



Appeal Decision

Site visit made on 23 March 2020

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary

Decision date: 14th April 2020

Appeal Ref: APP/P1560/W/19/3240479

Mount View, Fox Street, Ardleigh, Colchester, Essex CO7 7PS

- 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 Bill Marshall of Wambugu Ltd against the decision of Tendring District Council.
 - The application Ref 19/01148/OUT, dated 31 July 2019, was refused by notice dated 1 November 2019.
 - The development proposed is described as 'Construction of 9 custom build/self build dwellings, access road and pavements'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with all matters of detail reserved for future consideration. I have assessed the proposal on this basis and treated the drawings as being an illustration of how the proposal could ultimately be configured.

Main Issues

3. The main issues in this appeal are:
 - Whether the appeal site is a suitable location for the proposed development with reference to the spatial strategy in the development plan;
 - The effect of the proposed development on the character and appearance of the area;
 - The effect of the proposed development on the setting of Fen Farm, a Grade II listed building;
 - Whether the proposed development would make adequate provision for affordable housing;
 - The effect of the proposed development on biodiversity.

Reasons

The spatial strategy in the development plan

4. The Tendring District Local Plan 2007 (LP) includes several strategic objectives including the economic and social regeneration of some of the main

settlements in the district, making efficient use of previously developed land, directing housing to be close to services and facilities and providing support to rural communities.

5. In order to address the strategic objectives of the LP, saved Policy QL1 of the LP sets out a spatial strategy centred on a settlement hierarchy. This involves concentrating development within the settlement development boundaries (SDBs) of towns and villages. It only permits proposals outside SDBs if they are consistent with the countryside policies of the LP.
6. The proposed development would involve the erection of nine dwellings at Fox Street, a small hamlet to the north east of Colchester loosely arranged along the A137. There is no SDB around Fox Street, the nearest being at Ardleigh. Thus, the proposal would be located outside a SDB and is not allocated for development. Moreover, I have not been directed to any countryside policies in the LP that the proposal would adhere to. Consequently, the location of the proposal would be significantly at odds with, and harmfully undermine, the spatial strategy for the location of housing in Policy QL1 of the LP and thus the consistency and relative certainty that should ordinarily flow from a genuinely plan-led approach to new development.

The effect on the character and appearance of the area

7. The appeal site encompasses an undeveloped field bounded by mature hedgerows. It is accessed from a small driveway that connects the A137 with Mount View and High View. Fox Street is largely a linear hamlet as most properties are single depth with a frontage onto the A137. This provides the semblance of a building line and a discernible frontage pattern of development with open countryside, mainly fields, behind and beyond. The pattern generally endures near to the appeal site even though properties such as Fox Hill, Willowdene and Chantry's are sporadically positioned in large plots.
8. That said, the recently approved housing at Mount View would be arranged in depth and High View and Fen Farm do not have a frontage onto the A137. Nevertheless, Fen Farm and the houses beyond are separated from Fox Street by the appeal site and another field to the north-east and therefore they are not physically part of the hamlet. High View is a modest bungalow set amongst mature trees, so it is very discrete in public views. The homes approved at Mount View would be modest in size, would not project very far behind the frontage properties and would have residential development to all sides. In this respect they would appear tucked in amongst existing development rather than an expansion of it.
9. Conversely, the appeal scheme would result in development projecting back a considerable way behind the rear boundaries of the properties that front onto the A137. This would jar with the linear pattern of the hamlet and thus appear as an incongruous suburban projection of development into the network of fields around the hamlet. This would erode the form and countryside setting of Fox Street. Moreover, the appeal site has an attractive undeveloped rural character that would be severely depleted if the houses were constructed.
10. The proposed dwellings would not be prominent in views from the A137 due to the position back from the road, the boundary treatment along the frontage of Fox Hill and Chantry's and the mature landscaping within the gardens of these

properties. However, these screening features are outside the control of the appellant so their longevity cannot be guaranteed.

