
Appeal Decision

Site visit made on 5 December 2024

by **K Lancaster BA (hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 January 2025

Appeal Ref: Appeal Ref: APP/Z1510/W/24/3342323

Land adjacent 112 London Road, Braintree 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 Lynmore Homes LLP against the decision of Braintree District Council.
 - The application Ref is 22/01725/FUL.
 - The development proposed is the construction of three dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024. In the interests of natural justice, and to ensure neither of the main parties were prejudiced by this matter, I consulted both parties on the changes to the Framework, and this has informed my determination of the appeal.
3. The appeal submission includes additional evidence which was not before the Council at the time of its decision. This includes an updated Noise Report submitted with the Statement of Case and an amended site plan¹ submitted at the final comments stage which shows the proposed parking layout, including the provision of a parking space in front of the garage to Plot 1.
4. The Procedure Guide states that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
5. I have considered this additional information taking into consideration the principles established by the Courts in *Holborn Studios Ltd*². In this case, the additional information provides further evidence in relation to the Council's reasons for refusal, rather than significant amendments to the proposal. For this reason, I consider that there would be no prejudice to any party, and I have therefore determined the appeal on the basis of this additional information.

¹ Drawing Ref: 20B Proposed Site and Landscaping Plan (updated 23 April 2024)

² *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

Main Issues

6. The main issues are:

- The effect of the proposed development on the character and appearance of the area;
- Whether the proposed development would provide satisfactory living conditions for future occupiers with particular regard to outlook, light and noise; and
- Whether the proposed development would provide adequate parking provision.

Reasons

Character and Appearance

7. The appeal site comprises an area of open land situated next to No.112 London Road. The site is currently overgrown and enclosed by a metal fence. The appeal site is located at the bottom of the embankment to the A120 and is accessed via a short cul-de-sac which formed part of the original route of London Road, prior to the creation of the junction.
8. There are a small number of residential properties also accessed via this road, as well as a commercial premises. The appeal site lies to the edge of but outside the settlement boundary of Braintree. The proposed development would be located between a public right of way³ and a 6-metre-wide easement for a gas pipeline.
9. Policy SP7 Braintree District Local Plan 2013-2033 (the BDLP) states that all new development must meet high standards of urban and architectural design. It further states that new development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs and provide buildings that exhibit individual architectural quality within well-considered public and private realms.
10. Policy LPP52 of the BDLP states that the Council will seek a high standard of layout and design in all developments. It further states that the scale, layout, height and massing of buildings and overall elevation design should reflect or enhance the area's local distinctiveness and shall be in harmony with the character and appearance of the surrounding area including their form, scale and impact on the skyline and the building line.
11. The existing properties found on this part of London Road all front onto the street, but vary in terms of design, scale and materials. The closest residential property is a chalet style bungalow, but there are also detached, semi-detached and terraced, two-storey houses within the linear row of properties. Whilst there is a degree of architectural variety to the individual properties, there is nevertheless a consistent pattern of development with the residential dwellings situated in a linear row, facing towards the road.
12. The proposed development would involve the construction of three, two-storey dwellings, of which only Plot 1 would face onto London Road. I understand from the evidence before me that during the course of the application, the layout of the

³ PROW: 68-73

proposed houses was revised so that the front elevations of Plots 2 and 3 face towards the A120 and embankment, meaning that the gardens would be located behind the houses. However, whilst I understand the reasons for this change, this would be at odds with the prevailing character of the area in which properties typically front onto London Road in a linear pattern. Notwithstanding the differences in architectural design of the individual properties, the layout and orientation of the proposed dwellings would be at odds with this established character and would cause harm to the character and appearance of the area.

