



Appeal Decision

Site visit made on 20 December 2022

by John D Allan BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Appeal Ref: APP/Z1510/D/22/3311344

126 Witham Road, Black Notley, Braintree, Essex CM77 8LP

- 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 Mrs Anne Sutton against the decision of Braintree District Council.
 - The application Ref 22/01981/HH, dated 26 July 2022, was refused by notice dated 6 October 2022.
 - The development proposed is the construction of a dropped kerb and driveway to property.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposal on the character and appearance of the area, and upon highway safety.

Reasons

3. The appeal property is one of eight (Nos 114–128 even) that all sit on the west side of Witham Road and that are deeply recessed behind the highway's edge on higher ground and with a sloping grass verge in-between. There are two pavements to this side of the road along this stretch. The upper pavement separates the top of the grass verge with the front boundaries of these properties. The lower pavement separates the bottom of the grass verge with the kerbside. The proposal is to lower the kerb at the roadside to create a driveway for a car to park on the frontage of the appeal property. This would involve creating a vehicle crossing over the grass verge and both pavements, and breaking through a post and wire fence which runs along the top edge of the verge.

Character and Appearance

4. There are grass verges to both sides of Witham Road in the proximity of the appeal site that are regularly punctuated with hard surface crossovers leading to on-site parking for many properties. However, the verge in front of Nos 114-128 stands out as unique. Unlike other stretches of verge, it is a sloping bank populated with trees and, apart from a footpath that traverses the slope at one end, it is unbroken by any incursions leading to the properties that front onto it. Although I saw some evidence of tyre tracks and vehicles parking on

some lower parts of the bank, for the most part the verge in front of the appeal property appeared as a well-maintained and expansive landscaped feature that was prominent within the street scene and with significant visual appeal.

5. The appeal submissions indicate that the surface crossing over the verge would be constructed with a heavy-duty polythene mesh. The specifications provided with the appeal show that grass would grow through the apertures of the mesh and intertwine with it.
6. I recognise that the proposed surface treatment would be likely to ultimately appear as a discreet intervention across the grass bank after its installation and after a further period of time to allow for the grass to grow. A more traditional hard surface would be an unacceptable visual incursion. Therefore, a planning condition requiring installation and maintenance of the proposed surface in perpetuity would be necessary in order to safeguard the visual amenity of the area. However, I am mindful that the verge falls outside of the appellant's ownership and that such works of installation and maintenance would be dependent upon a third party. Therefore, such a condition would be unreasonable to impose as it would be unenforceable. In these circumstances, an acceptable level of maintenance could not reasonably be secured and I could not be certain therefore that use of the slope by vehicles accessing the proposed parking space would not result in damage to the bank that would be visually harmful to the character and appearance of the street scene.
7. Furthermore, once any hard surface was installed, it would have the potential to enable a vehicle, or vehicles, to park upon it in tandem formation. The presence of any parked vehicle would be a further intrusion that would harm the visual appeal of the bank.
8. Overall, whilst I acknowledge the appellant's efforts in putting forward a proposal that would attempt to respect the local distinctiveness of the area, I am not persuaded that this would be successful for the reasons I have outlined. There would therefore be conflict with part b of Policy LPP36 of the Braintree District Local Plan 2013-2033 (2022) (BDLP) as far as it requires development involving alterations to residential properties to be compatible with the character of an area. The failure of the proposed development to display a high standard of design and layout means that there would also be conflict with BDLP Policy LPP47.

Highway Safety

9. The plans which were submitted with the planning application show that the depth of the frontage at No 126 measures 4.2m. With a width of 10.9m there is space to enable a vehicle to park, albeit not necessarily perpendicular to the road, in an area that would satisfy the Essex County Council Parking Standard's 2009 (ECCPS) minimum dimensions of 5.5m x 2.9m. The Council argues however that the space available would not enable a vehicle to turn and thereby enter and exit the site in forward gear. The appellant disputes this and argues that there would be space for a small car to turn.
10. From my own observations it is clear that anything other than a small vehicle using the proposed parking space would be likely to drive forwards, up the slope of the verge, and would then need to reverse back down in order to re-enter the highway. Whilst the appellant may currently own a small car, there would be no means of controlling the size of vehicle that could use the parking

space within the curtilage of the property. Furthermore, any second vehicle using the access to park in tandem would need to reverse onto the highway.

11. The gradient of the grass verge is steep and I have no doubt that control of a reversing car on this slope over a significant distance and onto a reasonably busy road would be a challenging manoeuvre. Whilst the movement of vehicles may not be too frequent, with the access serving only one dwelling, the manoeuvre would be potentially dangerous on the highway with the risk of conflict between a vehicle leaving the appeal site and those approaching, including cyclists and pedestrians using the lower footpath.
12. Although there may not be any obstructions to visibility at the point where the access would join the highway, due to the backward motion of the vehicle and the gradient of the land, in my assessment it could be difficult to maintain adequate control of the car. Although I cannot find any specific conflict with the ECCPS, and thereby BDLP Policy LPP43 or Policy DM8 of the Essex County Council's Development Management Policies 2011 (ECCDMP), the failure to avoid a potentially detrimental impact to highway safety means that there would be conflict with ECCDMP Policy DM1. There would also be conflict with BDLP Policy LPP42 as far as it seeks to ensure development makes safe provision for pedestrians and cyclists.

Other Matters

13. The appellant has pointed out that there are no accident records in the locality relating to vehicles using dropped kerbs. Regardless, this does not indicate that the appeal proposal, which differs in context to other local residential points of access, would be inherently safe.
14. I have carefully considered the appellant's circumstances and I understand that a parking space within the curtilage of the property would be of significant personal benefit. However, when weighed in the balance, the personal gains would not outweigh the harms that I have identified.

Conclusions

15. For the reasons given, I find the proposal would be harmful to the character and appearance of the area, and to highway safety. In addition to the conflicts I have identified with development plan policies, there would also be conflict with the National Planning Policy Framework's objectives for achieving well-designed places and for promoting sustainable transport. Accordingly, and having regard to all other matters raised, the appeal is dismissed.

John D Allan

INSPECTOR