



Appeal Decisions

Site visit made on 21 February 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2023

Appeal A Ref: APP/Z1510/C/21/3279977

69 Halstead Road, Gosfield, Essex CO9 1PD

- Appeal A is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Hughie McGinley against an enforcement notice issued by Braintree District Council.
 - The notice, numbered 20/00302/TRE2, was issued on 1 July 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the carrying out of operational development consisting of an engineering operation to approximately 1660 square metres of land involving:
 - (a) The removal of a grassed area along with a substantial amount of topsoil
 - (b) The laying of an underground drainage system and water supply pipework
 - (c) The preparation for a hardstanding by importing, laying and levelling of a substantial amount of ballast
 - The requirements of the notice are to:
 - a) Remove all ballast from the land in the area outlined in blue on the attached plan
 - b) Remove from the land the underground drainage system and water supply pipework
 - c) Remove from the land all waste materials from the actions at (a) and (b)
 - d) Upon completion of the work required by steps (a), (b) and (c) and in the area outlined in blue, spread topsoil to a minimum depth of 10cm and level off
 - e) Upon completion of (a), (b), (c) and (d) return the area as outlined in blue to grass by laying turf
 - The period for compliance with the requirements is: 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/Z1510/W/21/3280189

69 Halstead Road, Gosfield CO9 1PG

- Appeal B 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 H McGinley against the decision of Braintree District Council.
 - The application Ref 21/00616/FUL, dated 22 February 2021, was refused by notice dated 1 July 2021.
 - The development proposed is a replacement two storey dwelling & cartlodge.
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Decisions:

Appeal A

1. The enforcement notice is quashed.

Appeal B

2. The appeal is allowed and planning permission is granted for a two storey dwelling and cartlodge at 69 Halstead Road, Gosfield CO9 1PG in accordance with the terms of the application, Ref 21/00616/FUL, dated 22 February 2021, and the plans submitted with it, subject to the conditions set out in Appendix 1 attached to this decision letter.

Appeal A: Matters concerning the notice

3. A notice should be drafted so as to tell the recipient fairly, what he has done wrong and what he must do to remedy it. The appellant states that the Council has failed to identify the precise location of the drainage and water pipework, including how it is expedient to enforce in light of the material public harm caused. While any challenge as to whether it was expedient for the Council to issue the enforcement notice should have been pursued by way of judicial review, I have a duty to try and get the notice in order, if I can.
4. The enforcement notice identifies the land as shown edged red on the attached plan. The land includes the dwelling and surrounding land. A smaller area is identified in blue on the plan, located to the rear of the dwelling. Some requirements refer specifically to the land outlined in blue, whereas requirement b) which relates to the removal of 'the underground drainage system and water supply pipework' does not and therefore relates to the entirety of the site.
5. A modern dwelling is highly likely to have water supply pipework which provides the property with fresh water. It is also highly likely to have some sort of drainage system to deal with foul water. It is not clear from the four corners of the notice which drainage system or pipework the enforcement notice is seeking to attack and from my inspection of the site, it seems likely that pipework has been laid outside the blue area identified on the plan. As a consequence, it is not clear whether it would be sufficient to limit the requirements to the area outlined in blue.
6. It is not clear from the notice what the extent of the works it is that the Council would like to see removed is. Leaving the allegation and requirement as it stands would result in the appellant needing to remove all water and drainage pipework from the site, which is not reasonable given the residential use of the site. I have considered whether it would be possible to delete reference to the drainage system and water supply pipework from the allegation, however, the requirements are linked and so removal of the allegation would affect the appellant's ability to restore the site. This would cause the Council injustice.
7. The High Court has issued an Order in respect of the appeal site, which sets out a number of undertakings that the Defendants are required to obey, including a series of steps which reflect the requirements set out in the enforcement notice. However, while I note the requirements contained on the Order, I am not bound by their inclusion.
8. The breach of planning control is generally stated and so I do not consider the notice to be a nullity. However, for the reasons given above, I conclude that the notice is invalid beyond correction, and should be quashed due to uncertainty.

Appeal A Conclusion

9. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.

