



Appeal Decision

Site visit made on 2 June 2020

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th June 2020

Appeal Ref: APP/A1530/W/19/3237688

Fen Cottage, The Causeway, Great Horkesley CO6 4EJ

- 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 John Cox (The Land Buying Company (UK) Ltd) against the decision of Colchester Borough Council.
 - The application Ref 190298, dated 22 January 2019, was refused by notice dated 29 March 2019.
 - The development proposed is described as "outline planning application for the erection of six dwelling houses on land at Fen Cottage (all matters reserved)".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline form with all matters reserved for future consideration. The appellant has provided an indicative layout that I have treated as illustrative for the purposes of this appeal.
3. The Council refer to policies within the Submission Colchester Borough Local Plan 2017-2033 (SCBLP) within its written statement. However, as the SCBLP is still being examined and may be the subject of change, the weight I afford it is limited.
4. The Council's decision notice refers to the use of a substandard access by reason of insufficient vehicular visibility splays. However, following further clarification through the submission of an amended plan¹, Essex County Council as Local Highway Authority has confirmed that the required visibility splays are acceptable. I have considered this drawing and am satisfied that, taking into account the principles established under Wheatcroft², that the drawing does not change the development to such a degree that to consider it would deprive those who should have been consulted on any changes, the opportunity of such consultation.
5. The Council's decision notice also refers to ecological matters and the need for an updated Ecological Appraisal. However, the Council confirm in its written statement that this matter has been satisfactorily dealt with.

Main Issues

6. The main issues are:
 - whether the appeal site is an appropriate location for the development having regard to the development plan;

¹ 25810-1010-P02

² Bernard Wheatcroft Ltd v SSE & Harborough DC [1982] P&CR 233

- the effect of the development on the character and appearance of the area; and,
- whether the development should provide an element of affordable housing.

Reasons

Location

7. The appeal site is the garden area of the host property and it is proposed to demolish a swimming pool area and to erect six dwellings within the site, retaining Fen Cottage. The land to the south of the site is the built-up area of Great Horkesley which has been developed with housing so that the area has a mixed suburban and semi-rural character. The appeal site lies adjacent to, but beyond the settlement boundary of Great Horkesley and is therefore, within the countryside.
8. Policy H1 of the Colchester Borough Council Local Development Framework Core Strategy Adopted December 2008 and revised July 2014 (the CS) seeks to deliver the majority of its housing allocation within the regeneration areas of Colchester town, with land to the north and south of the town also identified for additional housing. Table H1a of the CS does not identify greenfield sites that lie beyond settlement boundaries as areas of growth for residential development. Policy SD1 of the CS also targets Colchester town for development along with the most accessible and sustainable locations within the Borough.
9. Policy ENV1 of the CS states that development on unallocated greenfield land outside of settlement boundaries will be strictly controlled to conserve the environmental assets and open character of the Borough. Policy DP1 of the Colchester Borough Council Development Policies Adopted 2010 and revised July 2014 (the DP) also seeks to ensure that developments demonstrate social, economic and environmental sustainability.
10. Therefore, as the site lies beyond the settlement boundary of Great Horkesley, the proposal would be in conflict with Policy DP1 of the DP and Policies ENV1, H1 and SD1 of the CS, the requirements of which are specified above.

Character and Appearance

11. The appeal site contains the host property and swimming pool area and a number of small trees and hedges with other areas given over to grass. The site is bound on all sides by mature trees and hedging. The existing dwelling is located to the north-east corner of the site with the land to the south forming the area where the proposed dwellings would be located. An indicative drawing depicts a layout of four detached dwellings with a further pair of semi-detached properties.
12. To the south of the appeal site is an area of existing residential development, the closest being that which exists along Tile House Lane and Ivy Lodge Road. The area contains a variety of style and size of dwellings, including three storey town houses that abut the appeal site and bungalows further afield. Although there is a variety of dwelling types in the area, there remains a degree of uniformity which is created by the layout of properties that tend to be arranged in a linear manner, giving the area a pleasing and somewhat open and spacious suburban quality.
13. Extensive landscaping on the appeal site's southern boundary extends to the east and west and forms a buffer between the suburban areas of housing development to the south of the site and the more open and rural areas to the north of the site. To the north of the appeal site the land is a more open landscape which contains a scattering of properties and wooded areas surrounded by agricultural land. The

