
Appeal Decisions

Site visit made on 26 November 2019

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th December 2019

Appeal A Ref: APP/A1530/W/19/3234672

Brickstables Paddock, Halstead Road, Stanway, Colchester, Essex C03 0JU

- 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 Pathways Care Services against the decision of Colchester Borough Council.
 - The application Ref 191303, dated 10 May 2019, was refused by notice dated 11 July 2019.
 - The development proposed is the erection of 6 Nos. independent living units, with access and landscaping.
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Appeal B Ref: APP/A1530/W/19/3234781

Brickstables Paddock, Halstead Road, Stanway, Colchester, Essex C03 0JU

- 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 S J Moser against the decision of Colchester Borough Council.
 - The application Ref 191304, dated 14 May 2019, was refused by notice dated 11 July 2019.
 - The development proposed is the erection of three detached one and a half storey properties and garages, with access and landscaping.
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Decisions

1. Both appeals are dismissed.

Procedural Matter

2. Both appeals relate to the same site. Although I have considered each proposal on its own merits, given that they were both refused for the same reasons and the main issues are identical in each case, in the interests of brevity, I have dealt with them together in the decision.

Main Issues

3. The main issues are:
 - whether the proposed developments would comply with the development plan, having regard to the spatial strategy and its policy objectives for protecting the countryside;
 - whether the site represents an appropriate location for the proposed developments having regard to the access to shops, services and facilities;

- the effect of the proposed developments on the landscape character of the area, with particular regard to the location of the site relative to Colchester and Eight Ash Green, and the setting of the listed building known as Brickstables House;
- the effect of the surrounding noise environment on the living conditions of future occupiers of the proposed developments; and
- the effect of the proposed developments on the Colne Estuary, Blackwater Estuary and Abberton Reservoir Estuary Special Protection Areas and Ramsar Sites, and the Essex Estuaries Special Area of Conservation.

Reasons

Protection of the countryside

4. The development plan comprises the Colchester Local Development Framework Core Strategy, adopted in 2008 and updated in 2014 (CS), and the Colchester Borough Development Policies, adopted in 2010 and amended in 2014 (DP). Policies H1 and SD1 of the CS seek to direct appropriate levels of growth to the most sustainable places using the hierarchy of settlements, from Colchester and Stanway, down to villages in the Borough. The aim is to deliver 19,000 homes over the plan period, 80 per cent of which should be provided on previously developed land. However, greenfield locations have been identified to the outskirts of Colchester.
5. Policy ENV1 of the CS sets out that unallocated greenfield land outside of settlement boundaries will be protected and where possible enhanced. Development of such areas is therefore strictly controlled to conserve the environmental assets and the open character of the Borough. Furthermore, Policy ENV2 of the CS refers to development of infill sites and previously developed land within village boundaries. The policy also gives favourable consideration to development outside of village boundaries for small-scale rural business, leisure and tourism schemes, and supports development which would constitute an exception to meet identified local affordable housing needs.
6. For the purposes of planning policy, the appeal site is situated in the countryside outside the physical limits of a recognised settlement. Based on the evidence before me, it does not appear that the site is previously developed land or that either of the appeal schemes is for any of the types of development that are considered acceptable in the countryside by the policies of the Council's development plan. I therefore conclude that the appeal schemes would be contrary to Policies ENV1, ENV2, H1 and SD1 of the CS, as they would encompass residential development outside a defined settlement boundary.

Accessibility of shops, facilities and services

7. Paragraph 78 of the National Planning Policy Framework (the Framework) seeks to restrict housing in rural areas to locations where housing will enhance or maintain the vitality of rural communities. Although the site is situated within the countryside, in terms of whether it would be 'isolated' in the language of the Framework it is important to have regard to the site's relationship to existing built development and accessibility to shops, facilities and services.

