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## Appeal Decision

Site visit made on 27 September, 2016

**by S. J. Buckingham, BA (Hons) DipTP MSc MRTPI FSA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 8<sup>th</sup> November, 2016**

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**Appeal Ref: APP/A1530/W/16/3150042**

**6 Fitzwalter Road, Colchester, Essex, CO33 3SS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Ross Bain of Vaughan & Blythe (Construction) Ltd. against the decision of Colchester Borough Council.
  - The application Ref 160012, dated 23 December 2015 was refused by notice dated 16 February 2016.
  - The development proposed is demolition of existing dwelling and construction of 2 no. 4 bedroom detached houses with single detached garages.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling and construction of 2 no. 4 bedroom detached houses with single detached garages at 6 Fitzwalter Road, Colchester, Essex CO33 3SS in accordance with the terms of the application, Ref 160012, dated 23 December 2015, and the plans submitted with it, subject to the conditions set out in the schedule to this decision.

### Main Issues

2. The main issues in this case are the effect on the character and appearance of the area including its effect on protected trees.

### Reasons

3. The appeal site sits in an area of generally attractive housing of mixed character some of which are and set in generous gardens. The linear group of trees running behind the houses on the east side of Fitzwalter Road has considerable presence in the area, being clearly visible over the roof of the appeal dwelling and the roofs of two storey houses along the road.
  4. The existing bungalow at no.6 extends to some depth to the rear of the site, with garden areas to the rear, side and front. The front of the site is bounded by a high, close boarded fence, enabling the front garden space to be enjoyed in private. The rear of the garden area contains a number of trees, some substantial and some smaller, ornamental specimens. There are three trees, a beech and two oaks, to the rear of the garden of no. 6, but within the gardens of adjoining properties, which are protected by a Tree Preservation Order.
  5. The proposed new houses would be a handed pair centred on the long axis of the site. They would have external rear terraces extending to just beyond the
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- furthest extent of the existing bungalow, with single storey, highly glazed day rooms just behind that line. The built form would not therefore extend back into the site beyond the rear building line of the existing building to any significant extent, although it would extend further across the width of the site.
6. The site is orientated roughly north-west to south-east, with the protected trees grouped around the southern corner of the site. The appeal proposal includes the removal some of the smaller and lower-value specimens within the site but not of those of moderate or high value. At the time of my site visit, which was around midday in late September, the rear of the garden directly under the tree canopy was in shade, but it was evident that sunlight was able to enter over and between the existing trees, and was noticeable in the part of the garden adjoining the rear line of the existing bungalow.
  7. The information submitted with the appeal contains detailed assessments both of likely daylight levels reaching rear windows of the appeal dwellings and likely sunlight levels reaching the gardens. On both counts the proposed development appears to be capable of performing adequately in terms of Building Research Establishment requirements. I note the issue of whether or not the proposal would meet the summer target for daylight, and conclude that as a garden has a wider prospect than an interior space, it is likely to receive more daylight, and that the actual daylight received in the gardens is likely to be closer to the BS target of 25% than the 19.39% result given. I also note the point made in paragraph 3.4.6 of the submitted study that where the minimum value for a given room is exceeded in winter but not in summer, daylight provision year round is likely to be adequate, albeit with some effects experienced from trees. I note also that the gardens of the proposed dwellings are likely to meet the sunlight requirements set out by the BRE.
  8. On the basis of this information and my observations on site I can see no reason to doubt the evidence provided, and consider that the relevant windows and rear gardens of the proposed dwellings are likely to receive adequate amounts of daylight and sunlight. No alternative study has been put before me to indicate anything to the contrary.
  9. The Council has expressed concern that the effect of the proposed development on the living conditions of future occupiers would lead to applications for the removal or hard pruning of the protected trees, and I am bound to take that possibility into account. However, I have also to give some weight to the fact that the trees are not within the garden of no. 6 itself, and would not be in the ownership of future occupiers of the appeal dwellings. I am also mindful of the Council's responsibility under the relevant legislation, and as set out in the Framework, to consider the effect of any such applications on the visual amenity of the area. Taking all these factors into account, I conclude that the Council's concerns on this matter have not been demonstrated to be well founded.
  10. In conclusion, the east-facing rear windows of the proposed buildings and rear garden areas to be created by the appeal proposal are likely to receive adequate levels of daylight and sunlight respectively. That and the other factors set out above reduce the weight that I can attach to fears that there will be pressure from future occupiers of the appeal building for the removal or pruning of the protected trees. As a result I conclude that the appeal proposal is not likely to have a harmful effect on the character and appearance of the

area by virtue of leading to the removal or lopping of trees protected by a Tree Preservation Order.

