
Appeal Decision

Site visit made on 2 October 2025

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2025

Appeal Ref: APP/Z1510/W/25/3369349

Land to the south of 231 Witham Road, Black Notley, Essex CM77 8NQ

- 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 Ms Michelle Smith against the decision of Braintree District Council.
 - The application Ref is 25/00850/FUL.
 - The development proposed is described as to erect a modest 3 bedroomed dwelling on the land to the front aspect - ie aligned with the existing dwelling frontages along Witham Road.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposal upon the character and appearance of the area;
 - whether or not the proposal is compliant with policies for the location of new development;
 - whether or not the proposal would provide satisfactory living conditions for the occupiers of a neighbouring dwelling with particular reference to privacy and the appeal dwelling with particular reference to daylight and outlook;
 - the effect of the proposal upon highway safety and convenience; and,
 - whether or not sufficient evidence is provided in respect of biodiversity.

Reasons

Character and appearance

3. The appeal site comprises part of a vegetated field, largely free of built development, close to the settlement of Black Notley, where the settlement has a definitively residential character and appearance. However, the appeal site is quite open and strongly viewed as part of the wider countryside on the eastern side of Witham Road. Its largely open and undeveloped appearance makes a positive contrition to the character and appearance of the area.
4. The proposed development would result in marked urbanising incursion of new built development from the new dwelling, access, hardstandings, parking, and associated paraphernalia and activity. Though noting the residential development due broadly north of it within its visual context, the proposed development would be inherently harmful to the character and appearance of the appeal site and area.

5. Dwellings nearby include a variance of styles, including some dormer bungalows. However, those I could see have quite modest dormers. The two proposed would be particularly large bulky front dormers, appearing as dominant features of the roof and would be at incongruous with those nearby. The triangular windows on one, with a large blank area would not be reflective of designs I could see in the surrounds, and result in a stridently mis-matched pair, that does not reflect the remaining front dwelling façade. Even were I to regard the advice I am referred to in the Essex Design Guide as outdated, the dormers would still be out of keeping with the host dwelling and be harmful to the character and appearance of the area.
6. The proposed dwelling also includes an unusual and awkward looking arrangement of a rear dormer with an almost full height window adjoining and overlapping a rear projection with apex window of a differing scale. The arrangement would lack coherency and not result in an attractive well-designed dwelling. Alone and in combination the aforementioned aspects of the appeal scheme design would be highly strident in their context. Though a new dwelling need not be a carbon copy of others, the combination of features proposed would be out of keeping with and harmful to the appearance of the overall dwelling, and the character and appearance of the area.
7. Even were I to agree window details could be addressed by suitably worded conditions within the scope of this appeal scheme, I am not persuaded the harm from the scale of front dormers, and the arrangement of rear projections could be adequately addressed within its scope. Though there may be scope for significant landscaping, this would not satisfactorily address all the harm. The harm would be visible from a moderate section of Witham Road, from a limited part of a small number of properties nearby, and some open landscape to the east.
8. For the reasons set out above, the proposal would be harmful to the character and appearance of the area. It would conflict with Policy SP7 of the Braintree District Local Plan – Section 1 (2021) (the S1LP) and Policies LPP1, LPP35 and LPP52 of the Section 2 Local Plan (2022) (the S2LP). Amongst other things these seek a high standard of design and architecture, that complements, is in harmony with and responds positively to local character and context to preserve and enhance its qualities, and protects the intrinsic character and beauty of the countryside. It also conflicts with paragraph 135c) of the National Planning Policy Framework (2024) (the Framework) which has similar objectives to the above policies, and paragraph 139 which states that development that is not well designed, especially where it fails to reflect local design policies, should be refused.

