



Appeal Decision

Inquiry Held on 15 and 16 March 2018

Site visits made on 18 and 21 March 2018

by J Dowling BA(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2018

Appeal Ref: APP/W1525/W/17/3180511

Land adjacent to Chelmer Village Way, Springfield, Chelmsford Essex

- 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 David Fletcher (Landspring Ltd) against the decision of Chelmsford City Council.
 - The application Ref 16/02208/FUL, dated 13 December 2016, was refused by notice dated 26 May 2017.
 - The development proposed is erection of 70 bed, part two and part three storey care home with associated access, parking, landscaping, amenity space and provision for a significant area of public open space.
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Decision

1. This appeal is dismissed.

Procedural Matters

2. The Inquiry sat for two days and I undertook an unaccompanied site visit on 21 March 2018 where I observed the site from a number of viewpoints that had been pre-agreed by the main parties or suggested by interested parties. In addition at the request of the appellant I undertook an accompanied site visit on the 18 March 2018 to the Cherry Wood Grange Care Home located in Chelmsford which is another care home operated by the appellant.
3. A Statement of Common Ground (SoCG) was submitted at the start of the Inquiry which set out the policy context along with matters of agreement and those in dispute.
4. Due to time constraints it was agreed that both parties could submit their closing statements in writing to an agreed timetable. The Council also agreed to publish the closing statements on their website so that they would be available for inspection by any of the interested parties.
5. The site is an area of open space located at the junction of Cuton Hall Lane and the western end of Chelmer Village Way. The proposal would result in the development of a care home with its associated landscaping and parking on the south western corner of the site. At the Inquiry this area was referred to as the yellow land. The remainder of the site would be an area of public open space and at the Inquiry this was referred to as the red land. For clarity and consistency I have used these terms when writing this decision.
6. A completed Unilateral Undertaking (UU) was submitted at the close of the Inquiry which would provide the red land as public open space for a period of

125 years; the management and maintenance of this area through a public open space maintenance plan; the provision of a new signage board and the creation of a permissive right of way. In addition under the terms of the UU the appellant would undertake that for a period of 125 years or the life time of the development not to build on the red land.

7. In 2012 Chelmsford was afforded City Status and the Council was renamed Chelmsford City Council. However, as the development plan was adopted in 2008 the policies within the plan refer to the borough. For consistency I have therefore continued to refer to the borough rather than the city in my decision.

Main Issue

8. The main issue is the loss of open space and the effect that this would have on the character and appearance of the area and wildlife habitats.

Reasons

Policy Background

9. The development plan for the area consists of the Chelmsford Borough Council Core Strategy and Development Control Policies Development Plan Document (2008) (the CS and DCP). Following the publication of the National Planning Policy Framework (the Framework) in 2012, the Council undertook a focused review of the CS and DCP in order to update those policies within the development plan that they considered needed to be amended to ensure consistency with the Framework. Following an examination in public, where it was found sound, the Council adopted the Chelmsford City Council Core Strategy and Development Control Policies Focused Review (2013) (the Focused Review).
10. The policies most relevant to the determination of this appeal are CP12 and DC39 of the CS and DCP. Neither of these policies were subject to the Focused Review.
11. Policy CP12 seeks to maintain and enhance the provision of formal and informal recreation facilities, at appropriate locations, within the borough including the designation of new local parks and gardens, country parks and other public spaces.
12. Policy DC39 seeks to protect and enhance existing public open spaces that are identified on the proposals map. It states that planning permission will be refused unless it can be demonstrated that alternative and improved provision will be created in a location well related to the functional requirements of the relocated use and its existing and future users. It also requires that the proposal would not result in the loss of an area important for its amenity or contribution to the character of the area in general taking into account any deficiencies in public open space requirements in the area and the contribution the existing site could make to remedy that deficiency.
13. The Framework¹ advocates that the closer the policies in a plan are to the policies in the Framework, the greater the weight that they may be given. Both policies are consistent with the Framework² which advocates that existing open space should not be built on unless, amongst other things, an assessment

¹ Paragraph 215 of the National Planning Policy Framework (2012)

² Paragraph 74 of the National Planning Policy Framework (2012)

has been undertaken that clearly shows the open space to be surplus to requirements and the land being lost would be replaced by equivalent or better provision in terms of quantity and quality. As a consequence I consider that I can give policies CP12 and DC39 full weight.