11. The proposed dwellings would be a modest pair of detached houses in a traditional design idiom. They would sit close to the typical front building line of houses along the street, behind a landscaped and parking area. The proposal would include the removal of the existing high, close boarded fence, which is out of character with the low front boundaries and landscaping of other front gardens in the area. Paragraph 60 of the Framework urges against attempting to impose architectural styles or particular tastes, and but says that it is proper to seek to promote or reinforce local distinctiveness. In the context of the more mixed townscape of this part of the area, I conclude that the appeal proposal would not therefore appear out of character, and would not have a harmful effect on the street scene.
12. The appeal dwellings would sit behind a landscaped front garden and have modest but adequate garden space to the rear. The elevational and plan details on drawing 617/1 are at different scales, which would account for concerns about the apparent discrepancies between the spaces between the paired dwellings as depicted in each. The separation would be adequate to avoid a terracing effect, and appears to take a cue from the massing and disposition of Rochester Court. The proposed dwellings would not therefore appear as overdevelopment in an area of mixed residential character comprising detached houses of varying sizes with front gardens and rear gardens of varying sizes.
13. As the appeal proposal would not lead to a scale of development which would be in conflict with the protected trees on site, and would not harm the character and appearance of the area, it is therefore not in conflict with Policy DP1 of the Colchester Borough Development Policies document 2010 which seeks a high quality of design in new developments that respects or enhances the landscape and other assets that contribute positively to the site and the surrounding area, nor with Policy UR2 of the Colchester Borough Core Strategy 2008, which also seeks development which respects its context.

### **Other Matters**

14. A number of concerns were raised by adjoining occupiers, some of which are dealt with as part of the main issues. The lack of pre-application consultation with local residents and the issue of consultation process relating to the appeal are not matters for my determination. The levels on the site and any changes needed to accommodate development are an issue which can be resolved by condition. I have considered the issue of precedent, but individual cases should be considered on their own merits.

### **Conclusion**

15. For the reasons given above, and taking into account matters raised, I conclude that the appeal should be allowed.

### **Conditions**

16. I have taken into account the conditions proposed by the Council and the requirements of the Framework. A condition is added requiring the carrying out of the development in accordance with the approved plans in the interests of clarity.

17. A condition is added requiring the approval of external facing materials in the interests of protecting the character and appearance of the area. Conditions are added relating to the retention and protection of retained trees and hedges during the development, including from fire, the replacement of any that are lost within five years from the completion of development, and the standards to be followed in tree works, to ensure their safeguarding in the interests of the character and appearance of the site and the area. Details of the external landscaping of the scheme and its implementation are reserved by conditions, in order to protect the character and appearance of the area.
18. Conditions have been added relating to the laying out and retention of spaces for parking and turning of vehicles, and their surfacing, in the interests of highways safety.
19. The Framework states that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification for doing so, and Planning Practice Guidance states that to do so will only be justified in exceptional circumstances. The Council has suggested a justification for doing so, and the particular circumstances of the site lead me to conclude that any extension of the approved buildings would have the potential to cause material harm to the provision of private garden space and to the protected trees and I have on this occasion added a condition to restrict that right.

*SJ Buckingham*

INSPECTOR

## **SCHEDULE**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 617/1, 617/2 and 617/3.
- 3) No development shall commence until details or samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details or samples.
- 4) All the trees and hedges shown on the approved plans as to be retained and any trees whose canopies overhang the site shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

- 5) No fires shall be lit within 10 metres of the nearest point of the canopy of any retained tree.
- 6) If, within a period of five years from the date of planting, any retained tree is removed, uprooted, destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree unless the local planning authority gives its written consent to any variation.
- 7) All tree work shall be carried out in accordance with British Standard BS 3998: Tree work: Recommendations.
- 8) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping for the publicly visible parts of the site. The scheme shall include any proposed changes in ground levels; the accurate positions, spread and species of all existing trees and hedgerows on the land; and details of any hard surface finishes and external works.
- 9) All changes in ground level, planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 10) No dwelling shall be occupied until space has been laid out within the site in accordance with the approved plans for cars to be parked and for the loading and unloading of vehicles and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall be maintained thereafter and kept available at all times for those purposes.
- 11) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 12) 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 residential extensions shall be erected unless otherwise subsequently approved via a separate planning permission.