



Appeal Decision

Site visit made on 4 November 2024

by Mark Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th November 2024

Appeal Ref: APP/Z1510/W/24/3343474

80 London Road, Braintree, Essex CM7 2AS

- 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 A Smith against the decision of Braintree District Council.
 - The application Ref is 23/02931/FUL.
 - The development proposed is change of use of land and existing building for the storage, preparation and display of vans for sale.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The change of use to the van business described above had already occurred when I visited. Vehicles were also parked outside the site, albeit it was not clear if these were associated with the business or something else, such as construction work to the dwelling at No 80. In any case, the appellant clearly seeks planning permission for the change of use of the land within the site only, as shown on the drawings, and I have decided the appeal on that basis.
3. A traffic report has been submitted with the appeal. The Council and interested parties have had an opportunity to consider it and, in that respect, no prejudice arises in taking it into account. Moreover, the Council and the Highway Authority have no highway objections to the scheme as a result. However, the report refers to recent works to the access, and a wall has been constructed to its sides that extends along London Road. I have not been informed as to whether these works benefit from permission or are otherwise lawful, and they are not within the scope of the description of the scheme. Consequently, I have not taken the works or the corresponding aspects of the report into account, but have had regard to the evidence in the report in other respects. In these circumstances, it is appropriate that I consider the highway implications of the scheme as framed by the relevant refusal reason, which are reflected in the final main issue below.
4. The building on site benefits from a certificate of lawfulness¹. However, it clearly confirms that only the operational development comprising the erection of the building is lawful, and does not relate to the use of the building or the surrounding land on which it is sited. The Council contends there is no record of the previous or current uses of the site having ever been authorised. There is nothing compelling before me indicating otherwise. I have made the decision in that context accordingly.

¹ Council reference: 23/01731/ELD

Main Issues

5. The main issues are:

- the effect of the development on the character and appearance of the area;
- whether the development is satisfactory in terms of flood risk;
- the effect of the development on the living conditions of the occupiers of neighbouring properties and ground conditions; and
- whether the development is served by a satisfactory vehicular access.

Reasons

Character and appearance

6. The building and the forecourt area that are associated with the van business are located at the end of a long gravel driveway from London Road. A large number of vans are parked tightly together on the forecourt. The dwelling at No 80 is also located at the end of the driveway. Beside the driveway is an open paddock and then the River Brain. A footpath, play area and a new housing estate are on the other side of the river at a higher land level than the site, with some of the properties along Townrow Avenue oriented towards it.
7. A group of businesses relating to car and van hire, vehicle repair and stonemasonry are sited within a yard near the junction between London Road and Townrow Avenue. There are also many vehicles tightly packed amongst the yard's industrial buildings, which vary in age, size and condition. The Council has confirmed there are no records of permission being granted for those businesses, but uses of those sorts have ostensibly operated there for a significant period of time, and the Council has not indicated that it intends to pursue enforcement action. As such, I must assess the scheme on the basis that the yard is an established aspect of the area.
8. The forecourt and the vans thereon are less visible than the yard and the vehicles towards its front from London Road, but more visible from the footpath, play area and much of Townrow Avenue. From the latter locations, the site is seen in the context of vehicles parked to the rear of the yard. However, the yard is well-contained and benefits from changes in topography such that its rear is effectively cut into the land, which reduces the visual impacts of the buildings and vehicles there. In contrast, due to the elevated position of the footpath, play area and Townrow Avenue, the large number of tightly packed vehicles on the forecourt appear to sprawl across the site and juxtapose awkwardly with the paddock, the dwelling at No 50 and the adjacent riverside environment. Consequently, the development harms the character and appearance of the area. Supplementary landscaping would not fully mitigate these impacts.
9. It is argued that the site offers visual improvements when compared to the previous business. As set out earlier, I have considered this appeal on the basis that neither the previous nor current businesses were or are authorised. However, even if the previous one was authorised, the aerial photograph provided in the appellant's planning statement indicates that materials were in large part stored close to the building, whereas my visit indicated that vans are

parked over a significant proportion of the site, so the development has a greater visual impact in any event.

