
Appeal Decision

Site visit made on 8 August 2017

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: 6th September 2017

Appeal Ref: APP/A1530/W/17/3174693

St Ives Road, Peldon, Colchester, Essex CO5 7QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Heritage Pension against the decision of Colchester Borough Council.
 - The application Ref 162987, dated 18 November 2016, was refused by notice dated 17 January 2017.
 - The development proposed is residential development of five dwellings.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. The application is in outline, with all matters reserved, and I have determined it on that basis.

Main Issues

3. The main issues are:-
 - whether the proposed development would constitute sustainable development, with particular regard to its effect on the character and appearance of the area;
 - the effect of the development on any protected species that may be on site; and
 - the effect of the development on protected trees on the site.

Reasons

4. The appeal site is an area of open, closely-mown land on the edge of Peldon. Directly adjacent to the site on raised ground to the north is a large pond, with further ponds curving round in an arc to its east. The site is accessed from St Ives Road, but has a boundary running along Mersea Road, which is marked by naturalised hedgerow including young elm trees.
 5. The site adjoins residential properties to the south east and is surrounded by dwellings on its south and west sides, while to the north sit the light industrial units of the St Ives Farm Buildings site. It is, however, outside the settlement boundary of Peldon, and is greenfield land formerly used for agriculture. It sits within the Coastal Protection Belt.
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6. Paragraph 11 of the National Planning Policy Framework (the Framework) reminds us that the development plan is the starting point for decision making, unless material considerations indicate otherwise. Policy H1 of the Colchester Borough Council Core Strategy 2008, revised 2014 (the CS), directs the majority of new housing development to Colchester Town and to previously developed land, with any greenfield development being on allocated sites. This is reinforced by policy SD1 of the CS which sets out the settlement hierarchy, intended to promote growth in the most accessible and sustainable locations, an approach which I conclude to be broadly in line with the provisions of the Framework. The development of this unallocated greenfield site outside the settlement boundary would therefore fail to comply with these policies.
7. As the Council currently has an identified five year deliverable housing land supply, the provision of housing on a windfall site such as this would make only a limited contribution to meeting housing need. The development would provide five new houses. I consider, therefore, that although this would be a benefit, and one to which I accord moderate weight, that it would not outweigh the conflict with development plan policy.
8. The appellant has pointed out that conversion of the farm buildings to the north and east of the site were carried out without reference to policies directing development to sites within the settlement boundary, but these policies relate to housing rather than commercial or industrial developments. Other developments in the area are also pointed to as receiving differing treatment, but as no details of them have been put before me, I cannot judge how comparable they are to the appeal development. In any event, cases should be determined on their own merits.
9. Peldon is a small settlement consisting of a relatively small number of dwellings and several farms set in the open countryside. It has very limited services and facilities, including a church, pubs, and a regular but infrequent bus service. Nothing has been put before me to suggest that it is particularly close to any other settlements of any size or any with additional services and facilities. I conclude on this basis that the development would create isolated homes in the countryside, which Paragraph 55 of the Framework urges local planning authorities to avoid, and which would not be justified by any of the special circumstances set out in that paragraph. It would not, as a result, be in a sustainable location. The likely contribution of a small number of houses to the rural economy and the vitality of the settlement would also be limited.
10. The appellant suggests that the role of the village shop is one which is diminishing, but it appears to me that this is the kind of local facility which Paragraph 55 of the Framework seeks to protect. However in this case it is not clear from the evidence provided that there is a village shop in the area of the appeal site.
11. The appellant has also indicated that the development would represent infill development, as there are other developments around it. However, it appears to me that as there is a degree of space to the north and north east of the site, and as, in any case, it is not within the settlement boundary, that it does not constitute infill development.
12. Although submitted in outline, it is clear that the development would introduce five new dwellings into a greenfield site currently forming part of the open setting of the settlement. This, along with the provision of access, parking and

boundary treatments would add up to an urbanising effect on the previously open and rural character of the site, which would be harmful to its character and appearance. Although there are light industrial buildings in its backdrop, they appear to me to be reminiscent of the past agricultural use of the site, part therefore of its rural background and character, and not to justify residential development of the site.