Loss of Open Space

14. Whilst the appellant accepted that historically there was the intention that the area would provide public open space it was widely agreed at the Inquiry that it has never been laid out as such. Consequently whilst the appellant accepts that the site is shown as open space on the proposals map they advocate that it is not public open space and as such they question whether policies CP12 or DC39 are engaged.
15. I agree that the appeal site, whilst owned by Essex County Council (ECC), is effectively in private ownership. However, it was clear from the evidence that I read and heard and from what I observed on site that the site is accessed and used by the public on a regular basis and has been for a considerable period of time. As, for planning purposes, public ownership does not appear to be a pre-requisite of land being defined as public open space I am satisfied that in this instance given the way in which the land has been used that the site does constitute public open space for planning purposes and as such both policy CP12 and DC39 of the CS and DCP would be engaged.
16. The appellant accepts that the proposal would result in the loss of the yellow land to development. However, they advocate that in overall percentage terms this area is very limited; it is of poor quality and the development of the yellow land would enable the formalisation of the red land as open space and its enhancement through the introduction of a management and maintenance regime for this area.
17. In terms of compliance with policy neither CP12 nor DC39 make any exceptions with regards to the quality of the open space. Furthermore both policies require the maintenance **and**³ enhancement of open space (CP12) and the provision of alternative **and** improved provision (DC39) and as such whilst I accept that the proposal would provide enhanced/improved open space it would not fulfil the first part of the policy requirement to maintain current open space or deliver alternative provision. As a result the proposal would result in the loss of open space contrary to these policies and the Framework which requires that where open space is being lost that it would be replaced by equivalent or better provision in terms of quantity **and** quality.

Character and appearance

18. I observed at my site visit that whilst the site is relatively overgrown it has an open and pleasing aspect and provides visual relief and a sense of openness and rurality within fairly dense urban surroundings. From the evidence I have read and heard this visual openness is highly valued by local residents.
19. I consider that the care home through the use of materials and architectural detailing has been designed to reflect and respect the design of the adjoining commercial buildings and as such would not appear out of character in the street scene.

³ The use of bold indicates my emphasis

20. However, whilst in percentage terms the majority of the site would remain undeveloped in practical terms due to the proposed location, height, bulk and mass the building would enclose the roundabout with built form and effectively screen the retained open space from a number of key vantage points. As a consequence the openness and visual relief currently provided by the site would be substantially eroded. The feeling of rurality, surrounded by natural and semi-natural space would give way to a semi-urbanised environment and the further spread of development closer to residential buildings. In my opinion the sense of openness, which is a key attribute of the current open space, would be obstructed and from some vantage points entirely lost.
21. As a consequence I consider that the proposal would be contrary to CP12 which highlights the importance of maintaining formal and informal recreation facilities in the borough not just because of their recreational benefits but also the amenity value and contribution that they deliver in providing a visual break within the built environment⁴.

Wildlife matters

22. It was clear from the evidence that I have read and heard and from what I observed on site that due to the undeveloped and unmanaged nature of the site it has become a haven for wildlife. Furthermore, it has also been used as a translocation site for Great Crested Newts (GCN) for developments within the adjacent business park.
23. The proposal would result in the loss of the yellow land to development and formalised landscaping. However, unlike the red land which is more ecologically diverse I observed at my site visit that this area is predominantly overgrown grassland with some shrub and tree cover. As a result I am satisfied through the use of appropriately worded conditions and the proposed public open space maintenance plan that whilst the proposal would result in some loss of wildlife habitat that impact upon wildlife would in fact be very limited. Furthermore, by introducing the proposed management and maintenance regimes the biodiversity and ecology of the red land would be enhanced.
24. Finally, I note from the SoCG that the parties are in agreement that the information provided with the appeal satisfactorily shows that the proposal, subject to appropriately worded conditions, would result in no harm to the GCN which are a species that benefit from protection under the Wildlife and Countryside Act 1990. Nothing I have read, heard or seen leads me to a different conclusion. I am therefore satisfied that the proposal would not adversely affect wildlife habitats or the protected species.

Other matters raised by the appellant

25. The appellant considers that the fact that the yellow land is of poor quality should be given significant weight when considering its loss and that this element was not properly considered by the Council when they determined the application. Having visited the site I accept that the site is heavily overgrown and I agree that the site, particularly the yellow land, is physically in poor condition. However, in my opinion this is in the main attributable to a lack of maintenance and management rather than an intrinsic physical issue with the

⁴ Paragraph 2.106 of the CS and DCP

quality of the site itself. As a result I consider that I can only give limited weight to the current quality of the site. Furthermore, for the reasons outlined above I do not consider that its current quality detracts from the positive contribution that the site provides to the character and appearance of the area.