Location

9. Policy SP3 of the S1LP states that existing settlements will be the principal focus for additional growth. Development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role. There is no compelling argument demonstrating the settlement should not be considered as defined by designated boundaries for the purposes of Policy SP3. The appeal site is in the countryside outside, and though a fairly short distance from the designated settlement boundary, does not adjoin it.
10. Policy LPP1 of the S2LP requires development is confined to uses appropriate to the countryside while also protecting and enhancing the intrinsic character and beauty of the countryside. It is not fully clear which criteria the Council is referring

to in its reason for refusal and the appellant's view is that a residential use could be regarded as appropriate subject to locational sustainability and impacts. Even were I to approach it on that basis, given the impacts I have found to character and appearance above, the proposal would conflict with that approach.

11. The dwelling to the north was approved despite its countryside location, when the local plan was at an advanced stage and with a similar housing land supply (HLS) position. However, the evidence before me indicates the Council considered it was within a residential curtilage and was in such proximity to the settlement, it was regarded as abutting and adjacent to the village envelope. In these regards it differs from the appeal proposal, and notwithstanding the scale of this proposal, based upon the substantive cases, I can only find the appeal scheme conflicts with the relevant part of Policy SP3. The appellant's view the golf course might be regarded as a wholly defensible barrier, does not outweigh the conflicts.
12. Black Notley is a third-tier settlement and is understood to lack most facilities to meet day to day needs. It would be necessary for future occupiers to travel to Braintree nearby or other higher order settlements for other services, although the Council acknowledges there are opportunities for sustainable travel, and which provide connectivity to the larger centres.
13. The Inspector for the Brain Valley Avenue¹ appeal found certain settlement policies were regarded as out of date due to being drawn up in relation to much earlier levels of housing need (2001). That is not demonstrated to be the case for the settlement boundary as set out before me. However, I also note they found the scheme did not conflict with SP3 insofar as it seeks to ensure development locations are accessible by a choice of means of travel. Were I to adopt a similar view for this proposal, it might limit the weight attributed to the conflict, but it would not fully mitigate, or outweigh, the harm from conflict with SP3 insofar as it seeks development is within or adjoins settlements.
14. For the reasons set out above the appeal scheme would not be compliant with policies for the location of new development, in conflict with Policy SP3 of the S1LP and Policy LPP1 of the S2LP, the relevant provisions of which I have set out above. Though the reason for refusal cites a conflict with Policy SP1 of the S1LP, as it relates to the presumption in favour of sustainable development, I have not concluded in relation to it under this main issue, but I return to this below.
15. The Council refers to a conflict with the Framework, although in-light of the commentary in its delegated report and appeal statement, it is unclear exactly which particular paragraphs. Therefore, I have not concluded against the Framework for this particular main issue. The Council's basis for finding a conflict with Policy SP7 under this main issue unclear as it includes a variety of place shaping principles. Notwithstanding my findings on the first main issue, noting the Council's acknowledgement of opportunities for sustainable travel, I do not find a conflict with the policy under this main issue.

Living conditions

16. The Council explains its concerns are of the effects upon a recently constructed dwelling² due to actual and perceived overlooking into the rear private amenity

¹ Ref. APP/Z1510/W/21/3281232.

² Ref. 22/0839/FUL.

space from two side windows. The appellant does not appear to substantively dispute this, but offers obscure glazed windows to overcome concerns. The Council confirms that a condition securing an obscure glazed non-opening window, alleviates its concerns in respect of a bathroom. However, it is not deemed a suitable solution for a habitable room due to daylight and outlook.

17. The bedroom in question is served by two windows. The largest one at the front of the dwelling, provides a good degree of daylight and outlook to much of the room. The smaller side window would serve a fairly limited proportion of it. If it were fully obscure glazed, the level of daylight would be likely to be acceptable in the room. However, as a matter of judgement, there would not be sufficient outlook to provide satisfactory living conditions to the room as a whole.
18. As a matter of planning judgement, in combination with the main window, in principle a part obscure glazed window could be capable of ensuring a sufficient level of outlook for the room as a whole, while safeguarding the living conditions of the neighbouring occupiers. I note the appellant's suggested pre-commencement condition in this regard. It appears probable from the plans the internal floor level relative to the window is such that part-obscure glazing the window could both ensure sufficient privacy for neighbouring occupiers while also providing a satisfactory level of outlook for the appeal dwelling occupiers.
19. Therefore, subject to the imposition of suitably worded planning conditions, the appeal scheme could ensure satisfactory living conditions for the occupiers of a recently constructed neighbouring dwelling with particular reference to privacy, and the proposed dwelling with particular reference to daylight and outlook. I do not find a conflict with Policy SP7 of the S1LP and Policy LLP52 of the S2LP which seek to ensure that development protects, and ensures, a high standard of amenity for existing and future users. It would also not conflict with Framework paragraph 135f) which has similar objectives.

