



Appeal Decision

Site visit made on 11 November 2024

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th January 2025

Appeal Ref: APP/Z1510/W/24/3341180

The Mall, London Road, Braintree, Essex CM77 8FL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by JVIL (London Road) Ltd against the decision of Braintree District Council.
 - The application Ref is 23/00651/OUT.
 - The development proposed is outline planning application for residential development of up to 9 units.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by JVIL (London Road) Ltd against Braintree District Council. This is the subject of a separate Decision.

Preliminary Matters

3. The description of development cited in the planning application form differs to that contained within the decision notice and appeal form. There is no evidence that this change was formally agreed. In the interests of clarity, I rely upon the description as included in the application form for the purposes of the heading above.
4. The planning application which is the subject of this appeal was submitted in outline with all matters reserved except for access. I have therefore determined the appeal on this basis and taken all plans submitted to be for illustrative purposes only.
5. During the appeal, the National Planning Policy Framework (the Framework) was revised. Its content in respect of the main issues has not been materially altered. Therefore, in this instance, it has not been necessary to consult the parties on the revisions to the Framework.

Main Issues

6. The main issues are:
 - the effect of the proposed development on the character and appearance of the area, including trees;
 - whether the proposal would provide acceptable living conditions for the residents of the scheme with regard to outdoor space;

- whether the housing mix proposed within the scheme is acceptable having regard to the local housing need; and
- whether planning obligations are necessary and have been suitably provided.

Reasons

Character and appearance

7. The appeal site is accessed from the eastern side of London Road within a stretch of largely linear ribbon development. A limited number of close by developments are located off the east side of London Road. These developments follow a similar linear pattern facing the road. In contrast, on the western side of London Road, behind dwellings fronting the road, is a large housing estate. As such, there is a discernible change in character and appearance between the two sides of development on London Road. Development on the eastern side near the appeal site has a strong pattern to the layout of dwellings, which affords a pleasant suburban character to the area made up of linear ribbon development.
8. The appeal site comprises an area of garden land associated with No 3 The Mall. The expansive area of garden is occupied by outbuildings, trees and a grassed area. Trees on site and some nearby are covered by a Tree Protection Order (TPO), resulting in a pleasant, verdant appearance to the immediate area.
9. I note the appellant's comments that the Council did not take the opportunity to request further details at the application stage¹. It is also noted that the final layout of development will be determined at the reserved matters stage. However, the application is for up to 9 dwellings. Therefore, I must consider if the proposed development can be accommodated on-site even if the developer's choice to reflect market factors results in a different configuration at a later stage.
10. Moreover, the constraints on the site, such as the position of the protected trees, leave minimal potential to deliver this layout of development in a form substantially different to that set out in the illustrative plans. Indeed, the supporting evidence suggests that substantial consideration has been given to this being the preferred layout as red-edged and blue-edged areas also identify enhancement areas.
11. The illustrative plans suggest that the proposed dwellings and garages would be laid out on both sides of the internal road in a Y-shape. This would, therefore, be at odds with the character and appearance of the existing built form on this side and section of London Road. Given my conclusions about the scope for alternative approaches to layout, this is a significant concern. The details before me therefore indicate the proposal is an inefficient use of the land available, indicative of an overdevelopment of the plot.
12. The properties along London Road would partially screen the development from the surrounding areas. However, as already noted, accommodating a development of up to 9 dwellings is likely to result in an incongruous layout, positioning and orientation of development that would be visible along The Mall route including what appear to be ad hoc placed visitor parking spaces. Moreover, retained and

¹ With reference to article 5(2) to the Town and Country Planning (Development Management Procedure)(England) Order 2015 as amended.

proposed trees would be located close to many rear gardens that would dominate much of the private outdoor space, reinforcing the cramped nature of the proposal.