13. Policy ENV1 of the CS seeks to protect the open character of the Borough and the open rural character of the Coastal Protection Belt by restricting development on unallocated greenfield land outside settlement boundaries. Similarly policy DP23 of the CS seeks to avoid development on undeveloped areas in the Coastal Protection Belt unless it can be demonstrated that it would not be significantly detrimental to landscape character. The proposal would conflict with these policies.
14. Policy DP1 seeks development which would respect or enhance the landscape and other assets that contribute positively to the site and the surrounding area, and the development would fail to accord with this.

Protected Species

15. Paragraph 109 of the Framework is clear that the planning system should minimise impacts on biodiversity, and at Paragraph 118 states that where significant harm resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. Standing advice from Natural England advises that a survey for Great Crested Newts (GCN), a protected species, should be provided if there is a pond within 500 m of a development and if the site includes refuges such as grassland, scrub, woodland or hedgerows. The site has such features, and the Council has put evidence before me to demonstrate that they requested such a survey, although none was provided.
16. Circular 06/2005 is clear in paragraph 99 that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat, and that it is therefore essential that the presence or otherwise of a protected species is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. It is also clear that such surveys should only be required by condition in exceptional circumstances. These are considerations to which I attach considerable weight.
17. The appellant has stated that the ponds are only "lagoons" serving runoff from the commercial development, and that the presence of the adjacent access road and open storage site indicate an acceptance that pollutants will be able to seep into them. However, no technical evidence has been put before me to support this view, and the ponds appeared well planted with natural vegetation. It has not therefore been convincingly demonstrated they might not provide a suitable habitat for GCNs to have colonised. There can as a result be no certainty that this protected species is not present.
18. I conclude therefore that as a survey for Great Crested Newts has not been supplied, adequate provision has not been made to establish the presence or otherwise or the effect of development on any protected species that may be on site. No exceptional circumstances have been demonstrated which would

justify the securing of the necessary survey by condition. The development would as a result fail to meet the requirements of Paragraphs 109 and 118 of the Framework, and the provisions of policy DP21 of the CS, which seeks to resist development proposals where there is reason to suspect the presence of protected species and which are not supported by relevant surveys, and policy ENV1 of the CS, which seeks to safeguard the borough's biodiversity.

Protected Trees

19. The Council has indicated that the trees and Elm hedging on the road boundary of the site close to Bluebell Cottage are protected by a Tree Preservation Order, to which I have had regard. Due to their height and length the hedge and trees are a conspicuous element in the street scene at that point, and due to their natural appearance they form part of the rural setting of the settlement, with significant visual amenity value.
20. While the appeal development would not include removal of any part of the hedgerow for access, the indicative plan Ref 95/16/1 shows development set towards the front of the site, to the north of the hedgerow, albeit with a porous pathway between the houses and the hedgerow. Nonetheless, no detailed mapping of the protected trees or their root protection areas has been supplied, and there can therefore, be no certainty of any effect on them arising from the development works.
21. As a result, therefore, I conclude that in the absence of appropriate survey information, no convincing evidence has been brought forward to demonstrate that the proposal would not lead to harm to or loss of the protected trees, with consequent damage to the character and appearance of the area.
22. The protected hedgerow and trees would be in proximity to the proposed houses, and their effect on future occupiers of these dwellings is therefore a legitimate consideration. This proximity might potentially giving rise to concerns over light reaching the properties and consequently requests for the hedge and trees to be reduced in height or removed, which, if allowed, would cause harm to the character and appearance of the area.
23. The development would therefore fail to comply with policies ENV1, DP1, DP21 and DP23 of the CS which seek to protect the landscape character of the area.

Conclusion

24. For the reasons given above, therefore, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

S J Buckingham

INSPECTOR