10. In these circumstances, the appeal on the grounds set out in section 174(2)(c) and (g) of the 1990 Act as amended do not fall to be considered.

Appeal B

Preliminary Matters

11. The Council adopted the Braintree District Local Plan 2013 – 2033 (the BDLP)¹ on 25 July 2022 which supersedes the Braintree District Local Plan Review (2005) and the Braintree District Local Development Framework Core Strategy (2011). The Council has identified those policies it considers of relevance to the appeals and the appellant has had the opportunity to comment on those policies through the appeal process.

Main Issue

12. The main issue of the appeal is the effect of the appeal scheme on the character and appearance of the area.

Reasons

13. The appeal site comprises a modest bungalow set in a substantial plot, off Halstead Road. The bungalow is within the Gosfield Village Envelope, although the rear of the site lies outside of it. Policy LPP1 of Part 2 of the BDLP states that within development boundaries, development will be permitted where it can take place without material adverse detriment to the existing character and historic interest of the settlement.
14. The design of dwellings varies along Halstead Road, with both single storey and two storey dwellings. A unifying feature of this part of Halstead Road is that gaps to the front and sides of dwellings gives a sense of spaciousness. Landscaping to the front of dwellings also makes a significant contribution to the character and appearance of the area and helps give the area a semi-rural feel, particularly since many of the houses along this section overlook open fields.
15. Policies SP7 of Part 1 of the BDLP and policies LPP35 and LPP47 of Part 2 of the BDLP all seek development which responds positively to local character and of an area. I also note the importance that the National Planning Policy Framework (the Framework)(2021) places on achieving well-designed places.
16. It is proposed to erect a two storey dwelling with gable features to the front and a maximum ridge height which is similar to the adjacent dwelling at No 71. The proposed dwelling would comprise architectural features which would provide visual interest and while its design would be different to others along Halstead Road, given the wide variety of design along this part of Halstead Road, such difference would not be harmful to the character and appearance of the area.
17. Policy LPP52 of Part 2 of the BDLP seeks to ensure the scale, layout, height and massing of buildings are in harmony with the character and appearance of the surrounding area. Although the bulk of the dwelling would appear greater than the adjacent dwellings when viewed from Halstead Road, generous gaps either side of the adjacent dwellings would help preserve the sense of spaciousness

¹ The BDLP comprises two parts – Section 1 and Section 2. Section 1 of the Local Plan was adopted by the Council on 22 February 2021 and Section 2 was adopted on 25 July 2022.

which is characteristic of the area. The setback of the cart lodge from the highway significantly limits any massing effect it would have when viewed from Halstead Road.

18. I note that the proposed dwelling would be located closer to the highway than others located further along Halstead Road, including No 61a, however, it would be in line with the building line of dwellings either side of it and so it would not undermine the pattern of development along this section of Halstead Road. While the proposed dwelling would project further towards the rear of the site than the existing dwelling, oblique views of the dwelling would be limited from Halstead Road given the position of neighbouring dwellings. As such, it would not appear overly dominant and would not harm the character and appearance of the surrounding area.
19. Although there are limited opportunities for landscaping to the front of the dwelling, I consider some planting would help retain the semi-natural feel of the area. I note comments made by the Council regarding the planting proposed by the appellant and would agree that a native hedge would be more appropriate in this case. Further detail and the implementation of a landscaping scheme could be secured by condition.
20. Thus, for the reasons given above, I find that the appeal scheme would not harm the character and appearance of the area and there would be no conflict with policies SP7, LPP1, LPP35, LPP47 and LPP52 of the BDLP or the Framework, the requirements of which are set out above.

Other Matters

21. The Council has drawn my attention to policies SP1 and SP3 of Part 1 of the BDLP and policies LPP16 and LPP43 of Part 2 of the BDLP, which set out the presumption in favour of sustainable development, the spatial strategy for North Essex, housing provision and delivery and parking provision respectively. While I note the contents of the policies, since the appeal scheme would replace an existing dwelling, I do not find them determinative in this case.

