
Appeal Decision

Site visit made on 28 October 2019

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2019

Appeal Ref: APP/A1530/W/19/3230908

Land adjoining The Red Lion Public House, 130 Coggeshall Road, Marks Tey, Colchester CO6 1LT

- 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 Mr J Goddard against the decision of Colchester Borough Council.
 - The application Ref 190012, dated 20 December 2018, was refused by notice dated 25 April 2019.
 - The development proposed is outline application, with all matters reserved with the exception of access, for the erection of up to 6 dwellings on land to the north of the A120, Coggeshall Road, Marks Tey.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with approval being sought for access only. Matters relating to layout, appearance, scale and landscaping have been reserved. I have dealt with the appeal on this basis and have treated the layout shown on drawing number 1612/03 (Proposed New Development Proposed Block Plan) and the details shown on drawing number 1612/04 (Proposed New Development Proposed Site Sections) as indicative only.

Main Issues

3. The main issues in this case are: -
 - (a) Whether the proposal is an appropriate location for new residential development with regard to the spatial strategy of the development plan;
 - (b) The effect of the proposed development upon heritage assets, in particular The Red Lion Public House;
 - (c) The effect of the proposed development upon trees and the landscape;
 - (d) The potential for contamination pollution at the site; and
 - (e) Whether or not the proposal makes adequate provision for affordable housing.

Reasons

Location

4. There is no dispute between the parties that the site lies outside the limit of existing development at Marks Tey and the Council has confirmed that the site is not allocated for development within the Site Allocation DPD. Policy SD1 of the Colchester Borough Council Local Development Framework (2008 and found sound in 2014) (the Core Strategy) sets out the Council's spatial development strategy. It seeks to direct new development to the town centre and defined growth areas and takes a sequential approach that gives priority to accessible location and previously developed land (PDL). Policy H1 of the Core Strategy reflects this and adds that Colchester will seek to provide over 80% of housing on PDL during the plan period.
5. The appeal site is greenfield land in the countryside. It is an undeveloped vegetated site surrounded on its boundaries by trees and shrub vegetation. Policy ENV1 of the Core Strategy states that unallocated greenfield land outside of settlement boundaries will be protected and where possible enhanced.
6. Policy ENV2 of the Core Strategy sets out criteria for development outside village boundaries, however I have no substantive evidence before me that would indicate that the proposal would fall within any of the criteria. This policy also indicates development outside but contiguous to village settlement boundaries may be supported, primarily where it constitutes an exception to address an identified local affordable housing need. This proposal has not been supported by evidence that would suggest it is intended to address an identified local affordable housing need. Notwithstanding this, the appellant contests that the wording of the policy is not exclusive to affordable housing schemes. On reading Policy ENV2 it appears to me that the policy aims to allow for rural exceptions where a need for housing is demonstrated, as opposed to the delivery of market housing in general. Notwithstanding this, even if I were to accept the appellant's point, Policies SD1 and ENV1, jointly, amongst other matters, protect unallocated greenfield land outside settlement boundaries.
7. The Council states that it can demonstrate a five-year supply of housing land, however the appellant disputes this. The appellant has directed me to an appeal decision at Bakers Lane (Ref: APP/A1530/W/17/3178656) dated February 2018. I have also been referred to the Council's Focus Review, as well as Planning Inspector letters from 2018 relating to the emerging development plan. Whilst the appellant considers it untenable that the Council could establish a five-year supply relatively soon after the Bakers Lane appeal decision, it is clear to me that since that appeal decision the Council has undertaken further work in relation to establishing its five-year supply and has submitted evidence (2019 Housing Land Supply Annual Position Statement dated April 2019) to demonstrate that it has a five-year supply in place, which I find convincing. Whilst the appellant considers that he is not in a position to provide evidence to dispute the five-year supply as this appeal has followed the written representation process, I see no reason why this should be so.
8. The appellant contends that the Core Strategy, given its age, cannot be considered up-to-date. In accordance with paragraph 213 of the Framework due weight should be given to policies according to their degree of consistency with the National Planning Policy Framework (the Framework). The site lies

outside the defined settlement boundary and is not allocated for development. I consider Policies SD1 and H1 to be up-to-date with and compliant with the Framework in all but its housing targets and reference to PDL. Notwithstanding this, I have found the Council to have a five-year supply of housing sites in place. These policies are therefore not out-of-date in so far as they relate to proposals for development outside of the settlement boundary on land defined as countryside and, therefore, I attribute significant weight to these policies.

9. Policy ENV1 seeks protection and enhancement of the countryside and the strict control of development. This goes beyond the objective of the Framework of recognising the intrinsic character and beauty of the countryside and protecting and enhancing only valued landscapes. In rural areas Policy ENV2 seeks to support housing developments that reflect local needs and I consider this to be in line with the Framework. Significant weight can also be applied to these policies.
10. Given that the site is outside of the settlement boundary and on a greenfield site, it would conflict with the spatial strategy of the development plan and, as such would conflict with Policies SD1, H1, ENV1 and ENV2 of the Core Strategy.