13. Furthermore, the siting of the detached double garage together with the presence of large areas of hardstanding the front of the site would have a dominant presence that would result in an awkward relationship to the existing buildings and prevailing character of the area.
14. My attention has been drawn to the appeal decision⁴ for Nos. 98 to 104 London Road, which granted permission for a new-build development of five dwellings. However, whilst I note the Inspector's findings, the appeal proposal is not directly comparable in that all of these properties were designed with frontage onto London Road. Therefore, it does not alter my findings.
15. Consequently, I find that the proposed development by virtue of its design, siting and layout would cause unacceptable harm to the character and appearance of the area. Thus, it would be contrary to Policies SP7 and LPP52 of the BDLP which require amongst other things, a high standard of design that responds positively to local character in terms of scale, layout and design.

Living Conditions

16. Policy LPP52 of the BDLP requires that residential developments provide a high standard of accommodation and amenity for all prospective occupants.
17. Policy LPP70 of the BDLP states that proposals for all new developments should prevent unacceptable risks from all emissions and other forms of pollution (including light and noise pollution). It further states that development will not be permitted where, individually or cumulatively and after mitigation, there are likely to be unacceptable impacts arising from the development on noise.
18. In respect of noise, the application was accompanied by a Noise Report⁵, which sets out that the nearby noise sources include the A120 which is raised above the appeal site, the B1256 and other roads within the local area. The report proposed mitigation in the form of enhanced glazing, trickle ventilation and a requirement to keep windows closed.
19. Additional evidence was submitted at the appeal stage, which sought to address the concerns raised by the Council in relation to the proposed mitigation. However, whilst the appellant has indicated that the mitigation could be secured by imposition of planning conditions, the Council maintains that due to the proximity to the A120, this would not ensure that satisfactory living conditions would be provided for future occupiers.
20. The orientation of Plots 2 and 3 directly towards the primary noise source of the A120 is likely to result in significant noise disturbance to the main bedrooms of

⁴ Appeal Ref: APP/Z1510/W/18/3218279

⁵ Noise Report prepared by Sharps Redmore dated 17 August 2023.

these properties. This would require the windows to be kept permanently closed to avoid harmful levels of noise. Whilst it has been suggested that a mechanical ventilation system could be used to prevent over-heating during the summer months, no details have been provided. I cannot therefore be certain that this would be effective in mitigating adverse harm.

21. The Noise Report also recommends the use of a 2.8m close boarded fence to the garden of Plot 3, and 2 metres high elsewhere. Even with this mitigation The noise report indicates that only part of the garden will achieve noise levels that would accord with the WHO guidelines.
22. The appellant has mentioned that similar measures have been secured by condition in relation to other schemes within the District. However, no further details have been provided. The appellant has also made reference to an appeal decision which is stated to have taken a similar approach. However, as I cannot be sure whether there are any similarities between the appeal site and these examples, I find that I cannot attribute them more than very limited weight. In any event, I have considered whether or not the proposed development could be made acceptable with regard to noise by imposing conditions, but for these reasons set out above and based on the evidence before me, I have determined that it could not.
23. For these reasons, I therefore find that it has not been demonstrated that the proposed development would provide satisfactory living conditions for future occupiers, with regards to noise.
24. In respect of outlook and light, as noted above, a 2.8-metre-high close boarded fence would be required to mitigate the noise from the nearby A120 and other main roads. This fence would be located within approximately 3 metres of the side elevation of Plot 3, which contains three large windows serving the open plan kitchen, living and dining spaces. The proximity of these windows to the solid, high fence is likely to result in poor quality outlook for the occupiers of Plot 3. The proximity of the fence would also be likely to affect the amount of sunlight and daylight entering the ground floor of the property. For these reasons, I find that the proposed development would not provide satisfactory living conditions for the occupiers of Plot 3, with particular regard to outlook and light.
25. In respect of Plot 2, the only windows serving each of the three bedrooms would face towards the single storey garages and blank rear elevation of Plot 1. The relationship of the adjoining buildings is likely to result in a poor quality of outlook to these windows. As a result, I find that the proposed development would not provide satisfactory living conditions for the occupiers of Plot 2, with particular regard to outlook
26. The proposed garage for Plot 3, would be located close to Plot 1 and as a result there would be the potential for some minor disturbance to occur. However, this is not an unusual arrangement and accordingly would not be likely to cause adverse harm to the living conditions of the occupiers of Plot 1.
27. For the above reasons, I therefore find that it has not been demonstrated that the proposed development would provide satisfactory living conditions for future occupiers, with particular regard to noise, light and outlook. Thus, it would be contrary to Policies LPP52 and LPP70 of the BDLP, these policies require amongst other things, provision of a high standard of accommodation and amenity

for all prospective occupants and prevent unacceptable impacts in relation to noise pollution.

