

Appeal Decision

Site visit made on 25 April 2023

by P Eggleton BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2023.

Appeal Ref: APP/Z1510/W/22/3295620

Land to the rear of Jack and Jenny, Hatfield Road, Witham, Essex CM8 1EE

- 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 R Kingsley against the decision of Braintree District Council.
 - The application Ref 21/00458/FUL, dated 8 February 2021, was refused by notice dated 8 February 2022.
 - The development proposed is two 3-bedroom detached dwellings and creation of a new access.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect on the living conditions of future residents with regard to the outdoor amenity space.

Reasons

3. Since the council's decision, Section 2 of the Braintree District Local Plan 2013-2033 (2022)(LP) has been adopted. The council set out the changes in their statement and the appellant has not raised issue with this updated information. The policies referred to are consistent with the *National Planning Policy Framework* and must be afforded full weight.
4. Although I understand that the permission for a single property on this site has expired, there is nothing before me that suggests that the council would resist a new identical submission. As plot 1 of this submission is the same as the approved dwelling, the considerations with regard to this proposal therefore relate to the additional plot 2 dwelling only.

Living conditions of future residents of house 2

5. The position of house 2 has been dictated by the position of the cedar and willow trees. This has resulted in the property having a large front garden but a very constrained rear garden. Although the house design has responded to the constraints of the site in some respects, such as to avoid overlooking, it does not respond well to its inevitably cramped position close to the rear boundary. The rear boundary fence is an existing 1.8 metres high close boarded fence which also forms the rear boundaries of the adjacent houses on Haygreen
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Road. A similar fence is proposed between the house and the carpark of the adjacent retail unit immediately to the west.

6. The fences will be close to the rear windows of the twin aspect family room and lounge; and the rear facing dining room. The lounge has patio style doors that open into this very limited space. The area outside these doors will be overlooked from the rear facing windows of 85 and 87 Haygreen Road. These properties are set at an angle which will ensure that views are direct. The outshot of the dining room will not offer much protection with regard to privacy from the rear of number 83. The plans suggest new planting on this boundary. It is not clear what this would be but this would further reduce this already limited space. The amenity space to the side of the building and close to the parking space has similar shortcomings. The amenity area to the opposite side, adjacent to the commercial building, would be slightly larger but the design of the house does not embrace this area. Being so close to the parking and loading area of the convenience store may also add to the poor quality of this immediate environment with regard to residential amenity.
7. The house would benefit from the large area between it and the road. Much of this is set beneath the canopies of the two large trees that are to be retained. Trees can offer valuable shade within a garden. Given the nature of willow trees however, the areas close to this would be of relatively limited value without continuous and vigorous management. Shading concerns with regard to the cedar are less significant due to its very high canopy and aspect. This area is however close to the road and any formal use would need to be very carefully managed.
8. Both trees are of a substantial size. They are not garden trees or certainly not trees that can be practically accommodated in a garden of this size, particularly in such close proximity to the dwelling. There is a very real probability that future residents would wish to have these trees removed. Such requests would need to take into account the outlook from the forward facing windows, the debris that they produce and the overbearing impact that they have on the property generally. In these particular circumstances, future residents would have a compelling case. The proposal would therefore also represent a significant threat to the longevity of these trees but also require considerable management of the willow in the short term.
9. Overall, the layout shown does not represent good quality design. It would provide poor quality amenity space with regard to useability, privacy and outlook. The more useable areas would not be well related to the internal accommodation and the large trees would be too large for a domestic setting such as this. They would be unacceptably overbearing. Their loss would result in considerable harm to the character and appearance of the area. The proposal would result in unacceptable harm to the living conditions of future residents and would be contrary to the amenity requirements of LP policies LPP 1 and LPP 52(p); and the design and layout requirements of LPP 47.

Neighbouring residential amenity

10. Although not raised by the council as a reason for refusal, a number of matters have been raised by neighbouring residents. The proposed plot 2 dwelling would be built very close to the rear boundary of 81 Haygreen Road in

particular. The corner would be very close to the boundary. This is the two storey element of the house although the walls would be aligned at 45 degrees and the roof form would ensure that it would be the eaves that would be at the closest point. I note the discussions of appropriate distances within the previous documents in relation to plot 1. However, it appears that the two immediately adjoining properties, 81 and 83, have rear single storey extensions that bring development and rear facing windows closer to the boundary than previously considered. This inevitably also requires that outside sitting areas are located in a more constrained area. The aspect of these houses is such that in order to maximise access to direct sunlight within the garden, the rear most part of the garden is favoured. This is supported by the arrangement of a number of these gardens.

11. The very close proximity of this two storey corner of house 2 would be a dominant feature when within the rear garden and rear rooms of number 81 in particular. It would result in a loss of outlook and would be unacceptably overbearing when in the rear garden. This adds to my main concern.

Character and appearance of the area

12. The proposal would result in the removal of the roadside hedges and other vegetation to provide both the footpath and vision splays. This has been accepted with regard to the single house permission. In the longer term, this arrangement may offer an improved frontage to the site. The addition of this second dwelling would however result in the loss of trees within the site. The two leyland cypress are substantial trees which were previously classed as having moderate quality and landscape value. Their loss would result in harm to the character and appearance of the area.
13. Of greater concern is the potential long term impact on the willow and the cedar. Whilst it has been adequately demonstrated that these trees can be retained during construction, I am in no doubt that once occupied there would be considerable pressure to have one or both of these trees removed; or with regard to the willow, comprehensively managed. Whilst not inevitable, I consider this to be a distinctly likely outcome of this proposal. Any loss or significant reduction of these trees would result in further harm to the character and appearance of the area. This further weighs against the proposal.

Other matters and conclusions

14. The changes to the roadside and the footpath could offer considerable benefits for pedestrians but these would be achieved for the single dwelling. The proposal would contribute to housing provision in the district and result in additional economic investment. This is an accessible area that is well served by local facilities. Reliance on unsustainable transport options is not therefore inevitable. This proposal would therefore make more efficient use of land within an accessible location within the settlement. Although this represents only a single additional dwelling, these matters provide weight in favour of the proposal.
15. The proposal would however result in harm with regard to the future living conditions of the residents of house 2. The dwelling would offer poor amenity with regard to functional and useable outdoor space. Given the constraints, I am not satisfied that the house design has fully taken all the constraints into

account. Whilst a more intuitive design may reduce these concerns, I am not satisfied that they would be satisfactorily overcome. The layout is contrived and does not represent a high standard of design. I do not consider that the benefits of the scheme are such that they outweigh this harm. On this basis alone therefore, I consider that the appeal should fail. My concerns with regard to the amenity of existing neighbouring residents and the future of the two trees, adds to these concerns. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR