and surrounding historic buildings, including from its mature vegetation, spacings and set back from the boundary. This allows intervisibility in a landscaped setting between the Church and the public gardens, which is a relationship that has endured for much of their history. The appeal site comprises a small but important positive component of the setting that contributes to the significance of the BBCA.
19. From much of the park and particularly longer views, mature trees mean the new dwelling may not be visible. However, in short and medium range views at various points from the north and east, the dwelling would be visible in close proximity to the boundary, diminishing its open setting, and inhibiting the intervisibility and historical relationship between the two assets. From the south and west, particularly parts of St Peter's Road, there are views towards the public gardens perceptible over the appeal site from the mature trees and its undeveloped nature. Therefore, the proposed development would harmfully change views into and out of the BBCA, interrupting the continuity and relationship between heritage assets. While visible from only a small part of the BBCA, the development would harmfully affect the setting and significance of the BBCA. Conditions could not mitigate the harm.
20. For the reasons set out above, the proposed development would harmfully affect the setting and significance of the BBCA. This would be less than substantial harm. However, it would conflict with the aims of Policy SP7 of the S1LP and Policies LPP53 and LPP57 of the BDLP insofar as they aim to preserve and enhance the immediate settings of heritage assets.

Living conditions

21. Outdoor garden space would be divided between the driveway and adjacent small grassed area to the north and east of the dwelling, and a larger private space south of it. At the time of the tree survey² the spaces included a variety of size, age and species of trees. The spaces are also lined by a mature hedgerow to its west and an approximately 2m high closed boarded fence to the east beyond which are mature trees of the public gardens.
22. The trees to the east within and outside the appeal site form a sizeable collective canopy. Particularly when the deciduous trees are in leaf, they will significantly inhibit light from an easterly and upward direction. However, as a consequence of recent felling of T1 and H3 (mature *Leylandii* trees) I could see

² Arboricultural Impact Assessment by Skilled Ecology Consultancy Ltd (10 May 2021).

there was a good degree of open south and western aspect serving the southern main outdoor space. The appellant's Overshadowing Assessment³ demonstrates that over 85% of the southern garden will receive at least 2 hours of direct sunlight on 21 March, well above the BRE minimum requirement of 50% of the garden area. It would be over 93% on 21 June and over 46% on 21 December. This is on the assumption that the trees are completely opaque, although there is likely to be some dappled sunlight at times, so in practice there is likely to be more sunlight and daylight. Therefore, the outside space would provide satisfactory living conditions.

23. While of some value to the future occupiers, as a driveway and small lawned area, the northern space would not form the primary outdoor space for the enjoyment of the occupiers. For this reason, I satisfied that of itself the limited amount of daylight and sunlight would not result in unsatisfactory living conditions for the future occupiers.
24. Based upon what I saw and the evidence before me, even if the trees grow to a markedly greater stature in the future there would be more than sufficient sunlight and daylight serving the southern garden area, to provide good quality living conditions for the future occupiers. Therefore, it is not likely there would be undue pressure to harmfully reduce or remove valuable surrounding nearby trees, with specific reference daylight and shading of the outdoor spaces.
25. For the reasons set out above the development would provide satisfactory living conditions for the future occupiers of the dwelling with particular reference to daylight and sunlight to outdoor space. In this specific regard it would not conflict with Policies LPP52, LPP53 and LPP65 of the BDLP. Amongst other things, these aim to ensure that development is well designed so it does not result in unsatisfactory living conditions, preserves and enhances the character and appearance of Conservation Areas and their settings, and seeks to avoid the loss of trees that make a significant positive contribution to their surrounds. It would also not conflict with paragraph 130 of the Framework, which has similar objectives. I do not find the proposal conflicts with the guidance in respect of sunshine on page 76 in the Essex Design Guide (2005).