appeal site and land to the north of the village is verdant and has a distinct open and rural quality that is reinforced by the presence of mature landscaping within this countryside setting. Given the rural characteristics of the landscape to the north of the village, I am not persuaded that the land within the site to the south of Fen Cottage and which forms its residential garden, relates more to the built-up area of Great Horkesley. While very close to its settlement boundary, the appeal site nonetheless better relates to its rural surroundings to which it makes a positive contribution.

14. There are other dwellings in the vicinity and in that respect, the proposed development would not represent isolated dwellings in the countryside. However, while Fen Cottage may be considered to be the "*last visible dwelling house from the Causeway*", there is nonetheless a clear distinction between the more built-up and suburban areas that form part of Great Horkesley and the countryside that surrounds it. The tree belt and site make a valuable and attractive contribution towards softening the character of the area and forms a logical rural buffer to the built-up area of the village to the south. Furthermore, notwithstanding the presence of Fen Cottage, the development would represent a shift of the built environment beyond the edge of the village at this point which is clearly demarcated by the belt of trees along the southern boundary of the site.
15. The development of six dwellings would suburbanise the site, thereby eroding the rural qualities of the area and reducing the contribution that the site makes to the openness and rural quality of the area. Although I accept that all matters are reserved for future consideration, whatever its final form, the introduction of an additional six dwellings within the site, four of which would be three bedroom properties and two of which would be four bedroom properties³, along with areas for parking and turning, an improved access and retaining the existing dwelling, would result in an in-depth development that would appear somewhat discordant. The proposal would fail to respond positively to the prevailing layout of the more open and spacious development that exists to the south of the site, appearing as a cramped enclave of housing that would fail to reflect or respect the grain of the area, quite out of keeping with its established character.
16. Furthermore, while I acknowledge that three storey dwellings exist in the vicinity, these are part of the built-up area of Great Horkesley. The appeal site, although close to the village boundary, remains outside of it and forms part of the rural land that surrounds the village. Moreover, the development at Tile House Lane has a differing layout of ribbon development and thus, I do not find that it represents an irresistible precedent to find in favour of the development before me. In any event, I have considered this appeal on its own merits which is a fundamental principle that underpins the planning system.
17. I also acknowledge that the area contains a number of cul-de-sacs, such as those at Jonagold Drive and Elstar Lane. However, these are part of a wider, planned housing estate and do not have the appearance of a standalone development. Moreover, notwithstanding that the Framework states that planning decisions should avoid homes being built at low densities, the proposal would nonetheless be in conflict with paragraph 127 of the Framework which seeks to ensure, amongst other things, that developments are sympathetic to local character, including the surrounding built environment and landscape setting.
18. Thus, the development would result in material harm to the character and appearance of the area. It would be in conflict with Policies DP1 and DP16 of the DP and Policy UR2 of the CS and the Framework which seek, amongst other things,

³ Part 7 of application form dated 22 January 2019 refers (Market: Proposed Housing)

to ensure that developments are high quality and respect the character of the site, its context and surroundings.