26. Whilst the appellant did not undertake an assessment, as advocated by the Framework⁵, to show the open space to be surplus to requirements they highlighted that at a combined ward and Parish level that the amount of natural and semi-natural greenspace (N&SNG) exceeds the minimum standards. Furthermore, overall the borough is well provided for in terms of N&SNG. As a consequence they advocate that the loss of the yellow land would not result in a shortfall in local provision. However, whilst there might be a significant amount of N&SNG in the local area it has not been demonstrated that this is surplus to requirements. Furthermore, given the contribution that this site provides to the character and appearance of the local area as well as the living conditions of local residents and users of the space I consider that it serves an important function locally. Therefore whilst its loss would not result in a numerical shortfall in local provision the effect of the loss of this space would be detrimental.
27. I accept that a key benefit of the proposal would be the opportunity to formally secure in perpetuity the red land as public open space and ensure its future management and maintenance including improving public access, enhanced biodiversity and the continued protection of the GCN. However, I do not consider that this outweighs the harm that would result to the character and appearance of the area that I have identified above.
28. I also accept that like the adjoining nursery, the proposal would deliver a community facility and that this benefit needs to be weighed in the planning balance. However, whilst they would both provide a community facility I consider that the nursery differs from the appeal proposal in a number of physical ways. It is a much smaller development both in terms of developed area and in terms of bulk and mass. As a consequence a substantial swathe of greenspace has been retained as has the gap between the business park and the residential development. Furthermore the openness and visual relief provided by the retained greenspace has been maintained. As a result I consider that the nursery is perceived in a different context to the current proposals and as a consequence the effect of the loss of open space would have been assessed differently. I am therefore satisfied that the Council has been consistent in the way that they considered the applications.
29. The appellant accepted that the Council could deliver sufficient bed spaces to meet the boroughs needs to just beyond 2021. However, they point out that a significant proportion of this comprised of existing bed spaces which would not meet current regulations in particular the need to provide en suite facilities. As a consequence they advocated that in addition to a longer term quantitative need there exists a more urgent qualitative need to provide high quality accommodation and choice and that this benefit should be weighed in favour of the development. I agree with the appellant that those seeking a place in a care home should be able to expect accommodation that provides them with dignity and meets their needs. However, there is currently not a shortfall in quantitative provision in the short to medium term. In addition there are a

⁵ Paragraph 74 of the National Planning Policy Framework (2012)

significant number of new beds in the pipeline that will be added to the catchment all of which will be built to current regulations and which will therefore provide choice to those seeking accommodation. As a result I consider that when weighed against the harm I have identified above I can give only very limited weight to the qualitative improvements to the care home stock that would be delivered by this proposal.

30. The appellant has made reference to the fact that ECC currently have to purchase bed spaces outside of the County which the proposal would help to resolve. However, given the size of the county; the central location of the borough within Essex; the limited information about the type of beds needed (i.e. whether they were for a particular type/level of care for which there is currently no provision within the county or whether it was general bed spaces that are required) and the fact that the borough is meeting its short to medium term needs means that I consider I can only give this benefit very limited weight.
31. In addition to the environmental benefits that would be achieved through securing, managing and maintaining the red land as public open space I recognise that the proposal would deliver several social and economic benefits. It would provide a community facility with accommodation built to the current standards. It would deliver a number of jobs both during construction and through the future employment of staff. It would also offer a number of indirect benefits for the NHS and GP services through alleviating bed blocking and streamlining more efficient access to GP services.
32. The appellant highlighted that the proposal would accord with a number of policies within the development plan in particular policy DC35 which supports the provision of specialist residential accommodation including for the elderly within the main urban area of Chelmsford. It is acknowledged that planning policy and primary legislation both identify the importance of the development plan in making decisions whilst requiring that other material considerations be taken into account. It is also well established that compliance with the development plan is not compliance with each and every policy and the decision maker is required to reach a conclusion with regard to the plan when read as a whole. On this basis I conclude that whilst the proposal may accord with other policies within the plan for the reasons I have outlined it would not comply with the most relevant policies namely policies CP12 and DC39 of the CS and DCP and therefore I consider that it does not accord with the plan when read as a whole.

Unilateral Undertaking

33. In order to comply with the requirements of policies CP12 and DC39 of the CS and DCP which seek to, amongst other things, enhance the provision of public open space the Unilateral Undertaking (UU) would deliver the red land as public open space and ensure its future management and maintenance.
34. On the basis of the evidence I have read and heard I am satisfied that the obligations within the UU are necessary to make the development acceptable in planning terms; directly related to the development and fairly and reasonably related in scale and kind. As a consequence I consider that they would meet

the tests within the Community Infrastructure Levy Regulations (2010)⁶ and the Framework⁷.