Highway safety

20. Though not adopted by the Council, Policy DM1 of the Essex County Council Development Management Policies (2011) (the DMP) provides some useful guidance upon how development proposals will be assessed by the Highway Authority (HA). It advises proposals shall be assessed against; current standards for the category of road having regard to the capacity, the safety and geometry of the highway network, securing safe and convenient access, and not creating a significant potential risk or being detrimental to the safety of the highway network.
21. I note the HA's initial view of their being insufficient evidence to demonstrate the proposal would be acceptable on highway safety, efficiency and accessibility grounds. The HA has had the opportunity to comment upon appellant's additional splay plan that indicates a 2.4m x 21m splay to the north and 2.4m x 42m splay to the south may be achievable, within the extent of the appeal site boundaries.
22. The HA considers the revised submitted details fail to meet the current standards. It highlights the necessity for plans to be of the necessary extent showing the splays within the red-line area and public highway boundary ascertained by a search, based upon the posted speed limit or 85th percentile vehicle speed from a survey, and displaying all dimensions.

23. It is not clear from the evidence before me what the visibility splay requirements and sight stopping distances are for these posted speed limits. It would appear to me the northern splay indicated of 21m is very short for an access for either the posted 40mph section of highway the access opens onto or the nearby 30mph speed limit. The splays are shown only to the edge of the appellant's land. If splays can be achieved within the public highway to the north and south, they may be greater. However, this information is not clearly shown on the appellant's plan, there is no detailed evidence of vertical alignments and there are no search results before me to show the extent of the public highway.
24. The access on the splay plan appears to be similar dimensions to that on the site plan, but whether or not it is, and whether it meets the required dimensions, are also not clear. In-light of the significant absence of detail, and the fundamental importance of this matter, it is not demonstrated a safe access could be achieved, and I am not satisfied that the imposition of a condition in this regard would meet the test in the Planning Practice Guidance and Framework of being reasonable.
25. Therefore, for the reasons set out above, I cannot be certain the proposal would not be significantly prejudicial to highway safety and convenience. This conflicts with the aims of Policy LLP52 of the S2LP which expects proposals demonstrate they would not have a detrimental impact upon the safety of highways or their users. It would also conflict with Framework paragraph 115b) which expects a site can achieve a safe and suitable access for all users.

Biodiversity

26. The appeal proposal is subject to statutory Biodiversity Net Gain (BNG) requirements under Schedule 7A of the Town and Country Planning Act 1990. In these circumstances the PPG³ requires that where degradation activities have taken place before the submission of the application or an earlier proposed date, the applicant 'must provide', amongst other things, the pre-development biodiversity value of the site on the date immediately before the degradation activities were carried out.
27. The appellant's subsequent BNG Assessment has been carried out by suitably qualified professionals, the evidence is in a suitable format, and a habitat baseline map is provided. However, the evidence does not address the past habitat degradation sufficiently. The assessment acknowledges degradation occurred and states it has used historical photographs, aerial imagery and assessment of the current habitats adjacent to affected areas, to identify those degraded.
28. However, the Council's photographs indicate degradation took place prior to that photographed and mapped by the appellant. The Council's evidence strongly suggests the removal of a habitats including hedgerow and verge side trees, not on the appellant's baseline map. Bare ground recorded on the appellant's habitat map was likely modified grassland. Based upon the evidence before me, the appellant's baseline map and assessment values do not reflect what is likely to have been the pre-degradation values. In consequence it could significantly under-estimate the site value. In-light of the deficiencies, in conflict with a key aspect of guidance in the PPG, I have significant concerns the mandatory condition would not be capable of being discharged and the 10% BNG requirement would not be achieved.

