



Appeal Decision

Site visit made on 30 November 2020

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 December 2020

Appeal Ref: APP/A1530/W/20/3255231

Hewthorn, Anglesea Road, Wivenhoe, Essex CO7 9JR

- 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 Colne Valley Restorations Limited against the decision of Colchester Borough Council.
 - The application Ref 200218, dated 31 January 2020, was refused by notice dated 30 April 2020.
 - The development proposed is demolition of outbuildings/extensions and the erection of rear extension to existing dwelling, erection of 2 no. detached dwellings and 1 no. infill house, complete with improved access driveway and car parking.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of outbuildings/extensions and the erection of rear extension to existing dwelling, erection of 2 no. detached dwellings and 1 no. infill house, complete with improved access driveway and car parking at Hewthorn, Anglesea Road, Wivenhoe, Essex CO7 9JR in accordance with the terms of the application, Ref 200218, dated 31 January 2020, subject to the conditions set out in the Schedule attached to this decision.

Preliminary Matters

2. A planning obligation has been made by the appellant under section 106 of the Town and Country Planning Act 1990 in the form of a unilateral undertaking (UU). This has been signed and executed as a deed and I have taken it into account in making this decision. The Council has confirmed the UU overcomes its fifth reason for refusal and I cover this matter later on in this decision.

Main Issues

3. These are the effects of the proposal
 - (i) on the character and appearance of the area, including whether this would preserve or enhance that of the Wivenhoe Conservation Area (CA),
 - (ii) in respect of providing acceptable living conditions for future occupiers, with particular regard to those of plot 3 in respect of privacy and disturbance,
 - (iii) on highway safety and
 - (iv) on biodiversity.

Reasons

(i) Character and appearance, including that of the CA

4. The host dwelling is a quite large, detached house forming part of frontage development of a varying architectural character within a residential suburb of Wivenhoe. The property lies adjacent to the railway line that runs under Anglesea Road at this point. The extensive grounds slope downwards, beyond the defined settlement boundary, widening to the rear and forming part of a mainly undeveloped valley side, zoned as part of a coastal protection belt. A range of outbuildings runs alongside the railway embankment, extending towards the rear of the property. The full extent of the property falls within and at the edge of the CA.
5. The significance of this part of the CA relates to it forming part of the nineteenth century suburban development that formed around the earlier core to this small port town. The host dwelling is a well-preserved example of good quality domestic architecture. Dating from the late-Victorian/early Edwardian era, the house displays materials and details of that period, such as the use of red brick and timber sash windows. The house makes a valuable contribution to a wider street scene that reflects this period of the town's expansion, with its largely undeveloped grounds merging into the coastal landscape beyond.
6. The sympathetic refurbishment of the existing dwelling, as Plot 1 of this proposal, would be beneficial. Unsympathetic extensions would be removed and a new addition at the rear would be distinct as such, reflecting the contemporary character of the wider proposal. This extension would not be visible in the street scene, where the refurbishment of the host dwelling would enhance the CA.
7. The infill Plot 2 would be a low-profile contemporary unit, with a flat sedum roof and concealed atrium garden, fitting into the space between Hawthorn and next-door Anglesea Villa. Because of its low-level form, the Plot 2 unit would not be readily apparent in views from the countryside to the rear. The main impact would be from changes to the Anglesea Road street scene. This would be from the introduction of a wall between the two frontage houses, of a suitable design and materials, to screen the low-level infill dwelling behind it. There would also be the loss of a section of a low-level brick and flint front garden wall. This would be replaced by fencing/gating between the retained pillars, with parking spaces for the new dwelling occupying the front garden.
8. The wall linking Anglesea Villa and Hawthorn would have no adverse impact upon townscape character. The loss of a section of low wall, and the partial use of the front garden as car parking, would cause a very limited degree of harm to the street scene. Although rather alien in form to the original design of this detached house, the infill dwelling would not be visible from Anglesea Road. I have had regard to the Heritage Impact Assessment¹ prepared for the appellant and concur with its conclusion of neutral impact. The proposals to provide the Plot 2 dwelling would in my view preserve the significance of the heritage asset with regard to how it is appreciated in street views.
9. The detached Plot 3 house would replace a relatively unimportant outbuilding, that is set back from the street to the side of Hawthorn, and be designed to

¹ Hawthorn, Anglesea Road, Wivenhoe Heritage Impact Assessment Issue 04 by Purcell, dated December 2019.

reflect its position, scale and roof form. The design would be plain and contemporary with weather boarding to the sides and black corrugated sheet roofing, reflecting the local vernacular of traditional utilitarian buildings. Its design, scale and lower height, with the dwelling set into the slope of the land, would not compete with the period character and finer detailing of the larger host dwelling. The orientation of the Plot 3 house, which would be set back from the road and afforded some screening by the vegetation along the side boundary, means it would not be prominent in the street scene. The parking for plots 1 and 3 is to be further forward, at the side of Hewthorn, but would not be particularly prominent from the road.

10. The site access would remain in its existing position, adjacent the railway. It would run past Plot 3 house where an assortment of other sheds would be removed and a turning circle provided. There would also be parking here to serve the Plot 4 house. This would also be of a contemporary design, with a flat green roof, set within the sloping site at the bottom of the back gardens for Plots 1 and 3. This dwelling would be positioned at right angles to Plot 2 and be the same level in height. It would not be visible from Anglesea Road, where its low profile and separation from the rear of the historic host dwelling would preserve the ability to view and appreciate the significance of the CA. The Plot 4 house would be within the defined settlement boundary, with its garden projecting beyond this. Subject to suitable landscaping, this garden and the main two storey elevation to the Plot 4 house would be well-screened from publicly accessible points within the adjacent coastal protection belt, where the appeal site as a whole is not readily visible.
11. I have a legal duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The minor adverse impacts of the infill Plot 2 would be more than outweighed by the significant benefits derived from refurbishing Hewthorn and securing the value it provides to the townscape of this part of town. The two detached dwellings would be set apart and not harm the value of this house in that respect. Considering the scheme as a whole, I conclude that it would preserve the character and appearance of the CA.
12. With regard to the effects on character and appearance in a more general sense, the backland aspects to the proposal responds to the opportunity provided by the expansive back garden to this property and the presence of an array of rather unattractive and run-down outbuildings. As such, these are quite individual circumstances, where there would not be the same opportunity for repetition within other rear gardens along this road, that then might cause cumulative harm. As a bespoke scheme, this proposal provides a satisfactory combination of the refurbishment of a fine and prominent historic house and the sympathetic positioning of a modest amount of new housing of a good quality contemporary design within a large plot.
13. The development plan for this area comprises the Council's Core Strategy² (CS) and Development Policies³ (DP) along with the Wivenhoe Neighbourhood Plan⁴

² Colchester Borough Council – Local Development Framework Core Strategy – adopted December 2008, revised 2014.

³ Colchester Borough Council – Local Development Framework Development Policies – adopted October 2010, revised 2014.

⁴ Wivenhoe Neighbourhood Plan 2019 - 2033

(NP). For the reasons set out, I consider that this proposal would satisfy CS policies ENV1 and UR2, policies DP 1, 14 and 23, and NP Policy Wiv 13. This is insofar as these collectively seek that new developments should preserve or enhance the character and appearance of Wivenhoe, including its heritage assets and coastal setting.

(ii) Living conditions for plot 3 occupiers

14. A revised plan provides the detached Plot 3 dwelling with a 2.3m high wall along the side of its garden adjoining that to Plot 1. This would provide future occupiers an acceptable degree of privacy. Given that the Plot 3 dwelling would back onto the railway embankment, and that the Council is recommending conditions governing sound insulation, the noise and disturbance resulting from the vehicular traffic to Plot 4 would be of no material harm to the living conditions of future occupiers.
15. The proposal would provide acceptable living conditions for future occupiers, including those of plot 3 in respect of privacy and any disturbance, and thereby satisfies policies DP 1 and 12.

(iii) Highway safety

16. Anglesea Road is unadopted, unsealed and appears quite lightly trafficked. It supports informal, unrestricted on-street parking and is without footways. Revised plans provided with the appeal show both a reasonably practical parking layout and access width. Relative to the net increase in two dwellings using this access onto Anglesea Road, I find no material degree of harm to the interests of highway safety. I am satisfied therefore that, in this respect, the proposal complies with SP policies 12, 17 and 19 which seek, amongst other things, that access and parking be created in a safe and visually acceptable manner.

(iv) Biodiversity

17. The Council's refusal reason in respect to this issue appears to relate only to the in-direct effects of the additional dwellings in respect of added recreational pressure upon the nearest European nature conservation sites, which is a matter addressed below under the Habitats Regulations assessment.
18. A Phase One Habitat Assessment has however been provided, allaying the Council's initial concerns over the potential presence on site of great crested newts – a European protected species (EPS). This recommended further surveys⁵ in relation to bats and reptiles, which were duly carried out last summer.
19. Bats and their breeding and roosting sites are protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). The survey revealed that at least one part of the existing dwelling was in use as a roost site for common pipistrelle bats. The refurbishment would therefore require mitigation in order to secure the EPS licence from Natural England. The report indicates such mitigation would be feasible in order to gain such a licence for the works. Having established this, there is no need for me to duplicate by condition the legal protection granted by the Habitat Regulations and implemented through the EPS licensing regime.

⁵ Bat and reptile surveys both dated August 2020 by Essex Ecology Services Limited

20. The reptile survey found a good population of slow worms and a low population of common lizards within the garden of this property. These reptiles are themselves protected under the Wildlife and Countryside Act 1981, but not their habitat. The survey having established their presence, the mitigation recommended in the reptile report might be then required through a planning condition.

Planning Obligation

21. The UU secures the financial contributions sought by the Council towards open space, sport, recreation, community facilities and the Essex Coast Recreational disturbance Avoidance and Mitigation strategy (the RAMS). I have considered this against the advice in paragraph 56 of the Framework and the statutory requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations. I am content that the UU meets the tests these set out and is necessary to make the development acceptable in planning terms, is directly related to it and fairly and reasonably related in scale and kind.