10. For the reasons given, the development harms the character and appearance of the area. It thereby conflicts with Braintree District Local Plan 2013-2033 Section 1 (LP1) Policy SP7, which states that development should respond positively to local character. It also conflicts with Braintree Local Plan Section 2 (LP2) policies LPP1, LPP52 and LPP67 insofar as these state that development will be permitted where it can take place without material adverse detriment to the existing character of a settlement, is informed by and sympathetic to the landscape, and reflects an area's local distinctiveness.

Flood risk

11. The site is located in flood zones 2 and 3. LP2 Policy LPP74 sets out that proposals in such areas will be required to provide sufficient evidence for the Council to assess whether the requirements of the sequential test and exception test have been satisfied, taking climate change into account. It goes on to say that where development must be located in an area of higher flood risk, it must be designed to be flood resilient and resistant and safe for its users for the lifetime of the development, taking climate change into account. Furthermore, it requires proposals to be accompanied by a site-specific Flood Risk Assessment (FRA).
12. Paragraph 174 of the Framework makes clear that the change of use should not be subject to the sequential or exception tests. However, it should still meet the Framework's requirements for site-specific FRAs. It should therefore be demonstrated that the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment; sustainable drainage systems are incorporated unless there is clear evidence that this would be inappropriate; and safe access and escape routes are included where appropriate, as part of an agreed emergency plan.
13. The scheme is not supported by a site-specific FRA and, as such, I cannot be certain as to the precise nature of the flood risk, that flooding has not been increased elsewhere, that the risks have been minimised or that any residual risk can be safely managed. The lack of objection from the Environment Agency does not allay these concerns or address the policy conflicts. Consequently, the scheme is not satisfactory in terms of flood risk and it conflicts with LP2 Policy LPP74 and the Framework.

Living and ground conditions

14. The dwelling at No 80 is owned by the appellant, and otherwise the nearest residential properties to the site are along Townrow Avenue some distance away. I have no reason to doubt that the most disruptive activities at the site relate to cosmetic works undertaken within the building. Furthermore, I have not been informed that there are any restrictions on the aforementioned businesses in the nearby yard, which are close to dwellings. Although there is nothing preventing the dwelling at No 80 being sold to people with no connection to the business, the relationship with and likely nature of the uses would be plain to those considering a purchase, particularly as access to the dwelling requires travel past the business. Moreover, conditions could be imposed to require that the building be insulated, noisy activities are

undertaken within it and limit the hours of operation. Similarly, control of any pollutants could be secured by conditions.

15. Subject to conditions, the development would not have unacceptable adverse impacts on the living conditions of the occupiers of neighbouring properties or ground conditions. In these respects it accords with LP1 Policy SP7, which seeks to protect the amenity of existing and future residents and users.

Access

16. The access is roughly perpendicular to London Road, which has a relatively straight alignment and is subject to a 40 miles per hour speed limit, albeit a 30 miles per hour zone is nearby. The traffic report includes survey data indicating that 85th centile speeds are below 40 miles per hour in both directions, and that visibility splays can be achieved that broadly align with standards in Manual for Streets. Additionally, despite the high number of vehicles on the site, I have no reason to doubt that customers visit the site by appointment only, or therefore find that the access will be in use constantly. Furthermore, there have been no injury accidents in the vicinity of the access since 2013.
17. For these reasons, and subject to a condition to require the provision and retention of adequate visibility splays, a satisfactory access could be achieved. The scheme accords with LP2 Policy LPP52, which specifies that developments which result in a severe impact upon the highway network (taking into account cumulative impacts) will be refused unless they can be effectively mitigated.

Other Matters

18. The Council is concerned that the van business could encroach onto land outside the site. However, this would require permission and as such enforcement action could be taken to address this if necessary. Nevertheless, the development is harmful for the reasons identified.
19. I note that the Council has not objected to the business in principle, and it provides employment in a relatively accessible location. Additionally, the development plan highlights the importance of small and medium-sized businesses, promotes a strong, sustainable and diverse economy, and pursues flexible approaches to economic sectors showing growth potential. Further, paragraph 85 of the Framework states that the conditions in which businesses can invest, expand and adapt should be created, and significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. However, these considerations do not outweigh the harm to the character and appearance of the area, the issues relating to flood risk, or the consequent conflicts with the development plan.

Conclusion

20. I conclude that the scheme conflicts with the development plan taken as a whole. Material considerations do not indicate that a decision should be taken that is contrary to the development plan. Accordingly, the appeal is dismissed.

Mark Philpott

INSPECTOR