
Appeal Decisions

Hearing held on 16 July 2019

Site visit made on 16 July 2019

by Joanna Reid BA(Hons) BArch(Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 30 July 2019

Appeal A Ref: APP/A1530/W/18/3208482

Abbey House, St John's Green, Colchester CO2 7EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Lexden Restoration and Development Limited against Colchester Borough Council.
 - The application Ref 181440 is dated 5 June 2018.
 - The development proposed is erection of single dwelling and parking.
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Appeal B Ref: APP/A1530/W/18/3208487

Land at St John's Green, adjacent to Abbey House, St John's Green, Colchester CO2 7EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Lexden Restoration and Development Limited against Colchester Borough Council.
 - The application Ref 181439 is dated 5 June 2018.
 - The development proposed is erection of single dwelling and parking.
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Appeal C Ref: APP/A1530/W/18/3208489

Land at St John's Green, adjacent to Abbey House, St John's Green, Colchester CO2 7EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Lexden Restoration and Development Limited against Colchester Borough Council.
 - The application Ref 181438 is dated 5 June 2018.
 - The development proposed is erection of single dwelling and parking.
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Appeal A: Decision

1. The appeal is dismissed and planning permission for erection of single dwelling and parking is refused.

Appeal B: Decision

2. The appeal is dismissed and planning permission for erection of single dwelling and parking is refused.

Appeal C: Decision

3. The appeal is dismissed and planning permission for erection of single dwelling and parking is refused.

Appeals A, B and C:

Preliminary matters and main issues

4. The site addresses given on the 3 application forms and used in the banner heading above differ, but they all refer to the same site. Whilst the description of each of the 3 proposals is the same, Appeal A includes a single storey dwelling, Appeal B includes a 2-storey dwelling in the east part of the appeal site, and Appeal C includes a handed version of that 2-storey dwelling towards the west of the site.
5. The south boundary of the site adjoins a scheduled monument, which is The Benedictine Abbey of St John (scheduled monument), and it is close to St John's Abbey Gatehouse (listed gatehouse), which is listed in Grade I. The site is also within the Colchester Town Centre Conservation Area and fairly close to a number of other listed buildings and non-designated heritage assets that have been identified by the Council as being of heritage interest.
6. The Council has not given specific purported reasons for refusal, but its concerns about all 3 proposals in relation to heritage and design, contamination, ecology and trees, and conflict with Development Plan policies, are clear from its statement. The Council's witness explained at the hearing that its concerns about the effect of the proposals on the settings of the other nearby listed buildings and non-designated heritage assets are included in its concerns about the Conservation Area. I see no reason to disagree.
7. With this in mind, the main issues in each of the 3 appeals are:
 - whether the proposed development would preserve the settings of the listed gatehouse and the scheduled monument, and whether it would preserve or enhance the character or appearance of the Conservation Area,and the effects that the proposal would have on:
 - protected or priority species or their habitats on or near the site, and
 - the health of the future occupiers and public health.
8. The foundations of the wall by the south boundary of the site were discussed at the hearing. After the hearing closed the Council submitted archaeology evidence that could be material to the first main issue, so this late evidence was accepted, and the appellant was given the opportunity to comment on it. No interested parties appeared at the hearing, and as I do not consider that anyone's interests would be prejudiced, I shall take that evidence and the appellant's comments about it into account.

Reasons

The scheduled monument, the listed gatehouse, and the Conservation Area

9. The scheduled monument includes the gatehouse and precinct of the C11 Abbey of St John the Baptist, which covered a roughly rectangular area on the hillside that overlooked the medieval town to roughly north. Its standing

remains include the listed gatehouse, which is the only abbey building to remain standing, and sections of the precinct wall. The description of the scheduled monument explains that a small section of the medieval wall that extends for around 15 m to the west of the abbey gatehouse is included in the scheduling, although its continuation is a C19 brick replacement which is not. The gatehouse and the undesignated wall (the wall) on the line of the medieval precinct's north boundary enable the nearby extent of the historic abbey precinct to be interpreted on the ground, so they are important to the significance of the scheduled monument as the standing and buried remains of the historic abbey.

10. The handsome probably late C15 2-storey listed gatehouse includes a richly decorated north front with knapped flintwork set in stone panels, and turrets at each corner that are topped with crocketed pinnacles. Its back was largely rebuilt after damage in the C17. The historic character, form and features of the listed gatehouse are important to its special architectural interest, and to its significance as a historic abbey gatehouse. Its architecture emphasises its importance as a way into the enclosed abbey precinct that can be seen in many local views. The attached medieval precinct wall and the replacement wall on the south side of St John's Green (the green) contribute positively to the significance of the listed gatehouse because they provide some of the historic context that justifies its existence.
11. The Council's character appraisal divides the Conservation Area into study areas. The site is within the separate south part of Study Area 3: Culver Street, Trinity Street, Scheregate and St John's Green, which includes the north part of the scheduled monument. It is mainly characterised by the partly treed irregular-shaped green, which mostly slopes down from roughly south to north, the listed gatehouse and the attractive and historically meaningful wall towards the top of the hillside to the south of the green, and the informal arrangement of the various buildings that partly frame the green, mostly to the west, north and east. So, the study area has the ambience of a village green. The historic forms, features and materials of the buildings and structures, and the verdant openness within the green are important to its appearance. Together, the character and the appearance of this part of the Conservation Area contribute positively to its significance as an important area of historic townscape.
12. The abbey was founded in 1095, and during medieval times midsummer fairs were held on the green, just outside its precinct wall. Since the dissolution of the abbey, and ensuing uses including a house and a garrison, much of the nearby land south of the wall has been regenerated as part of an urban village. However, Historic England has explained that cartographic evidence prior to the 1848 Ordnance Survey map shows that the area outside the gateway was open space and a part of St John's Green. The parties' evidence including historic maps and the appellant's archaeological investigation support this. So, whilst Abbey House was built in roughly the north west corner of the precinct in around the early C19, the wall fronted the green, and the land west of the listed gatehouse and immediately north of the precinct wall was free from built development from the medieval period until roughly the mid C19, when the cottage that is now 33 St John's Green was built by the wall to the north west of the listed gatehouse.

13. The 1876 Ordnance Survey map shows that the garden of the cottage ran parallel to the north side of the precinct wall up to about the back of Abbey House. The road between 33 St John's Green and Abbey House was not built until about 1920. Because that road has little impact on openness, the site allows largely unobstructed views of the replacement precinct wall between the dwellings at 33 St John's Green and Abbey House that enable the historic relationship between the abbey and the green to be understood.
14. As it is the only building north of the wall on the south side of the green between the listed gatehouse and Abbey House, the dwelling at 33 St John's Green is at odds with the open character of the green and the historic development pattern close by. Because it has been separated from most of its historic garden and its form disrupts the visible continuity in the wall in most views from roughly north, the dwelling looks cramped and incongruous. Thus, it has a significant negative effect on the settings of the listed building and the scheduled monument, and on the character and the appearance of the Conservation Area.
15. By contrast, the existing openness within and over the fairly wide but shallow site, maintains much of the important openness in the historic green. This openness is important because it enables the historic context of the scheduled monument and the listed gatehouse to be interpreted and appreciated in views from the green, and from most nearby buildings, including those that are nationally or locally listed, which make a positive contribution to the character and the appearance of the Conservation Area. Thus, the openness at the site contributes positively to the settings of the listed gatehouse and the scheduled monument, and to the character and the appearance of the Conservation Area. Whilst the appearance of the tall part buttressed brick replacement wall is in character with the historic garrison, it respects the alignment of the medieval precinct wall, so it preserves the significance of the listed gatehouse as a portal into both of those enclosed historic communities.
16. Turning to the proposals, whilst all would include 2 parking spaces by the wall in the west part of the site, they would also include the built form of the dwelling and tall solid boundary treatment around their private gardens, as well as future occupiers' domestic paraphernalia including garden furniture, washing lines, play equipment and so on. So, the site would have a damaging built-up character and appearance that would harmfully erode the important openness, and each of the proposals would unacceptably disrupt the important views of the wall, to the detriment of the character, appearance, and significance of the Conservation Area. Whilst the settings of heritage assets are not fixed and may change as their surroundings evolve, all of the proposals would unacceptably erode the open historic setting that contributes positively to the significance of the listed gatehouse and the scheduled monument.
17. In addition, the single storey flat roofed dwelling in Appeal A, whilst a little lower than the wall, would take up over a third of the width and much of the depth of the site, so it would look squeezed in. Whilst it may be intended to blend in with the wall, its utilitarian character and discordant appearance would harm its surroundings. The traditional form of either dwelling in Appeals B and C would respect some of the nearby buildings, but it could give the misleading impression that it is part of the historic development pattern, and its bulk and height would detract from the prominence of the nearby listed gatehouse.

18. Most of the larger trees in and by the green are protected due to their siting within the Conservation Area. They include the substantial evergreen double stemmed holm oak by the parking and turning area to roughly north of Abbey House, which makes a significant positive contribution to the character and appearance of the Conservation Area, and the line of American Oaks (red oaks) on the opposite side of the road to the site, which were planted as a memorial. Each of the proposals would be partly screened in some views by the red oaks when they are in leaf, but that screening effect would be greatly reduced when their leaves have been shed.
19. Whilst the nearby trees would be expected to continue to grow, amongst other things, the large hard surfaced area at Abbey House and in the road close by could affect the morphology of their root systems, but no detailed arboricultural assessment has been put to me. As there is also insufficient evidence to show that the constraints imposed by the nearby trees have been taken into account in the design of the proposals, it would not be reasonable to impose a pre-commencement condition for an arboricultural method statement and tree protection measures, if any of the proposals were to be otherwise acceptable.
20. Although the extant permission for the car park would change the character and appearance of the site, the 7 cars and landscaping including trees would maintain much of the important openness at the site, and thus, most of its important positive contribution to the settings of the scheduled monument and the listed gatehouse, and to the Conservation Area. The 2 new dwellings roughly south of the listed gatehouse are within the scheduled monument and closer than any of the proposed dwellings would be to the gatehouse. However, as the new dwellings are within the historic abbey precinct, and not within the historic green, their circumstances differ from the proposals before me. The fairly recent extension to 33 St John's Green was said to have replaced unsympathetic earlier extensions, and as it was found to be acceptable on its merits, it does not weigh in favour of these damaging proposals.
21. In the terms of the *National Planning Policy Framework* (Framework) each of the proposals in Appeals A, B and C would cause 'less than substantial harm' to the significance of the listed gatehouse and to the scheduled monument respectively. The Framework advises that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
22. The public benefits of each of the 3 proposals would include one windfall dwelling within a relatively accessible urban area and construction jobs. However, all of the public benefits would not be enough to outweigh any of those less than substantial harms. Furthermore, insufficient clear and convincing justification has been put to me to show that any of the proposals would be necessary to conserve the significance of the listed gatehouse as a historic abbey gatehouse or to conserve the significance of the scheduled monument as the standing and buried remains of the historic abbey.
23. In respect of the Conservation Area, each of the proposals would cause less than substantial harm to its significance, but all of the public benefits would be insufficient to outweigh any of those harms. There is also not enough clear and convincing justification to show that any of the proposals would be necessary to conserve its significance as an important area of historic townscape.

