
Appeal Decision

Site visit made on 14 October 2020

by D Peppitt BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th November 2020

Appeal Ref: APP/A1530/W/19/3239155

10 Heath Road and part gardens of 12, 14 and 16 Heath Road, Colchester, Essex CO3 4DH

- 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 Ethan Morgan Developments Ltd against the decision of Colchester Borough Council.
 - The application Ref 181927, dated 27 July 2018, was refused by notice dated 17 April 2019.
 - The development proposed is described as 'erection of 4 single storey dwellings (bungalows) with associated parking facilities served by a private drive following the demolition of Number 10, Heath Road.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with all matters reserved. The site plan shows how the site might be developed and has been submitted for indicative purposes only.
3. The Council has made reference to its Emerging Local Plan. However, the examination is still on going, and it is not clear whether there are any unresolved objections or when the Local Plan may be adopted. Therefore, I only afford them limited weight.

Main Issues

4. The main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the site and surrounding area;
 - Highway safety; and
 - The living conditions of the occupiers of the neighbouring properties, with particular reference to noise and disturbance and pollution.

Reasons

Character and appearance

5. The appeal site contains an existing 2 storey detached dwelling on Heath Road, and it is located near to the junction with Straight Road. The appeal site includes the garden area to the rear of No 10 Heath Road, as well as part of the gardens for Nos 12-16 Heath Road. The area to the rear of the existing property currently has a verdant, open and spacious character.
6. The area surrounding the appeal site is predominately residential. Whilst there is a mixture of house types along the road, the area nearest the appeal site is mainly characterised by semi-detached and terraced dwellings which front on to the road, and have relatively long linear rear gardens. Although adjacent to the site, there are blocks of flats, which front on to Straight Road and Heath Road.
7. The proposed dwellings would be visible from Heath Road and the surrounding properties. The dwellings would appear as incongruous additions to the currently verdant and spacious site. Although the site layout and the final design of the dwellings is yet to be determined, the introduction of 4 dwellings to the rear of No 10 and Nos 12-16 would be at odds with the prevailing spatial pattern of development along this section of Heath Road.
8. The plans show that the site could accommodate 4 dwellings with associated garden areas. There should be scope for the private gardens of the dwellings to satisfy the Council's minimum standards. However, because they would be much smaller than many other back gardens nearby, the proposal would look squeezed in and incongruous.
9. An Arboricultural Impact Assessment¹ was submitted with the application, which concludes there would be no harm to a nearby tree (T1) on the adjacent property, which is subject to a Tree Preservation Order. However, the loss of vegetation, including a tree (T2) alongside the access driveway, and boundary hedging and trees to the rear, would have a harmful effect to the visual character of the site and would alter the existing verdant character of the site. The demolition of No 10, and the introduction of a potentially long private drive, with dwellings to the rear, would be in contrast to the nearby dwellings, which front on to the road.
10. The appellant has stated that there are examples of backland development in the area. However, the photograph supplied by the appellant is of a development not on Heath Road, and the surrounding context is not the same as this proposal, given the developments which surround it. In any case, I do not have full details before me of other planning approvals nearby to determine if they are directly comparable, or what may have led to their approval.
11. The Council has suggested that the proposal would set a precedent for the area. However, whilst the gardens in the area are relatively similar, there are no similar circumstances within the immediate context that would allow a similar development, as such there would be no harm in this respect. Furthermore, each proposal should be determined on its own merits and within its own context.

¹ Arboricultural Impact Assessment and Preliminary Method Statements – TPS (July 2018)

12. The proposed development would have a harmful effect on the character and appearance of the site and surrounding area. Therefore, it would be contrary to Policy UR2 of the Local Plan Core Strategy (LPCS) (2008), Policies DP1, DP12 and DP16 of the Local Plan Development Policies (LPDP) (2010) and the Backland and Infill Supplementary Planning Document (BISPD) (2009). These policies and guidance, require development to respect and enhance the character of the site, its context and surroundings and to provide outdoor space that is appropriate to the surrounding context and reflects the character of the surrounding area.

