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## Appeal Decision

Site visit made on 19 November 2019

**by Chris Forrett BSc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: Tuesday, 17 December 2019**

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**Appeal Ref: APP/A1530/W/19/3236989**

**The Old Rectory, Great Tey Road, Little Tey, Colchester, Essex CO6 1JA**

- 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 Ross Watson against the decision of Colchester Borough Council.
  - The application Ref 191116, dated 20 February 2019, was refused by notice dated 21 June 2019.
  - The development proposed is the erection of a new dwelling on garden amenity land currently serving The Old Rectory, Great Tey Road, Little Tey, CO6 1JA.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The appeal proposal was submitted in outline with the means of access being considered at the outline stage. Notwithstanding that, an illustrative layout plan has also been provided. However, with the exception of the site access, the details shown on this plan are not being considered at the outline stage. I have therefore treated these details as being indicative to show a possible way of developing the site.

### Main Issues

3. The main issues are:-
  - (i) the effect of the development on the character and appearance of the area;
  - (ii) whether the appeal site is situated in a sustainable location; and
  - (iii) the effect of the development on habitat and biodiversity, including European designated sites.

### Reasons

#### *Character and appearance*

4. Policy H1 of the Local Development Framework Core Strategy (2008) (CS) sets out that the majority of housing development will be located within regeneration areas in Colchester Town. However, it also recognises that greenfield locations have also been identified. It is common ground between the main parties that the site is located in the open countryside in planning policy terms.

5. The appeal site itself is part of the existing garden area to The Old Rectory which together with its outbuilding lies to the north of the site. To the south is Knaves Farmhouse which is another residential property. With the exception of these two dwellings, there are no other properties in the immediate vicinity of the site and as a result the area has a distinctly rural feel to it.
6. The site itself is currently open and undeveloped with various trees within the site. Whilst the proposal would be likely to retain the most important trees, the proposal would nevertheless introduce new built development which would contribute to the urbanisation of the area. Such urbanisation of this rural area would be highly undesirable and would give rise to harm to the rural character and appearance of the area.
7. In addition to the above, The Old Rectory and Knaves Farmhouse are also Grade II Listed Buildings. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the setting of these buildings.
8. The proposed development would invariably result in some changes to the setting of these Listed Buildings. However, subject to a suitable siting and design of the proposed dwelling (which would be considered as part of a reserved matters submission should I be minded to allow the appeal) I consider that a new dwelling would preserve the setting of these buildings. Taking this into account I consider that the proposal would accord with Policy DP14 of the Colchester Local Development Framework Development Policies (2010) Development Plan Document (LDFDP) and the historic environment aims of the National Planning Policy Framework (the Framework). However, this does not outweigh the harm I have already identified.
9. For the above reasons the development would harm the rural character and appearance of the area and would be contrary to Policies ENV1, DP1 and DP21 of the LDFDP and Policy UR2 of the CS which amongst other matters seek to ensure that development respects and enhances the character of the site including its landscape setting. It would also be at odds with the aims of the Framework which includes recognising the intrinsic character and beauty of the countryside.

#### *Location*

10. Paragraphs 78 and 79 of the Framework seek to promote sustainable development in rural areas by locating housing where it will enhance or maintain the vitality of rural communities. It also seeks to avoid the development of isolated homes in the countryside unless there are special circumstances.
11. My attention has been drawn to the Braintree case<sup>1</sup> which (in summary) outlines that an isolated home in the countryside simply connotes a dwelling that is physically separate or remote from a settlement. Therefore, just because the site would be in proximity to other dwellings does not mean that it would not be isolated in the context of paragraph 79 of the Framework.
12. From the evidence before me, the appeal site is in the region of 460 metres from the nearest settlement boundary (Little Tey) on foot or 1.3 kilometres by road. However, the route along the footpath to the church is not metalled nor

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<sup>1</sup> Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

does it have any form of lighting. Great Tey Road does not benefit from any pavement and any pedestrians using it would be forced to walk in the carriageway. Given what I observed in terms of traffic speeds along the section to the A120 this would not be a safe or attractive route for pedestrians or cyclists. These two routes would also be the way which users of the bus services along the A120 would have to navigate.