Other Matters

26. The appeal site is within the Zone of Influence of the Blackwater Estuary Special Protection Area/Ramsar Site (the SPA) and the Essex Estuaries Special Area of Conservation (the SAC). The appellant made a payment during the determination of the application as a contribution to mitigating the effects of the new dwelling upon recreational disturbance, in accordance with the Essex Coast Recreational Disturbance Avoidance & Mitigation Strategy (2020). It has not been put to me the contribution would have any benefits weighing in favour of the scheme. Therefore, in-light of my findings on the main issues above, it is not necessary to look at this matter in detail.
27. The appellant is dissatisfied at the Council's handling of the application. In particular reference is made to pre-application advice, during determination correspondence and opposing views from the Council's historic building advisers. I have carefully considered all the evidence before me and the appellant's analysis of them. While I have noted the appellant's concerns, pre-application advice, technical consultee advice, and correspondence with officers

³ By EEABS dated 18 March 2022.

of the Council are not formal a decision of the Council. I have had regard to all the evidence before me assessing the proposal upon its own merits and impacts.

Heritage Balance

28. The proposal would result in less than substantial harm to the setting and significance of a Grade II Listed Building and the BBCA. Paragraph 202 of the Framework states where a development would lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits. However, great weight should be given to an asset's conservation, and less than substantial harm should not be equated with a less than substantial planning objection.
29. There would be a modest economic benefit during construction, and once complete a small on-going spend in the local economy and support to local services and facilities. The New Homes Bonus would be a small economic benefit. I am informed the Council does not have a Community Infrastructure Levy so there could be no public benefit from this. The Council confirms Council Tax payments cover the costs of servicing the dwelling. I see no substantive evidence that persuades me otherwise, so it would not be a public benefit, but a neutral matter. The economic benefits that are public benefits attract limited weight in favour of the scheme.
30. The Council confirms it achieved a Housing Delivery Test measurement of 125% and can demonstrate a Housing Land Supply of 5.1 years. However, even if it could not, and need was acute, the provision of this single dwelling would be a small contribution to supply and a small benefit. I have noted the findings of the Preliminary Ecological Appraisal and benefits that could be secured by suitably worded conditions. These include measures such as bird and bat habitat boxes, native wildlife attracting planting, hedgerow planting and fruit trees, and removal of invasive species. These are a public benefit that attract limited weight in favour of the scheme.
31. The full specifications of energy efficient construction measures, the heat pump and electric charging point are not set out. There is no demonstration that these would off-set the energy requirements of the new dwelling. However, even if they did there is nothing of substance to suggest they would result in anything other than a small net benefit overall, attracting a small amount of weight. The provision of the pedestrian gate, which appears to have formed part of the original boundary between the site or vicarage and the church is a heritage gain. This is clearly positive, however, this is a small gain to the setting of the BBCA and the church. This attracts limited weight and does not off-set the harmful effects of the development.
32. Compliance with policies such as those in respect of the living conditions of the future occupiers and arboriculture are a neutral matter in the planning balance. Were I to agree the proposal is compliant, or could be made compliant by the imposition of suitably worded planning conditions, with policies in respect of matters such as accessibility, highway access and safety, parking, archaeology, design and appearance including having regard to the wider area, living conditions of neighbouring occupiers, construction effects, and the effects upon the SPA and SAC, these would also be neutral matters.

33. Overall, the public benefits constitute a limited public benefit that attracts limited weight. Consequently, when giving great importance and weight to the special regard I must have to the desirability of preserving the setting of the Church of St Peter and the BBCA, I find that the harm that would arise from the appeal scheme would not be outweighed by its cumulative public benefits. Accordingly, there would be a conflict with paragraph 202 of the Framework as the harm to designated heritage assets would not have a clear and convincing justification. This attracts great weight.

Planning Balance & Conclusion

34. The proposed development would result in harmful effects to the setting and significance of a Grade II Listed Building and the BBCA. This attracts great weight. The policy compliance and the cumulative benefits in favour of the scheme attract limited weight. Therefore, the harm from the development significantly outweighs the cumulative benefits of the development.
35. For the reasons set out above, the proposed development would be contrary to the development plan and the National Planning Policy Framework taken as a whole, and section 66(1) of the LBCAA. There are no material considerations advanced that indicate the decision should be made other than in accordance with the development plan or the Framework. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR