



Appeal Decision

Site visit made on 26 March 2024

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2024

Appeal Ref: APP/Z1510/W/23/3328873

Crix House, Braintree Road, Cressing, Essex CM77 8JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs M and L Spink against the decision of Braintree District Council.
 - The application Ref is 22/02498/FUL.
 - The development proposed is the erection of 2 pairs of semi-detached three bedroomed cottages with associated parking, landscaping and garaging together with related operational development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted amended plans with this appeal. These plans were not considered by the Council in their determination of the planning application. While the appeal process should not be used to evolve a scheme, the amendments to the proposed development relate only to a reduction in the depth of the dwellings and a slight re-siting of the dwellings on the site. The Council and any interested parties have had a chance to comment on these minor amendments as part of this appeal. Therefore, they would not be prejudiced by my acceptance of the amended plans. Thus, I have considered the appeal on this basis.
3. However, the amendments also include an additional plan with changes to the fenestration within the host dwelling, Crix House. Whilst the host dwelling is contained within the red line boundary on the location plan, it was not featured within the original plans or the description of the development. Therefore, whilst in themselves minor, the changes to the host dwelling are an entirely new part of the proposal and constitute a fundamental change to the application. Furthermore, whilst the Council and any interested parties have had a chance to comment on this additional plan as part of the appeal, it includes a new form of development which could raise further concerns that could not be added to the reasons for refusal. This would not be cured by re-consultation. Therefore, for the reasons above, I will not consider the additional plan reference 5799-08 as part of this appeal.

Main Issues

4. The main issues are:

- the effect of the proposed development on the character and appearance of the surrounding area;
- whether the proposed development would provide satisfactory living conditions for the future occupiers with regards to privacy, outdoor amenity space and noise and disturbance; and
- the effect of the proposed development on the living conditions of the occupiers of the neighbouring dwelling, Crix House, with regard to outlook.

Reasons

Character and Appearance

5. The appeal site is occupied by an existing dwelling and a large garden to the side with a busy road to the front and commercial units to the rear. The surrounding area on this eastern side of the B1018 is rural in character with large open fields, a verdant appearance and limited built form. The majority of residential development in the area is located on the western side of the B1018 which has a denser suburban character. The proposed development would introduce 2 pairs of semi-detached dwellings to the site within the existing residential garden.
6. The appeal site is located outside of the development boundary and as such is considered to be within the countryside. Policy LPP1 of the Braintree District Local Plan 2013-2033 (the LP) states that development outside development boundaries will be confined to uses appropriate to the countryside whilst also protecting and enhancing valued landscapes to protect the intrinsic character and beauty of the countryside. This is generally consistent with the National Planning Policy Framework which states that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
7. There is a group of existing residential dwellings also on the eastern side of the B1018. However, these are located slightly further north than the appeal site. The appellant has also highlighted a number of new residential developments which have been granted planning permission in this same area. This includes two appeals¹ allowed for 6 dwellings and 35 dwellings and three applications² approved by the Council for dwellings adjoining 1-8 Leyfield. The rural character of this specific area has been diminished over time by a linear style of residential development along the B1018. However, this area is visually separate from the appeal site when travelling along this road by landscaping and parcels of undeveloped land. The area immediately surrounding the appeal site is much more rural in appearance than the area identified above, with limited residential development.
8. Whilst the proposed development would be located adjacent to an existing dwelling and commercial units to the rear, residential development of this type in the immediate locality is limited. Therefore, the proposal would not follow the pattern of development and would be out of keeping with the rural character of the area. The density and design of the proposed dwelling would be similar to the residential development in the wider area outlined above.

¹ APP/Z1510/W/19/3223769 and APP/Z1510/W/22/3307493

² 21/001175/FUL, 21/01940/OUT and 22/00720/FUL

However, it would be contrary to the site's immediate surroundings, including the host dwelling, and would therefore appear as an incongruous addition to the area, resulting in a built up suburban appearance when viewed from the road.

9. Whilst the appeal site is currently well screened from the public realm and surrounding countryside by soft landscaping, which is intended to be enhanced as part of the development, views of the proposed dwellings would still be possible via the proposed access and above the tree line. Therefore, the proposed development would have a harmful impact on the character and appearance of the area. Furthermore, although the site is relatively self-contained, due to the proposed height and density of the proposed dwellings, they would still be visible in the wider landscape and would therefore harm the intrinsic character and beauty of the open countryside surrounding the appeal site.
10. Therefore, for the reasons above, the proposed development would harm the character and appearance of the surrounding area and would conflict with the relevant sections of policies SP3, SP7, LPP1, LPP35, LPP47 and LPP52 of the LP. These policies seek to ensure that, amongst other things, development is planned to ensure existing settlements maintain their distinctive character, respecting and responding positively to local character and context with density and massing of residential development related to the character of the site and its immediate surroundings, as well as the wider locality, and the layout of buildings in harmony with the character and appearance of the surrounding area. With development outside development boundaries confined to uses appropriate to the countryside whilst also protecting and enhancing valued landscape to protect the intrinsic character and beauty of the countryside.
11. It would also conflict with Policies 7 and 8 of the Cressing Parish Neighbourhood Plan (the NP) which seek to ensure development proposals for new housing outside settlement boundaries are sympathetic to the character of the open countryside, contributing positively to the existing character and appearance of the area, along with the general design objectives of the National Planning Policy Framework.

Living Conditions – Future Occupiers

12. The Essex Design Guide recommends a minimum garden size of 100m² for a three or more bedroom dwelling. The amended plan submitted by the appellant indicates that all four properties would exceed this minimum garden size and therefore would provide sufficient outdoor amenity space for the future occupiers of the proposed development.
13. However, plot 1 would be located directly adjacent to the host dwelling, Crix House. Crix House currently has first floor bedroom windows on the side elevation which would face the proposed development and provide direct views into the garden space of plot 1. The appellant has identified that these windows could be relocated under permitted development rights. However, no evidence has been provided to suggest that these works have been carried out and therefore, at present, plot 1 of the proposed development would be overlooked by the first floor windows of this neighbouring dwelling.
14. As part of this appeal the appellant has submitted a noise assessment which concludes that the internal noise levels within the proposed development are

predicted to meet the guideline noise criteria contained in BS 8233:2014 provided the identified appropriate minimum specified glazing, ventilation and façade materials are installed to a good manner of workmanship. Whilst the appeal site is located adjacent to a busy road, it would be well set back with some screening. Furthermore, the rear boundary adjoining the commercial uses to the north would be limited and could be sufficiently screened to ensure any disturbance is minimal. Therefore, the future occupiers of the proposed development would not be subjected to unacceptable noise or pollution levels when inside their property. Whilst external noise and pollution levels would be higher, it is noted that the land is already in use as a residential garden and therefore, whilst more people would occupy the site, the living conditions in relation to external noise and pollution would be the same as at present and therefore would also be satisfactory.

15. Whilst Policy LPP70 of the LP states an assessment in relation to land contamination should be submitted as part of any planning application, the land is currently used as a residential garden in the open countryside and is not land where significant levels of contamination may be expected. Therefore, concerns relating to contaminated land can be satisfactorily addressed via the inclusion of a suitably worded pre-commencement condition to identify and mitigate against any nearby ground contamination sources, which the appellant has confirmed they are happy to agree.
16. Nevertheless, due to the loss of privacy to the future occupiers of plot 1, the proposed development would not provide satisfactory living conditions for the future occupiers and would conflict with the relevant sections of Policies LPP47 and LPP52 of the LP. These policies seek to ensure residential developments provide a high standard of accommodation and amenity for all prospective occupants whilst being capable of meeting the changing future needs of occupiers. It would also conflict with the objectives of the National Planning Policy Framework relating to a high standard of amenity for future users.

Living Conditions – Crix House

17. The proposal would introduce a boundary fence between the host property, Crix House, and plot 1 of the proposed development. The Council indicate that this would be around 4.5 metres from the ground floor living room windows on the side elevation of Crix House. However, whilst in relatively close proximity to these windows, it is unlikely that the close boarded fence proposed would be overly tall. Therefore, it would not be unduly prominent or significantly impact upon the occupier's outlook from these windows. Furthermore, the appellant has indicated that this room is dual aspect which would provide alternative outlook opportunities.
18. Whilst clearly greater in height and massing than the boundary fence, the proposed dwelling on plot 1 would also be a sufficient distance from Crix House to ensure there is not a significant impact on the occupier's outlook from the windows on the closest elevation.
19. Therefore, the proposed development would accord with the relevant sections of Policies SP7 and LPP52 of the LP which seek to ensure there shall be no unacceptable impact on the amenity of any nearby properties including in relation to overbearing impact. It would also comply with the objectives of the National Planning Policy Framework relating to a high standard of amenity for existing users.

Other Matters

20. The Council has stated that they currently have a 5.8 year supply of deliverable housing. However, this is contested by the appellant who has provided a recent appeal decision³ demonstrating that, at that time, the total supply of housing was 4.7 years and that due to the provisions of footnote 8, paragraph 11(d)(ii) of the Framework should be applied.
21. In the context of the development, I have found that the proposal would be contrary to policies SP3, SP7, LPP1, LPP35, LPP47 and LPP52 of the LP, resulting in harm to the character and appearance of the surrounding area and would not provide satisfactory living conditions for the future occupiers. The Framework supports the creation of high quality, beautiful and sustainable buildings and places which are sympathetic to local character, including the surrounding built environment and landscape setting. It also supports a high standard of amenity for future users. Therefore, as these policies are generally consistent with the relevant aims of the Framework, I attached substantial weight to the conflict with them.
22. The development would add to the overall housing land supply and make a small contribution to the Government's objectives of significantly boosting the supply of homes, with the addition of four dwellings. Economic advantages would arise from the construction along with the spending power of the future occupants. However, given the scale of the scheme, any such benefits would be relatively small.
23. Therefore, even if I were to conclude that there is a shortfall in the five year housing land supply, given the harm that I have identified, the adverse impact of granting planning permission would significantly and demonstrably outweigh the limited benefits of four dwellings when considered against the policies of the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply and does not weigh in favour of the proposed development.
24. The appeal site is within the zone of influence for the Blackwater Estuary SPA/Ramsar site, where the Council indicate that new residential development is likely to have a direct effect on areas of the Essex coastline through increased visitor pressure on these sites. The Council have confirmed that a financial contribution has been secured by way of an upfront payment.
25. The Conservation of Habitats and Species Regulations 2017 (as amended) requires the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. However, no further evidence has been provided to me on this matter and regulation 63(1) indicates the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. Therefore, in view of my overall conclusions resulting in my decision to dismiss the appeal, it has not been necessary to address this in any further detail.

Conclusion

26. Whilst the proposed development would not harm the living conditions of the occupiers of the neighbouring property, it would harm the character and

³ APP/Z1510/W/3325050

appearance of the area and would not provide satisfactory living conditions for its future occupiers. Therefore, for the reasons given above and having had regard to all other matters raised, the proposal would conflict with the development plan taken as a whole and I conclude that the appeal should be dismissed.

E Grierson

INSPECTOR