Highway Safety

28. Policy LPP43 of the BDLP states that development will be required to provide vehicular and cycle parking in accordance with the Essex Vehicle Parking Standards (the Parking Standards).
29. In this particular case, the Parking Standards set out that there is a requirement for each proposed dwelling to be provided with two vehicle parking spaces. The standards further state that a garage can only be included as a parking space if it measures at least 7 metres by 3 metres. Additionally, there is also a requirement for 0.25 visitor spaces to be provided, rounded up to the nearest whole number.
30. The submitted plans indicate that the proposed garage for Plot 1 would provide two parking spaces. However, the measurements for the garage are disputed by the Council with regards to whether they comply with the minimum size standard in the Parking Standards. I accept that the amended plans submitted with the Appellant's final comments show a car parked within the garage of Plot 1, nonetheless, the garage for Plot 1 appears smaller in length than the garages for Plots 2 and 3 and as a result it still lacks sufficient detail to demonstrate that the required standard of parking can be accommodated within the appeal site for all three plots.
31. Furthermore, there is no visitor parking provision and even if I were to accept the spaces meet the required sizes, no tracking information has been provided. The location of the spaces close to the access road and turning head would be likely to increase the opportunity for conflict between parked cars, visitors and users of the access road.
32. Whilst I note that no objection was received from Essex County Council Highways, for the reasons set out above, given the restricted amount of space available for the required amount of parking, as well as providing access to each of the proposed dwelling, I find that it has not been demonstrated that the proposed development would be able to accommodate the required parking provision with the site.
33. I therefore conclude that it has not been satisfactorily demonstrated that the proposed development would provide adequate parking provision in accordance with the guidance set out in the Parking Standards. Thus, the proposed development would be in conflict with Policy LPP43 of the BDLP which requires vehicular and cycle parking to be provided in accordance with the Parking Standards.

Other Matters

34. I acknowledge that the Council raised no specific concerns in relation to the principle of developing the site for housing, matters regarding surface water drainage, contamination or ecology/bio-diversity issues, arboricultural matters nor the impact upon the amenities of any neighbours. However, the absence of harm in relation to these matters is a neutral factor which neither weighs for nor against the proposal.

35. The appeal site is located within the Zone of Influence of the Blackwater Estuary Special Protection Area (the SPA) and Ramsar site and the Essex Estuaries Special Area of Conservation (the SAC). As a result, the proposed development is likely to have an effect on the designated areas as a result of increased recreational pressure. The Council advise that a financial contribution is required to mitigate the impact of the proposed development and have confirmed that the financial payment has been made under Section 111 of the Local Government Act 1972.
36. If I were minded to allow the appeal, I would need to be satisfied that the proposal would have no adverse effects on the integrity of the SPA, Ramsar Site and SAC including through the undertaking of an Appropriate Assessment. However, even if that were the case, it would at most be a neutral factor. As I am dismissing the appeal for other reasons, I do not need to consider this matter further as it could not lead me to a different conclusion.

Planning Balance

37. At the appeal stage, the Council has provided evidence which indicates that it can now demonstrate a five-year supply of housing sites. This is not disputed by the appellant. Nevertheless, even if the Council could not demonstrate such a supply, the provision of three additional dwellings on the edge of a settlement, would represent no more than a modest benefit.
38. Nonetheless, these benefits would be limited to those associated three dwellings and would not be so compelling as to outweigh the harmful effects of the development that I have identified. Consequently, I find that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Conclusion

39. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons given the appeal is dismissed.

K Lancaster

INSPECTOR

