



Appeal Decision

Site visit made on 17 December 2020

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 January 2021

Appeal Ref: APP/A1530/W/20/3257321

Land adj. to Manwood Tye, Mersea Road, Abberton, Colchester, Essex, CO5 7NR

- 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 Mr & Mrs Gary Miles against the decision of Colchester Borough Council.
 - The application Ref 200665 dated 16 March 2020, was refused by notice dated 29 June 2020.
 - The development proposed is proposed three bedroom bungalow with associated garage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are i) whether the proposal is appropriate in terms of its location with regard to local and national planning policy and ii) whether the proposal provides adequate mitigation in relation to the effect upon a Special Protection Area and adequately secures the required planning contributions.

Reasons

Location of the proposal

3. The application site lies adjacent to, but just outside of, the village settlement boundary of Abberton within an extensive sized plot, which is currently part of residential property, Manwood Tye. Both parties are in agreement that the site lies outside of the settlement boundary and is, therefore, classed as countryside in policy terms. The appeal proposal would be between two existing dwellings, within an overall cluster of dwellings, within a well-established vegetation boundary on the site and not visible from the road.
4. I find the proposal would respect the landscape setting causing no harm to the character or appearance of the area. The first reason for refusal does not seem to raise impact upon the countryside itself as a specific issue. The refusal reason raises creation of a dwelling an location which the Council deem to be unsustainable and isolated in terms of accessibility to services.
5. From my site visit I did not find that the appeal site presents as isolated physically, or functionally, from the village or other dwellings nor do I find that it could be classed as remote away from local services. I do not find that the proposal would constitute an isolated home in the countryside in terms of

paragraph 79 of the National Planning Policy Framework 2019 (the Framework). The exceptions set out in paragraph 79 need not apply.

6. CS¹ Policies SD1 and H1 both seek to direct housing towards settlements and key development areas as outlined within CS Policy H1's settlement hierarchy. The policies seek to, amongst other matters, ensure the protection of the countryside and ensure housing is located in areas which are accessible and environmentally sustainable. It is key to note that there is nothing within these policies, nor the Framework, which would specifically preclude housing outside development limits or in the countryside. Whilst settlements must be demarcated somewhere, the aforementioned policies as adopted do not apply a blanket restriction beyond settlement boundaries.
7. The site is within a cluster of dwellings and there are a number of services within an acceptable distance which I find would be reasonably accessible by foot. Services include a community shop, village school and bus services. The Council acknowledge, in terms of preparation of evidence as to the Emerging Local Plan, that Abberton is classed as a Sustainable Settlement. I acknowledge that walking along a verge is not as preferable as a formal pavement, however, from my site visit I found that the verge was quite wide and indeed during my site visit I did see people walking along that section of verge. I have no evidence to suggest people would be discouraged from walking a relatively short section of wide verge to access services and it would be usable at least during the day. Furthermore, aside from walking, there is always the opportunity to cycle to local services.
8. I find, overall, the proposal would offer genuine alternatives to sole or primary reliance on the private car, as a result of its location, for future occupiers to meet their much of their day-to-day needs or to access transport links. This finding, in combination with paragraph 103 of the Framework (which acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas), means that I do not find the site an environmentally unsustainable location for housing.
9. The appeal site is an appropriate location for housing and would comply with CS Policy H1 and CS Policy SD1 which together seek to direct growth towards sustainable and accessible locations where countryside will be protected. The proposal would also comply with CS Policy ENV1 which seeks to conserve and enhance Colchester's natural and historic environment, countryside and coastline and LP² Policy DP1 which requires proposals to demonstrate environmental sustainability and respect its landscape setting and contribute to the surrounding area.

Special Protection Area and Planning Contributions

10. The appellant's statement of case outlines that they feel that matters within the second and third reasons for refusal could be dealt with by way of a Unilateral Undertaking (UU). The Council's statement of case confirms that should arrangements be made, for a legally binding mechanism in the form of a UU, the Council will also consider these reasons for refusal satisfied. I have no evidence before me to conclude differently to this, however, no completed UU has been received during the appeal process.

¹ Colchester Local Development Framework Core Strategy (adopted 2009, revised 2014)

² Local Development Framework Development Policies (adopted 2010, revised 2014)

11. The appeal was submitted at the start of August 2020 with acknowledgement, within the appellant's statement of case, that a UU was required. Further to this, within final comments from the appellant dated 9 December 2020, it was stated a completed copy of the UU would be sent within the next seven days (16 December). A reminder was sent by the appeal case officer to the appellant on 16 December, as well as an extension being granted to 21 December, but it was stated that the UU was only partly signed. An incomplete UU does not provide the legally binding mechanism required to overcome the second and third reasons for refusal.
12. In the absence of a complete, signed, UU before me at the point of determination the proposal is contrary to LP Policy DP21 which does not permit proposals for development that would cause direct or indirect adverse harm to national designated site or other designated sites or protected species without satisfactory prevention, mitigation and compensation measures being provided.
13. The proposal would also be contrary to CS Policy SD2 and CS Policy DP3 which require development to contribute to the provision of related facilities and infrastructure. The proposal would also be contrary to the Provision of Community Facilities Supplementary Planning Document (2013) and the Provision of Open Space, Sport and Recreation Supplementary Planning Document (2006).

Other Matters

14. The Council's submissions state that the Emerging Local Plan (ELP) as at an advanced stage, however, it is confirmed that it is yet to undergo a full and final examination. Furthermore it is stated by the appellant that Part 1 of the ELP was found to unsound, that major modifications are currently with the Inspector and that Part 2 will not be examined until Part 1 is concluded. Based upon the information before me, the limited reference to the ELP within the refusal reasons, and paragraph 48 of the Framework, I place very limited weight upon the ELP within the determination of this appeal.
15. I note third party comments made in relation support of this proposal, however, a lack of objection on certain matters (or indeed support) is a neutral consideration within the determination of this appeal. It falls to consider the proposal on its own merits against the Local Plan taking into account relevant material considerations as required by S38(6) of the Planning and Compulsory Purchase Act 2004.
16. I also note two objections to the proposal. I have already dealt with the location of the proposal, outside the village development boundary, earlier within this decision letter. Any future developments would be subject to a planning application which would be considered on its own merits against adopted policy at the relevant point. Guarantees against further development cannot be given.
17. I note the appellant's inclusion of appeal reference APP/A1530/W/17/3166839, however, whilst it may well have been submitted mainly due to the commentary on varying matters raised within this appeal it is for a change of use of a building so is not a comparable appeal proposal. I acknowledge that that, and other appeal decision letters submitted by the appellant, contain Inspector's findings relating to location, proximity to services etc. Despite this, without evidence before me such as location plans, it is difficult to place

context on the matters discussed by the Inspector in order to attribute more than little weight to them within the determination of this appeal.

18. The Council refer to two appeals within their submissions, however, I only have quotations/very limited extracts from the decision letter before me. I have no location plans or evidence as to services which could lead me to better relate to the Inspector's findings in those cases. This is of particular importance given the appellant's contention that one of the appeals referred to was some 2km away from services within the settlement. Such distances would lead to completely incomparable proposals in terms of location. I can therefore attribute little weight to these based upon the very limited evidence before me.

Conclusion

19. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be dismissed.

Eleni Randle

INSPECTOR