8. Taking the physical dimension of isolation first, the proposals would be located within close proximity of dwellings in Halstead Road and those fronting the A1124. The settlement of Eight Ash Green is a short distance to the northwest but incorporates a limited range of facilities, services, shops and other businesses. These would be unlikely to sustain the everyday needs of the future residents of the site. For those needs a resident would be obliged to travel further to Colchester or Stanway, including to Sainsburys which is around 550m away.
9. In terms of the accessibility of the site, paragraph 103 of the Framework suggests that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
10. Access on foot or by bicycle to Stanway would require passage along the A1124. This is a well-trafficked route with primarily narrow footpaths, with no formal pedestrian crossing points or refuges, particularly at the junctions of Halstead Road and the slip roads of the A12. There are also no dedicated cycle lanes. Pedestrians and cyclists can use a safer route along Lucy Lane, but this is some distance to the east. Similarly, although there are bus services available from the either side of the A1124, these would not be directly accessible by footpaths from the site. Moreover, there is no footpath serving the southern side of the Halstead Road and the application drawings suggest that the proposed vehicular access would be a shared surface.
11. Accordingly, whilst I accept that the Highway Authority did not raise concerns with respect to the highway safety of the proposals, the opportunities to walk or cycle to the services and facilities available further afield or to access the bus stops nearby would be unlikely to be convenient for future occupiers of the proposed developments.
12. The existing occupants of properties in Halstead Road may already choose to make journeys by private motorised transport. However, the proposals for six living units, which also require staffing, or three 4-bedroom dwellings would permanently increase travel to and from this location. Moreover, all future occupants would be highly likely to be required to travel regularly by private motorised transport to access shops, facilities and services, which would be likely to lead to a considerable increase in traffic.
13. With regard to Appeal A, I have been referred to paragraphs 77 and 78 of the Framework, which set out the government's approach to the development of housing in rural areas, including affordable housing for identified needs on rural exception sites. Essex County Council have provided a letter of support for the proposal and suggest that there is demand locally, including in Colchester, for accommodation of the form proposed. Furthermore, the appellant for Appeal A owns and operates other similar developments in the local area and their services are registered with the Care Quality Commission. However, I have not been referred to any special circumstances why either of the appeal schemes specifically need to be located at the appeal site or to any policies in the development plan that would support the case for either appeal scheme in this countryside location.
14. In light of all of the above, despite the site not being isolated in the language of paragraph 79 of the Framework, I conclude that it would not be a suitable location for the proposed developments. Hence, the appeal schemes would not accord with Policies H1 and SD1 of the CS, which give priority to new

development in locations with good public transport accessibility and/or by means other than the private car.

Landscape character and the setting of the listed building

15. The appeal site is situated between residential development to the outskirts of Colchester and a ribbon of development to the northern side of Halstead Road, a short distance southeast of Eight Ash Green. Brickstables House, to the east of the site, is currently the only built development to the southern side of the immediate area of Halstead Road surrounding the site.
16. Brickstables House is a grade II listed building, which dates from the 16th Century and earlier, the significance of which is derived from its architectural and historic interest. The building is a timber frame and plaster structure on a primarily L-shaped plan, with four red-brick chimney stacks and ridge gabled roofs. Along with the site and buildings across the road, it was part of a farmstead, however it is now in use as a dental and implant clinic.
17. I am mindful of the Framework's definition of 'setting' as being the surroundings in which a heritage asset is experienced. The site was formerly part of the historic field-system associated with the farm and currently has an unmanaged verdant appearance, dominated by mature planting to its boundaries. The openness of the site therefore provides a rural context which forms an integral part of the historic setting of Brickstables House. The site also makes a significant contribution to the landscape character of the area and is essential to maintaining separation between Colchester and Eight Ash Green.
18. I have been referred to an appeal decision¹ for a site to the west of the current appeal site, on the opposite side of the A1124. Whilst the decision relates to a greater quantum of development to that before me, it discusses the potential effect of the development on the landscape character of the area and the coalescence of settlements. It is therefore a material consideration of significant weight in my deliberations.
19. The appearance of the proposed developments would be acceptable, particularly in terms of their form and materials, as they respond to the traditional appearance of other built development nearby. I also appreciate that the proposals would be set away from the planting belts to the southern and western boundaries, which would be retained and supplemented with additional planting within the site. Nonetheless, like the Inspector for the recent appeal I refer to above, I consider that the physical presence of the proposals within the site would significantly and permanently change the landscaped character of the area. Moreover, the built form of the appeal schemes, particularly the taller dwellings in Appeal B, would be clearly discernible in public views and would erode the openness of the land to the southern side of Halstead Road and contribute to the coalescence of Colchester and Eight Ash Green.
20. The statutory duty in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. The appellants' Heritage Assessment does not describe the contribution made by the setting of the listed building to its significance as a designated heritage asset, as required by paragraph 189 of the Framework, it only concludes on the potential effect of the proposals. Be that as it may, I have

¹ Appeal Reference: APP/A1530/W/18/3217708

had regard to the document and other evidence before me. For similar reasons to those outlined above, the proposals would erode the distinctive setting of the listed building, which would have a negative effect on its significance as a designated heritage asset.

21. This would equate to less than substantial harm to the significance of the designated heritage asset. Paragraph 196 of the Framework identifies that this harm should be weighed against the public benefits of proposals. I undertake this assessment later in the Planning Balance.
22. For the reasons outlined above, I conclude that both appeal schemes would have a significantly detrimental effect on the landscape character of the area, with particular reference to the location of the site relative to Colchester and Eight Ash Green, and be harmful to the setting of the listed building. Hence, the appeal schemes would not accord with Policies ENV1, SD1 and UR2 of the CS and DP1, DP14 and DP21 of the DP. Together these policies require that new development respects and enhances the character of the site, its context and surroundings, including the landscape setting and maintains settlement separation. New development should also demonstrably protect, conserve or enhance the interests of historic assets, including features of specific historic interest such as landscape.
23. Both appeal schemes would also be in conflict with paragraph 189 of the Framework, which requires applications to be accompanied by a description of the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance.