Conditions

22. I have considered the conditions put forward by the Council and other parties against advice in the Framework and Planning Practice Guidance. As a result I have amended some of them for consistency, clarity and omitted others. In the interests of certainty and proper planning I have included conditions relating to commencement, plans and materials.
23. Policy LPP65 of part 2 of the BDLP seeks to protect trees. There are mature trees and hedgerows within the site which I consider merit protection and retention. Although information regarding trees and hedgerows to be retained has been submitted in support of the appeal, the information is limited and is insufficient to secure protection of trees within the site. I shall therefore include a condition regarding the protection of trees and hedgerows. Since construction and demolition works could pose a risk to trees, it is necessary that the condition is a pre-commencement condition.
24. Although some landscaping is proposed, the information provided is limited. I therefore consider it necessary, in order to protect the character and appearance of the area, to secure further details by condition. I shall also include a condition to secure the implementation of the landscaping scheme.

25. The proposed development will increase hard surfaces within the site, which will affect surface water runoff. Although the appellant proposes the use of permeable paving, there is insufficient detail regarding the method of construction, which will affect the effectiveness of permeable paving. It is necessary to secure information regarding the construction of hard surfaces prior to the development commencing to avoid abortive work and ensure the development is carried out in accordance with approved details. I shall therefore include a condition to secure details of the provision of hardstanding, to ensure that the development does not increase surface water run-off off site.
26. The Council has requested a Biodiversity Enhancement Layout is secured by condition, providing details of proposed enhancement measures. However, it is not clear what such details would comprise. BDC Ecology, in response to the consultation on the application, recommended 2 x bird nesting box, 1 x bat box and the use of native planting to attract wildlife. They also recommended hedgehog friendly fencing is included to enable hedgehogs to commute and forage between residential gardens. I shall therefore include a condition to secure such measures.
27. The appeal site is located between two residential properties and so mud, dust and noise have the potential to cause harm to the living condition of neighbouring occupants during the demolition/construction phases. A pre-commencement condition relating to the control of mud and dust is necessary to ensure that measures are put in place for the duration of the works. I shall also limit the hours within which demolition and construction works can be carried out.
28. I note the Environmental Health Officer has made comments regarding contamination, however, the appeal site comprises a residential dwelling and associated curtilage and so I have no reason to suspect that the site is contaminated. I note the Council does not advise a condition is necessary through this appeal and given the above, I consider such a condition is unnecessary in this instance.

Appeal B Conclusion

29. For the reasons given above, I conclude that the appeal scheme would not harm the character and appearance of the area and accords with the development plan as a whole. Consequently, Appeal B should be allowed.

M Savage

INSPECTOR

Appendix 1: Conditions

- 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: Proposed Floor Plans & Elevations, Number 675.20.01 Revision C and Proposed Site & Location Plans, Plus Cartlodge, Number 675.20.02 Revision D.
- 3) No site clearance, preparatory work or development shall take place until a scheme for the protection of those trees and hedgerows which are indicated as being retained on the 'Existing & Proposed Tree Plans, reference number 675.20.04' and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 4) Notwithstanding condition 2, no development shall take place until details showing the method of construction of hard surfaces within the site, which shall include the use of porous materials and a permeable base, have been submitted to and approved in writing by the local planning authority. The details shall be implemented as approved prior to occupation of the dwelling hereby approved.
- 5) No development shall take place until a scheme for the control of dust and mud during the site clearance and construction phase has been submitted and approved in writing by the local planning authority. The scheme shall be implemented as approved.
- 6) Notwithstanding condition 2, no development above slab level shall take place until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) No development above floor slab level shall take place until details / samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 8) A scheme for the enhancement of biodiversity within the site shall be submitted to and approved in writing prior to the occupation of the dwelling hereby approved. The scheme shall include details and locations of proposed enhancement measures, which shall include 2 x bird nesting box, 1 x bat box, native planting and hedgehog friendly fencing (13cm x 13cm gaps at the base). The scheme shall be implemented as approved prior to occupation of the dwelling hereby approved.

- 9) Demolition or construction works shall take place only between hours of 0800 and 1800 on Mondays to Fridays, 0800 and 1300 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.

End of Appendix 1