Other matters

35. Local residents raised concerns regarding the capacity of the local road network to take further additional on-street parking. However, the proposal would deliver on-site parking in accordance with the relevant standards. Furthermore, the site is in close proximity to two bus stops. I note from the evidence that the Highways Authority have not objected to the proposal. As a result I am satisfied that the proposal would provide sufficient parking and highway safety would not be compromised.
36. At the Inquiry local residents referred to the fact that they were exploring the possibility, in conjunction with Essex Wildlife Trust, of adopting the site and managing it as a community facility. However, at this stage in the process where the proposals are uncoded and unfunded and the agreement of the landowner has not been secured I can give this initiative no weight.
37. The site includes the remains of the Springfield Lyons Bronze Age Circular Enclosure which is a non-designated heritage asset (NDHA). The Framework⁸ requires the effect of a proposal on the significance of a NDHA should be taken into account when determining an application. Whilst the circular enclosure is located within the application site it would be some considerable distance from the site of the proposed care home and as a result I do not consider that the proposal would adversely affect the setting of the NDHA. Furthermore, under the proposed management and maintenance of the open space access to and information about the NDHA would be enhanced both of which would be a benefit delivered by the scheme.
38. Opposite the site is Dairy Farm Cottage a Grade II listed building. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that when considering a proposal which would affect a listed building or its setting special regard needs to be given to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. I observed on site that the land surrounding Dairy Farm Cottage has been extensively developed and as a result in my opinion the setting of this building has already been severely compromised. Consequently, although an observer would be able to appreciate the historic nature of the building its setting has already been lost. As a result I consider that the proposal would not adversely affect the setting of this building.
39. The fact that the land is not held as open space by ECC and that there are no restrictions to the disposal of the land for development purposes on public law grounds is not a matter to which I attach great weight.

Planning Balance

40. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 state that determination of planning applications must be carried out in accordance with the development plan unless material considerations indicate otherwise.

⁶ Regulation 122

⁷ Paragraph 204

⁸ Paragraph 135 of the National Planning Policy Framework (2012)

41. For the reasons outlined above I have found that the proposal would be contrary to policies CP12 and DC39 of the CS and DCP. However, there are a number of benefits that weigh in the favour of the scheme including the provision of a modern care home facility which would deliver additional bed spaces and the formalisation and securing of the red land as public open space. Moreover, I consider that the effect on GCN as a protected species would be neutral and the loss of wildlife habitat would be very limited. Nevertheless, for the reasons I have outlined above they would not outweigh the harm that would arise from the loss of the open space and the effect that this would have on the character and appearance of the area.

Conclusion

42. For the reasons given above and having regard to all other matters raised I therefore conclude that the appeal should be dismissed.

Jo Dowling

INSPECTOR

APPERANCES

FOR THE APPELLANT

Ms Mary Cross, of Counsel

She called

Mr David Fletcher

Associate Partner, Strutt & Parker

Mr Derek Stebbing

Planning Policy Consultant, Strutt & Parker

FOR THE LOCAL PLANNING AUTHORITY

Ms Melissa Murphy, of Counsel

She called

Ms Alison Hutchinson

Partner, Hutchinsons Planning and
Development Consultants

INTERESTED PARTIES

Mr Michael Day

Local resident

Cllr Neil Gulliver

Ward Councillor for Chelmer Village and
Beaulieu Park

Cllr Richard Lee

Parish Councillor for Chelmer Village and
Beaulieu Park but spoke as a local resident

Ms Rosemary Moore

Local resident

Mr John Piolet

Local resident

Mr Nigel Skinner-Simpson

Local resident

DOCUMENTS SUBMITTED DURING THE HEARING

Document 1	Plan 162040-003 rev B	Appellant by email 14 March 2018
Document 2	Draft Unilateral Undertaking	Appellant by email 14 March 2018
Document 3	Revised draft Unilateral Undertaking	Appellant
Document 4	Core Strategy and Development Control Policies Focused Review (2013)	Council
Document 5	Opening Statement on behalf of the appellant	Appellant
Document 6	Opening submission on behalf of the Council	Council
Document 7	Supplementary objection by Mr Michael Day	Interested Party
Document 8	Aerial photograph of routes through the site	Interested Party
Document 9	Extract from the Site Allocation Development Plan Document (2012) – pages 86/87	Council
Document 10	Plan showing open spaces for the Boreham and the Leighs ward – showing location and boundaries of sites 652 and 673	Council
Document 11	Extract from Planning Policy Guidance 17: Planning for open space, sport and recreation	Council
Document 12	Additional evidence from Mr Michael Day	Interested Party
Document 13	Copy of statement read out by Ms Moore on the first day of the Inquiry	Interested Party

DOCUMENTS SUBMITTED AFTER THE INQUIRY FINISHED SITTING

Document 14	Closing submissions on behalf of the Council	Council by email 20 March 2018
Document 15	Further comment from Mr Michael Day	Interested Party
Document 16	Closing submissions on behalf of the appellant	Appellant by email 22 March 2018
Document 17	Certified copy of Unilateral Undertaking	Appellant