Noise

24. The appeal site is adjacent to the A1124 dual carriageway, which is elevated above the appeal site to the west. The London to Norwich Main Line Railway is also in a cutting situated to the south. The boundaries to both include dense areas of mature planting. Appeal A is for an I-shaped building with bedrooms, living spaces, patios and shared private space arranged to face these boundaries. Appeal B is for three dwellings arranged in a similar manner, with living spaces at ground floor and bedrooms at first floor facing these boundaries.
25. My role is to consider the evidence before me in the context of relevant planning policies and other material considerations. The Noise Impact Assessments (NIAs) supporting the appeals do not include background noise readings taken within the site, particularly for more sensitive times of the day and week, when disturbance is more likely. I am not therefore persuaded that the NIAs provide a representative picture of existing background noise or the potential for noise to effect occupants of the proposed developments.
26. Without a more comprehensive assessment, the mitigation measures referred to in the NIAs cannot be adequately evaluated. Consequently, the evidence before me does not offer sufficient clarity and robustness to be able to determine that the living conditions of future occupants of the proposed developments would not be harmed by noise emanating from the railway line or nearby roads.

27. Therefore, for the reasons outlined above, I am not satisfied that the evidence relating to the potential for noise demonstrates that the proposals could be accommodated within the site without causing unacceptable harm to the living conditions of future occupants. Hence, neither appeal scheme would accord with Policies DP1 and DP12 of the Core Strategy, which require that residential development is to a high standard of design, construction and layout, avoiding unacceptable impacts on living conditions.

Colne Estuary, Blackwater Estuary and Abberton Reservoir Estuary Special Protection Areas and Ramsar Sites, and the Essex Estuaries Special Area of Conservation

28. All residential proposals within the Council's administrative area are required to have regard to the potential adverse effects from increased recreational disturbance upon the Colne Estuary Special Protection Area (SPA), the Blackwater Estuary SPA, the Abberton Reservoir Estuary SPA and the Essex Estuaries Special Area of Conservation.
29. I am conscious of the requirement to undertake an 'Appropriate Assessment' of the effects of the development on these protected areas. However, Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates that the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposed development.
30. Therefore, given my overall conclusion on the other main issues, 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

31. Paragraph 47 of the Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.
32. In the third main issue I indicated that the proposals would lead to less than substantial harm to the significance of Brickstables House, as a designated heritage asset. Paragraph 196 of the Framework identifies that this harm should be weighed against the public benefits of proposals.
33. In the context of Paragraphs 59 and 68 of the Framework, I note the contribution that would be made to the supply of housing by this small site, particularly as it could be built-out relatively quickly. There is no threshold for the assignment of weight to the quantum of residential development and the proposals would deliver six independent living units or three 4-bedroom dwellings. The former would address an identified need for housing and the proposed internal layout would be accessible and user friendly for disabled persons (in accordance with policy DP12 of the DP). The latter would contribute to the overall housing mix in the area. However, as the contribution to the supply of housing from either appeal scheme would be limited in its extent, I afford this benefit moderate weight.
34. Some economic benefits would arise from, for example, employment and procurement of materials during the construction period. Future occupiers

would also contribute to the local economy through expenditure but would be likely to do so by utilising private motorised transport. Nonetheless, given the relatively modest scale of the proposals, such benefits would be limited in scale and kind, and consequently carry only limited weight.

35. Paragraph 193 of the Framework states that in considering the impact of proposed development on the significance of a heritage asset, great weight should be given to the asset's conservation. Considered together, I conclude that the public benefits I have outlined above do not outweigh the heritage harm I have identified.
36. The main parties do not agree on the current position regarding the available supply of housing in the Borough. The Council has referred to their Housing Land Supply Statement, which they suggest demonstrates five-years supply of deliverable housing land. Meanwhile, the appellants have drawn on two appeal decisions in the Borough², which refer to the supply of housing. The evidence that informed those decisions is not before me and the appeals relate to developments of a significantly greater scale than the current appeal, including for affordable housing.
37. Clearly should I determine that the Council cannot demonstrate a 5-year housing land supply, in line with footnote 7 to paragraph 11 of the Framework, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, the tilted balance. However, I am mindful that in light of my finding in relation to heritage matters, paragraph 11d) i) of the Framework would apply. Accordingly, as the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the proposed development, the tilted balance would not be engaged, and the normal planning balance applies.
38. I have already identified the benefits of the schemes above. In terms of harm, the proposed developments would not comply with development plan policy in respect of the location, the accessibility of the site to shops, facilities and services, the living conditions of future occupiers, the harm to the setting of the listed building, or the effect on the landscape character of the area. The absence of harm in respect of all other matters, including the living conditions of neighbouring occupiers and the vehicular access into the site, would neither weigh for nor against the proposals.
39. In the final balance, I consider that this cumulative harm would outweigh the benefits of the proposed developments. Therefore, there are no material considerations that would indicate that the appeal schemes should be determined other than in accordance with the development plan.

Conclusion

40. For the reasons given, the appeals do not succeed.

Paul Thompson

INSPECTOR

² Appeal References: App/A1530/W/18/3209603 (for 18 dwellings, 36 retirement living/sheltered accommodation units and a 60-bed care home) and App/A1530/W/18/3211685 (for 26 dwellings).