13. Given this, in my view, the future occupiers of the development would invariably use the private motor vehicle for such journeys which is the least sustainable mode of transport.
14. In coming to the above view, I acknowledge that the Appellant have (anecdotally) stated that they frequently cycle to Marks Tey railway station for commuting purposes. I also acknowledge the evidence regarding walking and cycling distance and usage from the Department of Transport's Walking and Cycling Statistics 2018. However, these statistics only provide a general trend and do not reflect the circumstances of the unattractive route which users would be forced to navigate from the appeal site. Therefore, these factors do not alter my view on the relative safety of using Great Tey Road for such purposes.
15. To my mind, the appeal site is physically separate from the settlement of Little Tey which is evident from the undeveloped character of the area surrounding the appeal site and the distance to the edge of the defined settlement boundary.
16. Given that none of the exception circumstances outlined at paragraph 79 apply to the appeal development it follows that the proposal would result in an isolated dwelling in the countryside which the Framework and the adopted Development Plan policies seek to avoid.
17. Taking all of the above into account, I consider that the proposal would result in an isolated dwelling in the countryside and its future occupiers would be reliant on the private motor car with inadequate facilities to encourage travel by sustainable transport means contrary to Policies H1 and SD1 of the CS which amongst other matters seek to locate new development in the most sustainable locations. It would also be contrary to the sustainable location and transportation aims of the Framework.

#### *Habitat and biodiversity*

18. The Council also included a reason for refusal relating to the need for a phase 1 habitat survey which had not been undertaken at the time of their decision. As part of the appeal submissions, the Appellant has undertaken such a survey and the Council has confirmed that in this regard there is no obstacle to the granting of planning permission on this ground. Having considered the information before me in this respect, I agree with that view. Therefore, on this matter, the proposal would accord with Policies ENV1 of the CS and Policy DP21 of the LDFDP.
19. In addition to the above, from the limited evidence before me, the appeal site is located in the zone of influence of one or more of the European designated sites (such as Special Protection Areas/Special Areas for Conservations/Ramsar Sites). The Council have indicated that a financial payment of £122.30 is required to secure mitigation against recreational disturbance in those areas as

any intensification of these activities could lead to further disturbance in accordance with the emerging Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy. With that in mind, the Appellant has made such a payment directly to the Council.

20. Notwithstanding that, I am conscious of the requirement to undertake an 'Appropriate Assessment' of the effects of the development on these designated sites.

21. However, given that I have found harm in relation to the effect of the development on the character and appearance of the area and the sustainability of the location of the site, unless there is another material planning consideration which suggests that permission should be granted, it is not necessary for me to consider this matter in any further detail.

### *Planning balance*

22. The Framework indicates that planning decisions should apply a presumption of sustainable development. For decision taking, where Development Plan policies which are the most important for determining the application are out of date<sup>2</sup>, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

23. The Appellant has set out that the Council cannot demonstrate a deliverable five year supply of housing and indicate that the 'tilted balance' set out at paragraph 11d) of the Framework should apply. This is largely based upon the findings of an appeal decision<sup>3</sup> at Colchester Road, West Bergholt.

24. However, the Council have stated that they do not accept the findings of that decision, but have not provided details as to why that is the case nor has any information been submitted which demonstrates that the Council does have such a deliverable supply of housing.

25. Notwithstanding that, I have found that the proposal would not be in a sustainable location and would result in harm to the rural character and appearance of the area and as a result would be contrary to both the relevant Development Plan policies and the Framework. To my mind, these factors weigh heavily against allowing the proposed development.

26. The Appellant has outlined that the proposal would provide short term support of the local construction industry, long term support of local services and facilities as a result of additional residents, together with net gains in biodiversity and landscaping and heritage benefits. It is clear to me that all of these factors can be considered to be a benefit of the development and these must weigh in favour of the proposal. However, I consider that these benefits can only be considered to be minor.

27. I have also taken into account that the provision of an additional dwelling would be unlikely to have any significant effect in reducing the deficit to the housing land supply in the administrative area of Colchester should there be such a deficit.

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<sup>2</sup> Footnote 7 includes situations where the local planning authority cannot demonstrate five year supply of deliverable housing sites.

<sup>3</sup> Reference APP/A1530/W/18/3207626 dated 19 August 2019

28. With the above in mind, I consider that the harm identified significantly and demonstrably outweighs the minor benefits when assessed against the policies in the Framework when taken as a whole. The proposal cannot therefore be considered to be sustainable development.

**Conclusion**

29. Taking all matters into consideration I conclude that the appeal should be dismissed.

*Chris Forrett*

INSPECTOR