11. In addition, the appeal scheme would be a large body of housing relative to the size of the hamlet that would be clearly visible from surrounding properties and a public footpath to the north-east. This is despite there being no need to create a new access and the existing filtering presence of hedging and trees around the perimeter of the site. Thus, the development's presence as a discordant incursion into the countryside, which would significantly harm and erode the rural landscape character around Fox Street as well as the linear grain and form of the hamlet, would be apparent.
12. I therefore conclude that the appeal scheme would significantly harm the character and appearance of the area. This would be contrary to saved Policies QL9 and EN1 of the LP, which state that development should protect or enhance local character and that proposals which significantly harm landscape character or quality will not be permitted.

The effect of the proposed development on the setting of Fen Farm

13. Fen Farm is an attractive and impressive detached property set within a wooded garden. It is timber framed and probably originates from the 15th Century. It is vernacular in style and therefore intrinsically linked to the rural landscape in which it sits. The property is set away from the main body of the hamlet and accessed along what appears to be an historic track flanked by trees. The appeal site is located to one side of the track with another field on the other. This provides a semi-rural approach to the property. The Council are of the view that it also provides a flavour of how the building would have once stood in isolation within the landscape and I have no reason to disagree. Thus, the semi-rural approach and semblance of isolation are important components of how the building is experienced and understood – its setting.
14. The appeal scheme, even if it included single storey structures and extra landscaping, would result in the space between Fox Street and Fen Farm being notably eroded with the rural and open appearance of the appeal site lost to a suburban cul-de-sac. This would significantly harm the semi-rural character of the approach to the listed building and diminish the sense of the building's historically isolated position. The proposal would also urbanise views of the approach to the listed building when viewed from the public footpath to the north-east of the appeal site. This is a particularly important view as the house can be seen against the backdrop of wooded countryside. These impacts would be notably greater and closer than recently approved schemes such as the new dwelling at Wyldberrry (Ref 15/01730), or the builder's yard at Fox Hill.
15. The wider rural setting of Fen Farm has been cumulatively eroded by the intensification of development nearby. However, the closet housing does not impinge on the approach to the listed buildings or views of its front elevation. Moreover, the development along the A137 generally has a clear rear boundary and is seen distant from the listed building. Alternatively, the appeal scheme would urbanise the approach to Fen Farm and diminish the gap between it and the hamlet. I therefore conclude that the proposal would seriously harm the setting of Fen Farm.

Whether the proposal would make adequate provision for affordable housing

16. In order to address the high demand for affordable housing in the district, Policy HG4 of the LP states that the Council will expect 40% of new dwellings to be affordable housing. In settlements with a population of 3,000 or fewer, the policy requires affordable housing where the site has the potential to provide five or more dwellings or is a residential site of 0.15 hectares (ha). The appeal site is around 1.29ha in size and therefore affordable housing should be provided if the provisions of Policy HG4 are to be met.
17. However, Policy HG4 is not entirely consistent with the National Planning Policy Framework (the 'Framework'), which states that affordable housing should not be sought for residential developments that are not 'major developments'. The Framework defines a major development as 10 or more homes *or* where the site has an area of 0.5ha or more. As already stated, the appeal site is 1.29ha and is therefore a major development. There is also traction to the Council's argument that the nine homes proposed should be considered as part of the four already permitted at Mount View, as both sites are in the same ownership, accessed off a single private drive and could be delivered together. Thus, the Framework requires the provisions of affordable housing in this instance.
18. The Council are seeking a financial contribution towards affordable housing in lieu of four homes being provided on site. The contribution being sought is guided by the lower threshold (30%) set out in the emerging Local Plan, which is based on more up to date viability evidence. Nothing of substance has been provided to demonstrate this would be unviable or that the sum required, which I understand is around £669,056, was incorrectly calculated.
19. The self-build exception in Paragraph 64 of the Framework does not negate the need to provide affordable housing altogether. This is because it only provides an exception from providing 10% of the homes as affordable home ownership as part of the overall affordable housing contribution. The exception does not, for example, relate to a financial contribution towards affordable housing for rent. Thus, the provision of affordable housing would be necessary, directly related to the development and fair and reasonable in scale and kind.
20. A planning obligation that would make adequate provision for affordable housing is not before me. A financial contribution cannot be secured positively through a planning condition¹ and nor would it be appropriate to exceptionally impose a negatively worded planning condition requiring a planning obligation to be entered into at a later date because, for example, the proposal is not complex and the heads of terms are not before me². Thus, in the absence of a planning obligation or other appropriate means of legally securing the affordable housing contribution, the appeal scheme would not make adequate provision for affordable housing. It would therefore be at odds with Policy HG4 of the LP and the Framework.