13. I observed tree T52 and its relationship with the appeal site during my visit. Due to its height and canopy cover, it has a significant presence on this corner of the appeal site despite retaining little leaf coverage. I also observed considerable amounts of fallen leaves covering this corner section of the appeal site. These factors are likely to result in pressure for its removal or pruning. I observed this also to be the case with some trees on the northern boundary, which, based on the illustrative layout, would have canopies over the proposed gardens and likely lead future occupiers to seek the removal or pruning of these trees. As such, the development would fail to integrate with its surroundings and would have a harmful effect on the pattern and grain of development and existing trees.
14. I have considered the appellant's urban grain maps in reaching my findings. These reinforce my observations of the character and appearance of this section and side of London Road, regardless of other sites having a greater density.
15. Notwithstanding my findings above, the proposed garages would not appear isolated from their host dwellings. However, there would be a prominent area of hardstanding to the fronts of units four and five which would be used for the turning of vehicles. The limited separation distance between the service road and the resulting vehicular movements would heighten the development's overly compact, cramped nature.
16. There would be scope for additional soft landscaping measures where replacement trees could be planted. The Council also acknowledge that the appellant has sought to retain trees where possible. There are also opportunities within the landscape enhancement areas identified with the blue line boundary. However, given the limited information before me as to how such enhancements can be managed and maintained in the future, I am unconvinced such enhancements can be relied upon. Additionally, any proposed planting along the internal road frontage would either be small and cosmetic, given its proximity to the dwellings or would be under pressure to be removed from future occupiers as it matures.
17. The Council stated that the proposal supports the decline of mature Oak habitat and would deny the potential for it to achieve ancient status. In the absence of any substantial details relating to specific trees, I find no conflict in this regard.
18. As already acknowledged, further details of the scheme could be put forward at the reserved matters stage. However, the appellant has not sufficiently demonstrated how the proposal could be varied to secure a development that reflects and responds to the layout, positioning and orientation that forms the established and prevailing character of residential development along this side of London Road. In the absence of this information, I cannot be certain that the harmful effect on the character and appearance of the area, including protected trees, can be addressed at the reserved matters stage.
19. The appellant has drawn my attention to numerous development examples, including allocated sites². While I do not have full details, a number of examples

² Section 2.6 Planning statement dated March 2023 prepared by Savills. Page 7 of the Design and Access Statement prepared by Scroton & Partners. Statement of case dated March 2024 prepared by Ceres Property.

provided are for larger schemes. Furthermore, the examples provided do not appear to be subject to the same site constraints which includes protected trees across the site. As such, they are materially different to the appeal scheme, and I can draw no comparisons that weigh in favour of the proposal.

20. For these reasons, the proposed development would cause unacceptable harm to the character and appearance of the area. Consequently, the proposal would conflict with Policies SP7, LPP 1, LPP 52 and LPP 65 of the Braintree District Local Plan (LP). Together, these policies seek, with respect to this issue, for development schemes within development boundaries to respond positively to local character and context while protecting and enhancing assets of natural value, including protected trees.

Living conditions

21. As identified above, at the time of my visit, which I appreciate was only a snapshot in time, many of the trees had lost much of their leaf coverage. I also observed that many of the retained trees were of considerable height and had expansive canopies. Additionally, I have also found the illustrative layout would be largely fixed such that an assessment of how tree coverage would be experienced from within the development can be undertaken despite the application being in outline.
22. The Council have raised no concerns over the amount of outdoor space to be provided but has concerns over the quality it provides, given the presence of existing trees. The appellant has provided details in relation to sunlight and shading, but no detailed information is presented on how much daylight would reach each garden.
23. Given the relatively fixed layout, the existing tree canopies would be sited over large areas of the gardens to Units 2-5, resulting in an enclosing effect on these garden areas. While I have no compelling evidence before me to suggest that the assessment is inaccurate or otherwise misleading, the future occupiers of these plots, when using the garden, would receive limited light throughout the day. Moreover, the height and proximity of these trees would give rise to the perception of being within the shade for long periods, resulting in inadequate living conditions for future occupiers.
24. As a result of the separation distance between units 6 and 7 and tree T52, the location of this tree would not result in any detrimental levels of overshadowing. However, for the same reasons identified above, the effect of being in the shade and enclosing feeling would be perceived by future occupiers of units 8 and 9. Based on my observations, this harmful enclosing feeling and overshadowing would be substantially increased when the trees are in full leaf.
25. I note the appellant's comments on shade in the garden during the summer months. However, as established above, an unacceptable relationship would exist given the layout proposed.
26. For the above reasons, the proposed development would not provide appropriate living conditions for future occupiers with regard to outdoor space. It would fail to accord with LP Policies SP7, LPP 1, LPP 35 and LPP 52. Together, amongst other matters, these seek to protect future residents' amenity, including by providing appropriate private outdoor space.