Heritage assets

11. Policy ENV1 of the Core Strategy seeks to conserve and enhance Colchester's historic environment. Policy UR2 of the Core Strategy indicates that the Council is committed to enhancing Colchester's unique historic character. Policies DP1 and DP12 require development to be designed to a high standard and set out design criteria standards for new development. Policy DP14 of the Core Strategy indicates that development that would adversely affect a listing building will not be permitted. It also says that development affecting the historic environment should seek to preserve or enhance the heritage asset. This policy also requires proposals that would impact on the setting of heritage assets to be supported by a Heritage Statement so that sufficient information is provided to assess the impact of development on historic environment assets.
12. The Framework states that "*In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting*". The proposal has not been supported by any heritage assessment that does this. Although the appellant says that the proposal would be a sufficient distance from The Red Lion Public House, I consider the appeal site to be sufficiently close to necessitate consideration relating to the setting of this heritage building, its grounds and its significance.
13. I note that other development has taken place close by in the past and that there are intervening trees/vegetation between the listed building and the appeal site. However, the proposed development needs to be considered in its own right in relation to its impact. The proposal has not demonstrated that the setting of heritage assets close by would be preserved or enhanced or to what degree harm may be caused. The proposal therefore conflicts with Policies ENV1, UR2, DP1, DP12 and DP14 of the Core Strategy, as well as the requirements of the Framework that seek to conserve the historic environment.

Trees and landscape

14. I observed that trees are mainly located around the periphery of the site. In order to facilitate access to the site the trees along the Coggeshall Road boundary would be required to be removed. No survey of the trees has been submitted to support the proposal. The quality of the trees is unknown and, therefore, it is not possible to determine what impact the proposal would have on any of the existing trees. The appeal site is within the countryside and the trees make a pleasing contribution to the countryside landscape, even though I acknowledge the trees are not formally protected by a Tree Preservation Order.
15. The applicant contends that the site is set behind a well-defined boundary of mature vegetation. However, I observed gaps in the existing vegetation that surrounds the site. In addition, the new access would open up the frontage of the site enabling the development within the site to be visible in views from Coggeshall Road. The development would therefore be visible within views from the surrounding wider area. Without a Landscape Visual Impact Assessment, it is not possible to fully understand the impact of this urbanising proposal that would project into rural landscape further beyond the existing residential development and commercial uses situated close to the appeal site. I therefore cannot be certain that the proposal would assimilate with the existing built form or that it would protect the overall character of the countryside.
16. Policy ENV1 of the Core Strategy seeks to conserve and enhance Colchester's natural environment and countryside. Policy DP1 of the Core Strategy requires development to respect or enhance the landscape. The proposal would be in conflict with these policies as it has not demonstrated that it would conserve and enhance the natural environment and its countryside location. The appellant considers these matters could be appropriately assessed at the reserved matters stage or could be dealt with by means of an appropriately worded planning condition. However, I consider establishing the visual acceptability of the proposed development to be fundamental to the consideration of the principle of the proposed development.

Contamination

17. The Council has identified that the site, being located adjacent an existing long-established fuel filling station, is vulnerable to potential contamination. For this reason, a 'Phase 1' Desk Study site walkover would be required at a minimum to provide an initial assessment of risks. It has been suggested that this matter could be dealt with by an appropriately worded planning condition. However, as human wellbeing and safety are potentially in question, I consider the Council is right to be prudent in establishing the potential likelihood of contamination of the appeal site from adjoining existing uses. Creating places that are safe with a high standard of amenity is support by the Framework. I, therefore, consider that it is necessary to undertake a risk assessment to establish whether further detailed investigation is required or what remediation might be necessary.

Affordable housing

18. Policy H4 of the Core Strategy indicates that in villages there is a requirement on housing developments of 3 or more dwellings to provide affordable housing. In this instance an onsite affordable housing contribution of 20% would be

required to comply with Policy H4. No mechanism has been put in place to secure one of the dwellings as an affordable unit. The appellant contends that Policy H4 does not apply as the proposal is beyond the defined settlement of Marks Tay. As I see it, the proposal, being on the edge of Marks Tay, would create an extension to the village and, as such, Policy H4 would be applicable to this proposal. For these reasons the proposed development would be in conflict with Policy H4 of the Core Strategy.

19. I note the comment made by the appellant that the proposal would contribute to CIL, however the Council has clarified that it has not adopted a CIL charging regime.

Other Matters

20. The appellant highlights the benefit that the proposal would provide six dwellings in a sustainable location and says that the Council has not suggested that the site is not sustainable. In regard to sustainability the appellant highlights that the appeal site would utilise land that would form part of land put forward as part of the emerging local plan strategy for the new garden suburb. Indeed, the site is within walking distance of those services and facilities within Marks Tay. Bus stops at Coggeshall Road would provide access to Colchester and further afield. The main train line station of Marks Tay would provide access to North Essex and London. The occupiers of the proposed development would contribute to local spend in the area. These are social and economic benefits of the scheme, and I attached moderate weight to these in favour of the proposals.

Planning Balance

21. The Framework requires decisions to be made in regard to the presumption in favour of sustainable development. Accordingly, I have considered whether the appeal proposal would be consistent with the economic, social and environmental objective of sustainable development, as set out in paragraph 8 of the Framework noting that I have concluded that the Council has a five-year supply of housing sites.
22. I have found that the proposed development would not adhere to the spatial development strategy of the Borough and the proposal has not demonstrated that it would not be harmful to the countryside, to the setting of the nearby listed building and to the well-being of future occupiers and it would not provide an appropriate level of affordable housing as part of the development proposal. The other moderate benefits of the proposal do not outweigh this environmental harm. When the Framework is considered as a whole, I find that the proposal does not constitute sustainable development. Furthermore, I conclude that the scheme conflicts with the development plan as a whole.

Conclusion

23. Having regard to the above findings, the appeal should be dismissed.

Nicola Davies

INSPECTOR