The effect on biodiversity

21. The appeal site is currently an uncultivated field with patches of scrub, bare earth and rough ruderal grassland. A Preliminary Ecological Appraisal was submitted with the appeal and this considered the likely presence of protected species and the possible impacts the appeal scheme would have upon them.

¹ See Planning Practice Guide Paragraph: 005 Reference ID: 21a-005-20190723

² See Planning Practice Guide Paragraph: 010 Reference ID: 21a-010-20190723

22. The appraisal was undertaken less than two years ago by a suitably qualified ecologist at the optimum time of year. For these reasons I am content to rely on the findings in the appraisal, which have not been disputed by the Council. The report concludes that the site is likely to be of moderate overall value to wildlife because it is the type of habitat that could be used by several protected species including badgers, bats, reptiles (common lizard and grass snake), nesting birds and great crested newts. Other notable species such as hedgehogs and common toads may also be present.
23. The report concludes that the development is unlikely to have a significant effect on some of the species listed above if impact avoidance measures are secured dealing with tree works, lighting and the timing of site clearance and construction works. In addition, the site would need to be cleared carefully and mitigation measures employed such as a 500 square-metre area of wildflower meadow provided, fencing with hedgehog passages constructed and log piles left around the site. 'Layout' and 'landscaping' are reserved matters so it would be possible to secure these avoidance and mitigation measures at a later date in the event the scheme was otherwise acceptable. In addition, a condition could be imposed requiring enhancement measures such as species rich lawns, native tree planting, bird, bat and bee boxes, a stag beetle logger and a pond.
24. However, the appraisal also recommends that further surveys are necessary for roosting bats, great crested newts and reptiles. Bats may be roosting in some of the trees in and around the site and great crested newts may be present in nearby ponds or within the site as a terrestrial habitat. Further surveys would be required to ascertain whether a European Protected Species Licence is required and likely to be granted by Natural England. Without the evidence provided by further surveys I have reservations over the likely success of any license application. In the absence of surveys, it is unclear whether protected reptiles are present and, if so, the extent of any colonisation.
25. The appellant has not provided the additional surveys recommended. This is a significant omission because the presence or otherwise of the relevant protected species is unclear and therefore any impacts and potential mitigation has not been identified and cannot be fully understood. Circular 06/2005³, states that ecological surveys should only be left to a planning condition in exceptional circumstances, which do not apply in this case. Thus, without the additional surveys there is an unacceptable risk that the proposal could harm protected species. As such, I cannot be certain the development would protect and enhance biodiversity and thus adhere to Policies EN6 and EN6a of the LP.

Other Considerations

26. The harm I have identified to the setting of Fen Farm would be serious but not severe and therefore it would be 'less than substantial' within the meaning of the Framework. As a material consideration, Paragraph 196 of the Framework requires such harm to be weighed against the public benefits of the proposal. The Framework also states that great weight should be given to a designated heritage asset's conservation.
27. The Council are currently unable to demonstrate a five-year housing land supply and therefore the provision of nine homes would assist in remedying

³ Biodiversity and Geological Conservation – see footnote 56 of the National Planning Policy Framework

this and thus achieve the objective of significantly boosting housing supply⁴. However, the appeal scheme is only of moderate size and the appellant has not disputed the Council's proposition that the shortfall in supply is modest when calculated using the standard method prescribed in the Framework. Moreover, the Council has submitted a draft Local Plan for examination. It is therefore taking positive steps to address the shortfall. In this context, the contribution to housing supply is currently of moderate weight as a public benefit.