Housing Mix

27. LP Policy LPP 35 seeks new residential development to reflect the housing needs of the Borough by providing a mix of house types and sizes at an appropriate density for the area as set out in the 2015 SHMA update (or its successor) unless material considerations indicate otherwise.
28. The Council has supplied no substantive evidence that satisfactorily demonstrates that there has been a significant surplus of four or five-bed units in the Borough. Therefore, I am unconvinced that the development proposed would result in the oversupply of housing of this type in relation to delivering the mix of new dwellings sought over the plan period, and so this concern merits only limited weight. Moreover, whilst I have identified that the layout is largely fixed, the proposed number of rooms to be provided within each dwelling could be explored further at the reserved matters stage.
29. For the above reasons, the proposed development would support an appropriate housing mix and would help to meet the housing needs of the Council. The proposal would not therefore conflict with LP Policy LLP 35.

Planning obligations

30. The Council's third reason for refusal concerns the blue-edged areas of the submitted plans not being included within the red-edged area. There is no dispute between the main parties the red-edged area falls below the 0.5ha threshold for providing affordable housing and other planning obligations. Including these blue-edged areas with the red-edged area would have triggered the thresholds.
31. While I note the Council's concerns regarding this matter, I am not persuaded that the appellant has deliberately sought to exclude these areas. Based on my site observations and the evidence presented, it would be reasonable to exclude these areas, given the site constraints of TPOs would prevent the development of these areas. At the same time, some environmental enhancement could be undertaken. Indeed, the Council raised concerns in relation to the quantum of development proposed being located close to the protected trees and the need to keep development away from these areas. Moreover, management and maintenance access details could be addressed at the reserved matters stage.
32. For the above reasons, there is no substantive evidence in this instance to conclude the appellant has sought to artificially engineer the site area to avoid the threshold for providing affordable housing and other planning obligations. As such, I find no conflict with LP Policies SP6, LPP 31, LPP 50 and LPP 78.

Other Matters

33. The appeal site lies within the zone of influence of the Blackwater Estuary Special Protection Area/Ramsar site and the Essex Estuaries Special Area of Conservation. However, as the appeal is being dismissed for other reasons, an Appropriate Assessment under Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 is not required. A financial contribution was submitted in this regard, but this would have mitigated harm and would not have amounted to a benefit. For these reasons, I have not considered this matter further.

34. I note the appellant has engaged in pre-application discussions with the Council and the Council's report identifies compliance with some LP Policies. It would also not result in any harm with regard to flooding, heritage, or contamination. Compliance with sections of the LP and avoiding harm in relation to flooding, heritage or contamination does not overcome the detrimental harms identified above.
35. There is no dispute that the Council can demonstrate an adequate five-year housing land supply. Nonetheless, the proposal would meet the Framework's aims to significantly boost the supply of homes on small and medium sized sites by delivering up to nine dwellings to the Council's housing stock in a sustainable location.
36. There would also be social and economic benefits associated with employment during construction as well as future occupants buoying up the local economy. There would also be some environmental benefits through biodiversity net gain. However, in the form proposed, this development would result in the significant harms identified above, and the benefits of the scheme do not justify development that would be contrary to the development plan.

Conclusion

37. Whilst I have found the site area has not been artificially engineered and the scheme would provide an appropriate housing mix, the proposal conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
38. For the above reasons, I conclude that the appeal should be dismissed.

A Hickey

INSPECTOR