³ Ref. Paragraph: 036 Reference ID: 74-036-20240214.

29. The appellant proposes the Council's suggested condition could require the delivery of the mandatory 10% BNG in a manner to the satisfaction of the Council. However, in-light of clear deficiencies in respect of pre-degradation evidence and values of habitat, and certainty as to whether a 10% BNG could be achieved, I am not persuaded modified conditions overcome the need to address a fundamental principle of PPG guidance in respect of BNG, which attracts significant weight.
30. Therefore, insufficient evidence has been provided in respect of biodiversity to ensure mandatory requirements will be delivered. This would conflict with the aims of Policies LPP64 and LLP66 of the S2LP which state that proposals shall provide for the protection of biodiversity, mitigation and compensation of adverse effects, enhancements commensurate to the scale of development, and where insufficient information is provided a precautionary approach will be taken. I also cannot be certain it would comply with the aims of Framework paragraph 187d) which expects decisions to minimise impacts and provide net gains for biodiversity.

Other Matters

31. The appeal site lies within a Zone of Influence of the Blackwater Special Protection Area and Ramsar site. The appellant has made a payment to contribute towards mitigation in accordance with the Essex Coast Recreational Disturbance Avoidance & Mitigation Strategy (2020). As this is seeking to secure mitigation against the likely significant effects of the proposal, would not result in an overall benefit, and I am dismissing the appeal for other substantive reasons, I have not pursued this matter further. On the basis the payment adequately secures the delivery of full and timely mitigation, this would be a neutral matter.

Planning Balance

32. The proposal would result in limited temporary economic benefits during construction, and minor benefits from on-going spend in the local economy and support to local services and facilities upon completion. The evidence indicates the Council could demonstrate a deliverable HLS of the order of 5.32 years. A 5-year HLS is not a ceiling, the appellant informs me the figures in Policy SP4 are a minimum, and Framework objectives seek to significantly boost the supply of new homes. The proposal could be designed to be a more accessible dwelling for those with disabilities. Overall, the benefits of a single dwelling towards supply and meeting local needs attracts limited weight in favour of the proposal.
33. Reference is made to sustainable design and renewable energy technologies to be integrated and there is some indication of these on the submitted plans. However, there is no substantive evidence demonstrating an overall net benefit to generation. The measures proposed and scope within the appeal scheme, suggests this would be likely to be a very minor net benefit at best.
34. Were I to agree the proposal would, or subject to the imposition of suitably worded planning conditions, could comply with policies and standards in respect of matters such as the living conditions of future and neighbouring occupiers, drainage, refuse collection, construction management, parking, and materials, these would be neutral matters in the balance. Securing mitigation to prevent harm to European designated sites, and ensuring satisfactory living conditions as set out under the third main issue, are neutral matters. The policy compliance and benefits of the development attract limited weight in favour of the appeal scheme.

35. The proposal would conflict with development plan and Framework design policies and be harmful to the character and appearance of the area, which would be of a magnitude that attracts significant weight against the scheme. That I cannot be certain the scheme would not be prejudicial to highway safety and convenience, attracts significant weight against it. The conflict with policies and guidance in respect of biodiversity is an important matter that attracts due weight against the scheme. The proposal would conflict with some policies for the location of development, which based upon the magnitude of the harm and adverse effects, I attribute the conflicts limited weight against the appeal scheme.
36. Overall, the policy conflicts and resulting harm are such that the adverse impacts significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies of the Framework taken as a whole. The appeal scheme is contrary with the development plan read as a whole, and conflicts Policy SP1 of the S2LP insofar as it states that development that complies with the Plan will be approved, unless material considerations indicate otherwise.

Conclusion

37. The proposed development is contrary to the development plan read as a whole, and the Framework read as a whole. There are no considerations advanced, including the policies of the Framework, which indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Mr D Szymanski

INSPECTOR