Affordable Housing

19. Policy H4 of the CS states that an element of affordable housing from residential schemes in other villages for developments of three or more dwellings will be secured. The appellant argues that the Framework states at paragraph 63 that the provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). The Council state that the site lies within a designated rural area and as such, an element of affordable housing is required. In support of this, the Council refer to a committee report⁴ (the report) which defines Great Horkesley as a designated rural area.
20. I am not persuaded that Policy H4 of the CS is inconsistent with the Framework as it requires affordable housing for developments that are not major. The Framework has an exception that a development on land that is a designated rural area, a lower threshold may be taken. Nevertheless, in the absence of the report that the Council relies upon, confirming that the appeal site is part of Great Horkesley and indeed within a designated rural area, I have no option but to determine that the development as sought would not have to provide an element of affordable housing.
21. Thus, the proposal would not be in conflict with Policy H4 of the CS which seeks, amongst other things, to improve housing affordability in the Borough.

Other Matters

22. Although not a reason for refusal, the site lies within the zone of influence of European sites of nature conservation importance, such as the Colne Estuaries Special Protection Area (SPA), the Blackwater Estuary SPA and the Essex Estuaries Special Area of Conservation (SAC). It is established that any development resulting in a net increase in the number of dwellings, within the zone of influence and without avoidance measures, would be likely to have a significant effect on the SPAs and SAC within the meaning of the Conservation of Habitats and Species Regulations 2010. This effect principally derives from identified recreational pressures on the SPAs and SAC associated with additional residential development and atmospheric pollution on the SPAs and SAC.
23. As the appeal is being dismissed on other substantive issues, it is not necessary to look at this matter in detail. Moreover, had I been minded to allow the appeal, I would have explored the necessity for undertaking an Appropriate Assessment and the requirement for any payments to off-set the impact of the development on the SPAs and SAC, including the condition as suggested by the appellant.
24. I acknowledge that the site was originally promoted as site RNE35 within the Council's Strategic Housing Land Availability Assessment 2017. However, the Council confirm that the appeal site remains outside of the settlement boundary of Great Horkesley within the SCBLP. I accept that the SCBLP could be the subject of change and that the appellant argues that the reasoning the Council gave for refusing planning permission and for site RNE35 appear to be at odds. However, this is not a matter for my consideration as other mechanisms exist to resolve such matters.

⁴ Local Plan Committee Report dated 2 February 2015 - Changes to the Use of Planning Obligations

25. I note that representations were made by local residents, some of whom raise additional concerns. However, given my findings on the main issues, it is not necessary to consider these matters in detail.

The Planning Balance and Conclusion

26. There is a disagreement between the parties as to whether the Council can demonstrate a five year supply of deliverable housing sites with each party providing appeal decisions to support their position. The appellant has referred to a recent decision at Barbrook Lane, Tiptree⁵ where the Council's housing land supply was found to have a small shortfall at some 4.7 years. Thus, the policies which are the most important for determining the application are considered to be out-of-date. In such circumstances, the tilted balance at paragraph 11 d) of the Framework requires that, in the circumstances of this case, 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.
27. In this case, the development would contribute towards boosting the supply of housing in the Borough, and thereby helping to meet an identified shortfall. There would be social benefits through the provision of six new dwellings and some economic benefits through the construction of the dwellings and in the future when residents could be expected to be economically active and to contribute to the support of local businesses and services. However, given the quantum of development, I afford these benefits moderate weight in favour of the appeal.
28. However, I have found that the proposed development would be contrary to the development plan in that it would result in material harm to the character and appearance of the area, to which I afford significant weight. Moreover, even if the Council is unable to demonstrate a five year housing land supply and whether or not the policies from the Development Plan which are the most important for determining the appeal should be considered out-of-date, the harm I have found to the character and appearance of the area is serious and in my view that significantly and demonstrably outweighs the benefits of the scheme when assessed against the policies in the Framework taken as a whole. As such the presumption in favour of sustainable development as envisaged by the Framework does not apply in this case. There are no other material considerations that indicate a decision other than in accordance with the Development Plan.
29. Thus, for the reasons given above, and having regard to the Development Plan when read as a whole, the appeal is dismissed.

Graham Wyatt

INSPECTOR

⁵ APP/A1530/W/19/3223010 dated 7 April 2020