Habitats Regulations Assessment

22. I have had regard to the RAMS Supplementary Planning Document⁶ (SPD). This aims to deliver the mitigation necessary to avoid significant adverse effects on the natural environment from the combined impacts of residential development anticipated in the adjacent parts of coastal Essex. This is to protect the European sites along the Essex coast from the impacts of increasing visitor pressure and to avoid any adverse effects on their integrity, so as to meet the requirements of the Habitats Regulations.
23. In combination with other housing growth, this proposal would likely have a significant effect upon the Essex coast European sites, due to increased recreational disturbance from the added population. To address this, a financial contribution towards the strategic mitigation measures provided under the RAMS has been secured through the UU. I am satisfied that the level of further recreational disturbance resulting from the dwellings proposed would be effectively offset by the contributions made to these strategic mitigation measures. Having reviewed the evidence before me, I am able to ascertain that this proposal would not have an adverse effect on the integrity of the European sites along the Essex coast.

Other Matters

24. I have considered the further matters raised by interested parties at both the application and appeal stage. Although the garden to the Plot 4 dwelling sits outside the defined settlement boundary, there is the benefit of the removal of various ancillary structures. The treatment of the land beyond the settlement boundary might be addressed through a planning condition and I do not find there to be any harm from this scheme being a precursor to further development, over which the Council would have control.
25. The Plot 2 dwelling would occupy a quite narrow gap between the existing two road frontage houses. However, it would provide acceptable living conditions for any future occupiers satisfied by the nature of accommodation offered.

⁶ Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document - May 2020 published by Place Services.

Access for future maintenance, including installing scaffolding, would not be an insurmountable matter or provide the grounds to alter my overall conclusions.

Conditions and conclusion

26. The conditions suggested by the Council have been considered in the light of the tests set out in Paragraph 55 of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance. Those considered necessary have in some cases been amended for succinctness, clarity and precision.
27. In addition to the standard condition applying the three-year period for commencement, another is necessary for certainty that specifies the plans approved. To preserve reasonable living conditions for neighbouring occupiers during the building phase, a condition requires adherence to an agreed Construction Method Statement.
28. Conditions are necessary to satisfactorily address archaeology, any site contamination, the acoustic environment within new accommodation close to a railway line, landscaping, access and car parking arrangements. I have added a further condition to secure mitigation for any impact on the reptile population affected by this development.
29. The scheme provides some small benefit towards achieving the Council's five year housing land supply, which is neither particularly robust nor provides grounds for any restraint on further windfall housing where suitable. This proposal would make appropriate use of a site that is sustainably located within a residential part of Wivenhoe, preserving both the character and appearance of the CA and this part of the town generally. For the reasons set out above, I find that the proposal would accord with both the development plan and the Framework considered as a whole and I conclude therefore that the appeal should succeed.

Jonathan Price

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1843/20 B, 1834/28 F, 1843/29 C, 1843/31 B, 1843/32 A, 1843/34 B, 1843/35 A, 1843/36 B, 1843/37 and the Arboricultural Impact Assessment TPSarb0330719 dated 28 June 2019.
- 3) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;

- iii) storage of plant and materials used in constructing the development;
- iv) measures to control the emission of dust and dirt during construction;
- v) a scheme for recycling/disposing of waste resulting from demolition and construction works;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 4) No development beyond that involved with the refurbishment and extensions to the existing dwelling at Hewthorn shall take place until mitigation measures for reptile species within the site have been carried out in accordance with details that shall have had the prior written agreement of the local planning authority.
- 5) No development beyond that involved with the refurbishment and extensions to the existing dwelling at Hewthorn shall take place until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation that has been submitted to and approved, in writing, by the local planning Authority. The scheme shall include an assessment of significance and research questions; and
 - i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.

The Written Scheme of Investigation shall thereafter be completed as agreed.

- 6) No development beyond that involved with the refurbishment and extensions to the existing dwelling at Hewthorn shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work

shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 28 days of the report being completed and approved in writing by the local planning authority.

- 7) No development above ground level, beyond that involved with the refurbishment and extensions to the existing dwelling at Hewthorn, shall take place until a detailed acoustic assessment and mitigation report providing details of the noise exposure at the facade of residential dwellings, internal noise levels in habitable rooms and noise levels in all associated amenity spaces shall be submitted to and approved in writing by the local planning authority. The development shall be carried out and thereafter maintained in accordance with these agreed details.
- 8) No development above ground level, beyond that involved with the refurbishment and extensions to the existing dwelling at Hewthorn, shall take place until a scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The approved landscaping scheme shall be carried out in full prior to the end of the first planting and seeding season following the first occupation of the development or in such other phased arrangement as shall have previously been agreed in writing by the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 9) Prior to the first occupation of any of the dwellings hereby allowed the access to and car parking for that dwelling shall have been provided in accordance with detailed specifications that shall have had the prior written approval of the local planning authority. The access and carparking shall thereafter be retained for those purposes.
- 10) Demolition or construction works shall take place only between 0800-1800 on weekdays and 0800-1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
