
Appeal Decision

Site visit made on 21 July 2020

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st August 2020

Appeal Ref: APP/A1530/W/20/3248248

Land adjacent Heathcote Farm, Fox Street, Ardleigh 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 Mrs Clinch against the decision of Colchester Borough Council.
 - The application Ref 191625, dated 18 June 2019, was refused by notice dated 6 September 2019.
 - The development proposed is two dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Outline planning permission is sought with all matters reserved for future consideration. I have therefore taken the submitted drawings to be illustrative.
3. The main parties have indicated that the development would have likely significant effects on European sites as designated by the Conservation of Habitats and Species Regulations 2017. The appellant has submitted a unilateral undertaking (UU) dated 27 February 2020 with the appeal, which is intended to mitigate the effects. The Council has withdrawn its second reason for refusal as a result. Nevertheless, as the competent authority, I shall consider the effects of the proposal on the integrity of European sites.
4. The Council's Emerging Local Plan¹ (ELP) is in the process of being examined. The ELP may therefore be subject to change and thus it attracts limited weight in my decision.

Main Issues

5. The main issues are:
 - whether the site represents an appropriate location for housing having regard to the Council's settlement strategy and access to services and facilities;
 - the effects of the proposal on the character and appearance of the area; and
 - the effects of the proposal on the integrity of European sites.

¹ Colchester Borough Local Plan Publication Draft

Reasons

6. The appeal site comprises an area of green space enclosed by trees and hedges that is adjacent to a dwelling at Heathcote Farm. An access onto the A137 is located between the dwelling and the site. The trees and hedges to the front of the site form part of a row which extends along the road to a dwelling at Braefoot. The planning application form indicates that the site is in agricultural use.

Location for housing

7. Policy SD1 of the Colchester Local Development Framework Core Strategy (CS) sets out that growth will be located in the most accessible and sustainable locations in accordance with its settlement hierarchy. In addition, CS Policy ENV1 states that unallocated greenfield land outside of settlement boundaries will be protected and development within such areas will be strictly controlled to conserve the environmental assets and open character of the borough.
8. The site is located near the edge of the Council's administrative boundary with most of the surrounding development in the adjacent Tendring district. The appellant states that the area is recognised as a small settlement by Tendring District Council. Nevertheless, the site is unallocated greenfield land which is located outside of the settlements recognised by the Council's settlement hierarchy. The site and the surrounding area within the borough are therefore located within the countryside. I thus find that the site is not a location where housing is supported. The proposal conflicts with CS Policies SD1 and ENV1 in this respect.
9. The National Planning Policy Framework (the Framework) does not indicate that development should be prohibited within rural areas. It sets out, at paragraphs 78 and 79, that housing should be located where it will enhance and maintain the vitality of rural communities and isolated homes in the countryside should be avoided. The site is near to several buildings and therefore the proposed dwellings would not be isolated for the purposes of the Framework.
10. The occupiers of the proposed dwellings would be close to a restaurant which is located opposite the site; however, there are otherwise few services and facilities in the immediate area. The occupiers would likely travel to Colchester or the rural community of Ardleigh to meet their requirements for day-to-day living as a result.
11. It is unlikely that the occupiers of the dwellings would walk regularly to Ardleigh due to it being 2 miles from the site, according to the Council. It is also unlikely that the occupiers would walk to Colchester due to a lack of footpaths to it. However, it would be possible for the occupiers to reach the settlements by cycling.
12. In addition, the site is within walking distance of bus stops and bus services run to Colchester and to Ardleigh and beyond on a regular basis every day of the week. The bus stops are accessible via footpaths beside the road. The occupiers would be required to cross the road to reach the footpaths and there is no street lighting along them. However, the road is relatively straight and has a speed limit of 40 miles per hour. Therefore, I consider that the road offers good visibility for highway users and pedestrians can cross it to access the bus stops safely.

13. I find that the site is in a location where services and facilities are accessible and the development would enhance and maintain the vitality of rural communities, in accordance with the Framework. However, the location of the proposal within the countryside would harm the integrity of the Council's settlement strategy. I conclude that the proposal is contrary to CS Policies SD1 and ENV1 in this respect.

Character and appearance

14. The area is predominantly characterised by varying sized groups of buildings of differing ages and designs located along the road and surrounded by countryside. Fields, trees and hedges provide a sense of separation between buildings. The trees and hedges that enclose the site provide it with a verdant appearance that contributes positively to the character of the area.
15. Whilst details of the appearance, layout and scale of the development have been reserved, the dwellings would be screened from the surrounding countryside to a large extent by the vegetation to the rear of the site and woodland beyond it. I therefore find that the effects of the proposal on the character of the countryside would be minimal.
16. The Planning Statement indicates that the dwellings may front onto the A137. As a result, the dwellings would have a similar orientation to many of the properties in the surrounding area. I consider that there is sufficient space within the site for the dwellings to be designed and positioned in a manner that would be reflective of the nearby properties and in keeping with the surrounding rural setting.
17. The extent to which the proposed dwellings would be visible from the road would depend on the amount of vegetation that would be retained to the front of the site. This would be considered when approval of landscaping is sought. However, even if the dwellings were highly visible, they would be viewed in the context of the properties along the road and effectively form a new group with the dwelling at Heathcote Farm. The development would be compatible with the prevailing character of the area as a result.
18. The proposed dwellings would not undermine the separation between the properties in the immediate area and Colchester as they would be further from the settlement than the dwelling at Heathcote Farm and those located on the opposite side of the road. The development would also be located further from Ardleigh than the majority of the properties in the vicinity. While the proposed dwellings would be closer to Braefoot, there would still be a long row of trees and hedges between the buildings which would maintain the sense of separation along the road.
19. The Council has raised concerns that the approval of this scheme would set a precedent for similar development in the vicinity that would erode the rural character of the area and lead to coalescence between Colchester and Ardleigh. However, much of the nearby land is within the Tendring district where different considerations apply. In addition, the characteristics of the surrounding area and the spaces between properties vary considerably along the road. Therefore, I do not consider that a specific precedent would be set or that coalescence between the settlements would occur as a consequence.