28. The proposal is also aimed at self-builders at a time when the demand, as recorded on the Council's register, is increasing. Thus, the proposal would help to address the provisions of the Self Build and Custom Housebuilding Act 2015 (as amended⁵), which includes a duty on Council's to give enough permissions to meet the identified demand. The evidence before me does not demonstrate the Council has failed to approve an adequate number of custom and self-build serviced plots in the relevant base periods and the LP does not prevent many forms of windfall development that could qualify as serviced plots⁶ for custom and self-build homes. For these reasons, the self-build concept is a matter of limited weight.
29. The proposal would result in benefits to the construction industry and future residents may spend locally and generally support facilities nearby as well as the vitality of the local community. They could do so without having to travel far and by using sustainable transport from a site that is not isolated. These are public benefits of moderate weight as there is little before me to suggest nine households would have a significantly positive impact on local services and facilities. For example, there is nothing to suggest local services are failing for lack of patronage. It is unclear whether the proposal has been formally considered as a candidate for 'Livewell Accreditation' and, being an outline scheme with all matters reserved, whether it could be at this stage.
30. Thus, when giving considerable importance and great weight to the special regard I must have to the desirability of preserving the setting of a listed building⁷, I find that the serious harm to the setting of Fen Farm that would arise from the appeal scheme would not be outweighed by its cumulative public benefits. Accordingly, there would be a conflict with Paragraph 194 of the Framework as harm to a designated heritage asset would not have a clear and convincing justification.
31. Given my findings in respect of Paragraphs 194 and 196 of the Framework, there are clear reasons for refusing the development. Consequently, it is unnecessary to consider whether the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits.
32. The appellant has referred to several approvals⁸ within the immediate area of the appeal site. However, these are smaller schemes than the proposal before me and it has not been demonstrated that they were permitted despite negative impacts to the character and appearance of the area and the setting of a listed building and without adequate biodiversity surveys or provision made for affordable housing. Accordingly, they are of limited weight to my deliberations, which turn on the specific impacts of the proposal.

⁴ A point reinstated in the Government Budget Statement 2020

⁵ By the Housing and Planning Act 2016

⁶ See Planning Practice Guide Paragraph: 026 Reference ID: 57-026-201760728

⁷ See Sections 66(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990

⁸ Including 18/01575/OUT, 18/01589/FUL, 16/00751/FUL and 15/01730/FUL

33. Given my overall conclusion that the appeal should fail, there would be no future occupants and therefore no increase in recreational disturbance at The Colne Estuary Special Protection Area. Accordingly, it is unnecessary to consider this matter further.
34. I have been referred to policies within the emerging Local Plan including suggested amendments to draft Policy SP1. However, it is still in the process of being examined by the appointed Inspector and it is unclear what objections have been raised to individual policies and therefore whether they are likely to be adopted in their current form. Consequently, I attribute the emerging Local Plan limited weight for the purposes of this decision.
35. Various concerns have been raised by interested parties, including reservations regarding the impacts on traffic and infrastructure, which I have noted. However, given my overall conclusion it has not been necessary for me to address these matters further as the appeal has failed on other grounds. There appears to have been four letters of support which I have carefully considered but I have come to my own conclusions for the reasons given. Fox Street has been included in an area identified as a potential urban extension⁹, but this does not mean the appeal site will be developed.

Conclusion

36. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal has failed.

Graham Chamberlain
INSPECTOR

⁹ Land to the North East of Colchester Urban Extension Vision Framework April 2019