24. Therefore, I consider that each of the 3 proposed developments would fail to preserve the settings of the listed gatehouse and the scheduled monument, and that they would fail to preserve or enhance the character or appearance of the Conservation Area. They would be contrary to Policy ENV1 of the Colchester Borough Council *Core Strategy* (CS) which aims to conserve and enhance the natural and historic environment, Policy DP14 of the Colchester Borough Council *Development Policies* (DP) which aims not to permit development that would adversely affect a listed building, a conservation area, or important archaeological remains, and CS Policy UR2 and DP Policy DP1 which seek to secure high quality design and respect for context, as well as the Framework which aims for heritage assets to be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

Ecology

25. The mostly open site is largely bounded by tall fencing with solid double gates, and the wall. It includes a broadly level slightly raised hard standing that slopes down gently to the east, a container that was said to be going any day, and a few building materials. The portacabins that were referred to in the Council's statement have gone. Whilst the Council's witness said that some recent nearby development included bat boxes, the Council has provided almost no technical data or other evidence to support its concerns about biodiversity. Moreover, the appellant's ecological consultant's letter of 12 July 2019 confirms that the site is largely cleared ground and hard standing, more or less devoid of vegetation, and has no potential to support legally protected species, and that the consultant does not anticipate any ecological issues or constraints associated with its development and use. I see no reason to disagree.
26. Thus, I consider that the proposals in Appeals A, B and C would not be likely to disturb or harm protected or priority species or their habitats on or near the site. They would satisfy DP Policy DP21 which aims to conserve biodiversity.

Contamination

27. Due to its historic military use and more recent use to store building materials for nearby development, the land at the site could have been contaminated. The site was part of a wider site that was assessed for contamination in relation to the conversion to residential use of Abbey House, but that was several years ago. The risk assessment related to the planning application for the car park attracts little weight because that use would be less vulnerable to contamination than residential use. No potential contamination was reported when the appellant's archaeological investigation was carried out in about 2017, but the area within 2 m of the historic wall was excluded from the excavations. So, insufficient evidence has been put to me to show that the land at the site has not been contaminated. However, this matter could reasonably be dealt with by the imposition of a pre-commencement condition if any of the proposed developments were to be otherwise acceptable.
28. Thus, I consider that, subject to the imposition of a suitably worded planning condition, the proposals in Appeals A, B and C, would not be likely to harm the health of the future occupiers and public health. They would satisfy DP Policy DP1 which seeks appropriate remediation of contaminated land.

Conclusions

29. I have found that the proposals would not be likely to harm biodiversity interests on or near the site, and that potential contamination at the site could be dealt with by condition if any of the proposals were to be acceptable. However, the failure to preserve the settings of the listed gatehouse and the scheduled monument, and the failure to preserve or enhance the character or appearance of the Conservation Area, are compelling objections to the proposals in the 3 appeals.
30. For the reasons given above and having regard to all other matters raised, Appeals A, B and C fail.

Joanna Reid

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Jonathan Frank	Appellant, Director, Lexden Restoration and Development Limited
Mr Robert Pomery	Appellant's agent and planning consultant, Pomery Planning Consultants
Mr David Balcombe	Appellant's heritage consultant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Lucy Mondon	Principal planning officer, Colchester Borough Council
Ms Eirini Dimerouki	Historic buildings and areas officer, Colchester Borough Council
Dr Jess Tipper	Archaeological advisor, Colchester Borough Council
Mr Liam McKarry	Arboricultural officer, Colchester Borough Council

DOCUMENTS PUT IN AT THE HEARING

- 1 Interested party response to appeal notification
- 2 Bundle of historic environment record maps and historic maps
- 3 Natural England revised interim advice dated 16 August 2018 and *Essex Coast Recreational disturbance Avoidance & Mitigation Strategy (RAMS)*
- 4 The Council's internal consultation responses
- 5 *Managing Archaeology in Development Supplementary Planning Document*
- 6 Mr Frank's email to Dr Tipper of 25 November 2016 10:21:14
- 7 Extracts from Character Appraisal for Study Area 3: Culver Street, Trinity Street, Scheregate and St John's Green and maps showing Colchester Town Centre Conservation Area
- 8 Street elevations of the 3 proposals with precinct wall coloured brown
- 9 Essex Ecology Services Limited letter dated 12 July 2019
- 10 Plan of earlier scheme, before and after photos and photomontage showing 2 new dwellings south of the listed gatehouse

DOCUMENTS PUT IN AFTER THE HEARING

- 11 Essex Historic Environment Record CAT Report 548
- 12 The appellant's response of 23 July 2019 13:53