20. Overall, I conclude that the character and appearance of the area would not be harmed. In this limited respect, the proposal accords with CS policies SD1 and ENV1, which seek to protect the character of the countryside. The proposal also accords with Policy UR2 of the CS and Policy DP1 of the Colchester Local Development Framework Development Policies (DP) which require development to respect local character. I also find that the proposal is in accordance with paragraphs 127 and 170 of the Framework, which seek to ensure that development is sympathetic to local character and the intrinsic character and beauty of the countryside is recognised.

Integrity of European sites

21. The site is located within the zones of influence of the Colne Estuary Special Protection Area (SPA) and Ramsar site, the Blackwater Estuary SPA and Ramsar site, the Dengie SPA and Ramsar site, the Stour and Orwell Estuaries SPA and Ramsar Site and the Essex Estuaries Special Area of Conservation (SAC), which support birds and coastal and estuarine habitats.
22. Natural England (NE) advises that, without mitigation, any new residential development within the area is likely to result in significant effects on the sensitive interest features of the European sites through increased recreational activity in combination with other plans and projects. Having had regard to the advice from NE and adopting a precautionary approach, I cannot rule out that the proposal would not have significant effects on the integrity of the European sites. I am thus required to undertake an appropriate assessment.
23. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) sets out a programme of strategic measures that are intended to mitigate the significant effects on the integrity of European sites from residential development in combination across Essex. It identifies that the mitigation will be funded by means of a tariff per dwelling of £122.30. However, the Council has stated that the tariff per dwelling has now increased to £125.58.
24. In the circumstances of this case NE advises that, provided a proportionate financial contribution in line with the RAMS is secured, it can be concluded that the proposal will not have adverse effects on the integrity of the European sites. The UU intends to require a payment to be made to the Council for use in accordance with the RAMS.
25. The UU states at clause 3.1 that the covenants within it 'shall not take effect until the Planning Permission has been granted'. However, the meaning of "Planning Permission" at clause 1.1 is 'planning permission (with conditions) granted by the Council pursuant to the Planning Application'. The Council has not granted planning permission and thus the covenants within the UU will never take effect. In addition, the UU requires a "Recreational Disturbance, Avoidance & Mitigation Contribution" to be paid to the Council; however, the meaning of that term is 'the sum of £122.30' which the RAMS identifies as the cost of mitigation for one dwelling and 2 dwellings are proposed.
26. I therefore find that the UU does not secure a payment in accordance with the RAMS. If I had found that it did so, I would have needed to consider whether the specific mitigation necessary to conclude that the proposal would not adversely affect the European sites would have been secured. However, as the

payment and thus mitigation have not been secured, I do not need to consider this matter further.

27. I therefore conclude that the proposal would adversely affect the integrity of European sites. The proposal is contrary to DP Policy DP21. This states that development which would cause harm to designated areas will not be permitted unless satisfactory mitigation is provided. I also find that the proposal conflicts with ELP Policy ENV1, which states that development which has an adverse impact on the integrity of European sites will not be supported.

Other considerations

28. I have been furnished with 2 appeal decisions² which grant planning permission for housing in the vicinity of the site. There are parallels with those decisions and my findings in respect of the location of the site and the effects of the proposal on the character and appearance of the area. However, the effects of development on the integrity of European sites was not a consideration. Moreover, those appeals relate to proposals located within the Tendring district. Accordingly, the considerations that apply in those cases are not directly comparable with those that apply in this appeal.

Planning Balance

29. I have found that the proposal would harm the integrity of the Council's settlement strategy and adversely affect the integrity of European sites. The proposal conflicts with CS Policies SD1 and ENV1 and DP Policy DP21 as a result.
30. Paragraph 213 of the Framework states that the weight to be given to policies should accord with their degree of consistency with the Framework. Policies SD1 and ENV1 of the CS adopt prohibitive approaches to development outside settlement boundaries that are not consistent with the Framework. However, Policy SD1 is consistent with paragraph 78 of the Framework insofar as it seeks to sustain the vitality of the countryside. In addition, both policies accord with paragraph 170 of the Framework in respect of their aims to protect the character of the countryside. I therefore find that modest weight should be attached to CS Policies SD1 and ENV1.
31. The appellant has provided an appeal decision³ which indicates that at the time the decision was made the Council did not have a 5 year supply of deliverable housing sites. The appellant contends that the presumption in favour of sustainable development, as set out at paragraph 11 of the Framework, should therefore apply. However, paragraph 177 of the Framework makes clear that the presumption in favour of sustainable development does not apply where a proposal would adversely affect the integrity of European sites.
32. Nevertheless, I recognise that the proposal would contribute to the Council's housing supply. In addition, the occupiers of the proposed dwellings would be able to access services and facilities by transport modes other than private motor vehicles and contribute to the vitality of the surrounding rural area. I also note that there would be economic benefits from the construction of the development. However, these matters do not outweigh my findings in respect of the development plan.

² APP/P1560/W/16/3152285 and APP/P1560/W/18/3196023

³ APP/A1530/W/19/3223010

33. Overall, I conclude that the proposal is contrary to the development plan taken as a whole. There are no material considerations which indicate that a decision should be taken other than in accordance with the development plan.

Conclusion

34. For the reasons identified the appeal is dismissed.

Mark Philpott

INSPECTOR