Highway safety

13. The indicative site layout shows that a private driveway would join up with Heath Road between Nos 13 and 14 Hunters Court and the neighbouring property at No 12. I observed on my site visit that Heath Road is relatively narrow, therefore vehicles are likely to park partly on the pavement, as evidenced by the Council's photographs, which restricts visibility along the road. Whilst a number of the nearby properties have dropped kerbs outside their property, which might restrict where vehicles would be parked, there are no other restrictions, apart from the double yellow lines towards the junction Straight Road.
14. The pavement adjacent to the appeal site does not have dropped kerbs, as such cars are likely to park in this area, which would restrict visibility along the road. I note that the appellant states similar accesses already exist along the road, including a recent development at Heath Lodge, 15 Heath Road. However, I have not been provided with full details of this approval to determine what may have led to its approval. Furthermore, the demolition of No 10, and the introduction of 4 dwellings, is likely to significantly increase the vehicle movements into and out of the site, when compared to the existing arrangements.
15. From the evidence before me, it is not clear if there is scope for reasonable car parking for the future occupiers of the development to be accommodated on the site, or whether it would be likely to satisfy the requirement of LDP Policy DP19. If it could not, on street parking by future occupiers and their visitors would be likely to increase. This would add parking pressure on Heath Road, which would add to the hazards to other highway users on Heath Road.
16. The proposed development would have a harmful effect on highway safety near the likely access to the site in Heath Road. Therefore, it would be contrary to Policy DP1 and Policy DP19 of the LPDP. These policies require development to create a safe environment and provide adequate parking provision.

Living conditions of the occupiers of the neighbouring properties

17. The drive to the 4 dwellings would be likely to be close to the dwellings at 13 and 14 Hunters Court and 12 Heath Road. However, there is already a parking area close to the west site boundary, which serves the nearby flats. Therefore, the area is already affected by some vehicular noise and light from headlamps.
18. Thus, subject to the imposition of conditions to control the finish of the drive and boundary treatment, if the proposal were to be otherwise acceptable, glare from headlights, and noise and disturbance from vehicular activity within the site would not be likely to harm the living conditions of the nearby occupiers. A

construction method statement could also be controlled by condition to deal with noise and disturbance during construction. There is almost no substantive evidence to show that vehicle fumes were a concern of the Council, and I see no reason to disagree.

19. Subject to the imposition of suitably worded planning conditions, the proposal would not harm the nearby occupiers' living conditions of, regarding noise and disturbance and pollution. Therefore, it would accord with Policy UR2 of the LP, Policies DP1 and DP12 of the LPDP and the BISPD. These policies and guidance require that existing residential amenity should be protected, particularly with regard to noise, disturbance and light pollution.

Planning Balance

20. The appellant has suggested that the adopted policy cited by the Council in its reasons for refusal pre-dates the National Planning Policy Framework (the Framework) and that the presumption in favour of sustainable development is therefore engaged, which provides the context for the determination of the appeal.
21. Paragraph 11 of the Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, 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.
22. Even so, although the LPCS and the LPDP are a number of years old, paragraph 213 of the Framework states that existing policies should not be considered out-of-date simply because they were adopted, or made prior to the publication of the Framework, and that due weight should be given to them according to their degree of consistency with the Framework.
23. The appellant has highlighted that the appeal site is in a highly sustainable location where small-scale development is urgently required and that the appeal site is currently underutilised.
24. In the context of the development plan, I have found that the proposed development would be contrary to Policy UR2 of the LPCS, and Policies DP1, DP12, DP16 and DP19 of the LPDP. For this appeal, I have found these policies to be generally consistent with the relevant aims of the Framework and I attach substantial weight to them. I have found harm to arise in the context of the policies stated above, therefore, the proposal would not accord with the development plan when considered as a whole.
25. I acknowledge there is no reference to backland development in the Framework as specified in the guidance in the BISPD. However, the policies referred to by the Council focus on elements of design and highway safety, which have consistency with the Framework chapter on development achieving well-designed places and paragraph 109 in relation to highway safety.
26. Whilst I have identified that the proposed development would not have a harmful effect on the living conditions of the occupiers of the neighbouring properties, the adverse impacts of the development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the

Framework when taken as a whole. Therefore, the proposal would not represent sustainable development.

Other Matters

27. Although it was not a concern of the Council in its reasons for refusal, the need for a unilateral undertaking to secure a payment towards the European Sites Recreation Avoidance Mitigation Strategy was raised by the Council in its statement. As the harm identified in the first 2 main issues is sufficient to dismiss the appeal, I have not pursued the matter further with the parties.

Conclusion

28. For the reasons set out above, I conclude that the appeal is dismissed.

D Peppitt

INSPECTOR