



Appeal Decision

Site visit made on 6 October 2025

by **Mark Caine BSc (Hons) MTPL MRTPI LSRA**

an Inspector appointed by the Secretary of State

Decision date: 29 October 2025

Appeal Ref: APP/Z1510/W/25/3370859

Land adjoining tennis courts, Ludham Hall Lane, Black Notley, Essex CM77 8QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Daniel Chapman against the decision of Braintree District Council.
 - The application Ref 25/01028/FUL was approved on 8 August 2025 and planning permission was granted subject to conditions.
 - The development permitted is 'Proposed erection of 3 No. detached dwellings and 1 No. detached bungalow & new access.'
 - The condition in dispute is No 13 which states that: *'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending, revoking and reenacting that Order), no enlargement of the dwellinghouse(s), provision of any building within the curtilage of the dwellinghouse(s), or alteration of the dwellinghouse(s), as permitted by Classes A, AA, B, C and D of Part 1 of Schedule 2 of that Order shall be carried out without first obtaining planning permission from the Local Planning Authority'*.
 - The reasons given for the condition is: *'In order that the Local Planning Authority may exercise control over any proposed future development and in the interests of residential and/or visual amenity'*.
-

Decision

1. The appeal is allowed and the planning permission Ref 25/01028/FUL for the erection of 3 No. detached dwellings and 1 No. detached bungalow & new access at land adjoining tennis courts, Ludham Hall Lane, Black Notley, Essex CM77 8QT granted on 8 August 2025 by Braintree District Council, is varied, by deleting condition No 13 and replacing it with the following condition;
 - 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes B and C of Part 1 of Schedule 2 to the Order shall be undertaken on approved plot 01.

Background and Main Issues

2. Planning permission for the dwellings included a condition removing permitted development rights (PD rights) for extensions, including porches and additions and other alterations to the roofs. The Council's statement indicates that the condition is necessary to protect visual and residential amenity and to preserve the high-quality design and appearance of the approved houses.
3. Taking the above background into account, the main issues are whether the disputed condition is reasonable and necessary, in the interests of the character and appearance of the area and the living conditions of the residents of neighbouring properties.

Reasons

4. Paragraph 57 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed when they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. More specifically, paragraph 55 of the Framework states that planning conditions should not be used to restrict national PD rights unless there is clear justification to do so.
5. The Planning Practice Guidance (PPG)¹ advises that conditions restricting the future use of PD rights may not pass the test of reasonableness or necessity. It also states that area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
6. The Council applied condition 13 to remove PD rights within classes A to D inclusive. As the condition is applied to the appeal site only, and it clearly does not extend beyond class D to include other types of domestic development, it is consequently not a full 'blanket' restriction of PD rights. The reference to Class E in the Council's evidence has therefore not formed a part of my deliberations.
7. The removal of PD rights would not preclude future owners of the properties from applying for planning permission for alterations in the future. However, the PD rights which have been removed would, in the main, permit further modest extensions to the rear of the approved dwellings and perhaps small porches and loft conversion/ rear dormers. I am aware that the approved dwellings already have open canopy porches, but even if all of these rights were fully exercised, the resulting dwellings would not appear overly large, bulky or disproportionate in relation to their size, design and appearance or the spaciousness of the plots that they occupy.
8. Given the restrictions in relation to size, scale and distance with shared boundaries set out under Class A I am also unable to find that any extensions permitted under this class would harm the living conditions, in respect of light, outlook or privacy for future and existing neighbouring properties. In addition, there are further restrictions within the prior approval process for Class AA. These specifically require an application to the Council for prior approval as to the impact on the amenity of adjoining premises, including overlooking and privacy and the external appearance of the dwellinghouse. The removal of PD rights in relation to development permitted under Class A, AA and D for any of the approved plots is therefore not reasonable or necessary.
9. Nevertheless, guidance in the Essex Design Guide (EDG) recommends that, where the rear faces of new houses are approximately parallel to the existing, a separation distance of 15 metres from the rear elevations of the proposed houses to the rear boundaries of existing houses should be maintained. While that figure is only guidance, it is intended to preserve the privacy of existing occupiers.
10. I am mindful that a degree of mutual overlooking of garden space is a common feature in most residential areas. Given its restricted scale and height, and separation with 9 Wildflower Meadow's shared rear garden boundary, I do not find

¹ Planning Practice Guidance ID: 21a-017-20190723

that any roof additions, enlargements or alterations permitted under Class B and C for the approved bungalow on plot 04 would result in an unacceptable amount of overlooking to this neighbouring property. Indeed, the distance to this boundary would be similar to that which has already been approved between the two storey dwellings on the site and other neighbouring gardens on Wildflower Meadow.

11. Furthermore, the approved dwelling on plot 03 directly faces the gable elevation, driveway and a sliver of land to the side of an extension to No 9. The approved dwelling on plot 02 also faces the turning head of this neighbouring cul-de-sac. Accordingly, I am satisfied that the angled relationships between these two approved dwellings and the neighbouring gardens at 5, 7 and 9 Wildflower Meadow are such that any future dormer extensions or roof alterations to these dwellings would not cause an unacceptable loss of privacy.
12. Nonetheless, plot 01 directly faces the rear garden areas and rear habitable windows of Nos 5 and 7. There would be an approximate 15 metre separation distance between the boundaries of these neighbouring properties and the rear elevation of the approved dwelling on this plot. Any potential new second floor heights and windows and the proximity of these to the shared boundary with No 5 and 7's rear garden areas would result in an increased amount of direct overlooking and loss of privacy for its neighbouring residents. Any absence of controls on the insertion of rear roof windows or dormers to Plot 01 would thereby have the potential to create an unacceptable amount of harmful overlooking of No 5 and 7's rear gardens.
13. I therefore find that condition 13 in its current form is not reasonable or necessary in the interests of the character and appearance of the area and the living conditions of the residents of neighbouring properties. As such there is clear justification for it to be removed and replaced by a condition that refers to restrictions in respect of Class B and C of the GPDO for plot 01 only.
14. This would not, in my view, conflict with Policy SP7 of the Braintree District Local Plan – Section 1 (2021), Policy LPP52 of the Section 2 Local Plan (2022) and design advice within the EDG. These seek, amongst other matters, for the scale, layout and massing of buildings and elevation design to reflect or enhance the area's local distinctiveness and to protect the amenity of existing and future residents and users with regard to matters including privacy and overlooking.
15. In reaching my decision I have had regard to an appeal put to me (Ref: APP/P1940/W/21/3275230). However, this was in relation to a single storey side/rear extension and alterations in the Green Belt and involved different policy considerations. As such, it is not relevant to my assessment of the current appeal proposal, as I have determined it based on its own merits

Conclusion

16. For the reasons given above, the planning permission should therefore be varied as set out in the formal decision.

Mark Caine

INSPECTOR