

Appeal Decision

Site visit made on 24 March 2021

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 April 2021.

Appeal Ref: APP/A1530/W/20/3262117

Garden House, Queens Road, West Bergholt, Colchester, Essex CO6 3HG

- 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 & Mrs Tyrone and Linda McGlinchey against the decision of Colchester Borough Council.
 - The application Ref 201224, dated 6 June 2020, was refused by notice dated 5 August 2020.
 - The development proposed is detached dwelling with associated vehicle access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellants indicate that the original description of development has changed. Therefore, the above description reflects the amended description shown on the appeal form.
3. The application is for outline planning permission with access, landscaping and layout to be considered at this stage. The other matters, appearance and scale, are reserved for subsequent consideration. Drawing ref 71-2018-03PA showing the plans and elevations of the proposed dwelling is marked as indicative and, therefore, I have treated it as such.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the appeal site and street scene;
 - the effect on trees and other landscape features;
 - the effect on protected European sites; and
 - whether adequate provision would be made for sport and recreation, and community facilities.

Reasons

Character and Appearance

5. The appeal site is part of the garden of the host dwelling, Garden House, which is located on a corner plot next to the junction of Queens Road with Bourne Road.
6. Both main parties refer to an earlier application for residential development at the appeal site¹. While I note this application and decision, this appeal involves a separate proposal which I have considered on its own merits.
7. Policy UR2 of the Colchester Core Strategy (2018) (CS), Policy DP1 of the Colchester Development Policies (2010) (DP) and Policy DPP10 of the West Bergholt Neighbourhood Plan 2019 (NP) all require high quality design and that development should respect local character.
8. The site includes a high hedge directly next to the road frontage. While this makes a positive contribution to the street scene in terms of breaking up the built form and adding greenery, it is not characteristic of the wider area. Boundary treatments largely comprise lower front hedges, walls or fences. I note that the hedge would be retained to the Queens Road frontage and around the corner next to the driveway. As such, the loss of the hedge to the Bourne Road frontage would not, of itself, result in material harm.
9. In terms of layout, the plot is not dissimilar in size to those of some surrounding properties. However, the position of the new dwelling would not relate well to the street scene due its position well forward of established building lines. The new dwelling would be much further forward than the neighbouring dwellings to the west, The Cottage and Faircroft, while the dwellings to the east on the other side of the junction are on a consistent building line running down Bourne Road, as are the properties opposite.
10. A good degree of setback of properties from the road with front gardens is a characteristic of the area. The front elevation of the new dwelling would be much closer to the road and, consequently, due to this uncharacteristic position would be much more prominent in the street scene than other dwellings and would appear incongruous as a result. Consequently, this would result in a harmful effect in this established residential setting.
11. The amount of amenity space for both properties would meet the Council's private amenity space standards. However, the Council contends that in accordance with Policy DP16 of the DP, the *Backland and Infill Development Supplementary Planning Document* (SPD) and the *West Bergholt Parish Plan & West Bergholt Village Design Statement (2011)* a higher standard of amenity space is required to reflect the character of the surrounding area.
12. The area surrounding the proposed property would not be dissimilar to the size of plots of some neighbouring dwellings. However, the position of the dwelling and related parking spaces means that these spaces effectively sever the garden area and so reduce the amount of useable space. As such, this is indicative of the overdevelopment of this corner plot that would result from the proposal.
13. The appellants state that the first floor windows of the host dwelling would be reduced in size to avoid overlooking the new property. It is not clear that this

¹ Ref 191285.

formally is included in the current proposal, but I agree with the Council that this is a further indication of the overdevelopment of the site, resulting from both the prominent position of the new dwelling in the street scene and its relationship with the host dwelling.

14. Accordingly, for all the above reasons, I conclude that the proposed development would have an unacceptably harmful effect on the character and appearance of the appeal site and street scene. Consequently, it is contrary to Policies UR2 of the CS, DP1 of the DP and DPP10 of the NP, as described above.

Trees and other Landscape Features

15. The Council states that an Arboricultural Impact Assessment is required to fully quantify the proposal and to demonstrate that there would be no detrimental impact to principal landscape features. However, this is a small site that includes a limited number of trees and some boundary landscaping. Moreover, I am unaware that any of the trees on the site are protected.
16. While I acknowledge the importance of ensuring no detrimental effects as the Council contends, in the circumstances of this site it would be appropriate and proportionate instead to impose a landscape condition. This could require a landscaping scheme to be submitted and approved, which would include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
17. With such a condition in place, I conclude that there would be no conflict with Policy ENV1 of the CS, which seeks to conserve and enhance Colchester's natural environment; or with Policy DP1 of the DP, which amongst other matters requires development to respect or enhance the landscape and other assets that contribute positively to the site and surrounding area.

Protected European Sites

18. The whole of Colchester Borough, and therefore the appeal site, is within the Essex Coast Recreational Avoidance and Mitigation Strategy (RAMS) zone of influence. The Essex Coast RAMS sets out the detailed mitigation measures that are to be delivered from the RAMS tariff related to the likely effects of residential development on a number of protected European sites. The relevant regulations require that if likely significant effects on a protected site cannot be excluded, then the competent authority must undertake an appropriate assessment of the implications for that site².
19. The Council undertook an appropriate assessment using the Natural England standard approach. The proposal is assessed as having likely effects on the designated sites within the RAMS zone of influence resulting from increased recreational disturbance, in combination with other schemes. Consequently, a tariff contribution per dwelling is required to mitigate the effects. In these circumstances, I have relied on the appropriate assessment already undertaken by the Council and agree that a contribution is necessary to mitigate the likely effects in accordance with the Essex Coast RAMS.

² The Conservation of Habitats and Species Regulations 2017, Regulation 63.

20. I acknowledge that the appellants are willing to make the relevant contribution. However, in these circumstances where there is no formal agreement or undertaking through a planning obligation provided as part of the appeal submissions, there is no certainty that the necessary contribution will be made and no means of securing it. Therefore, I must conclude that the proposal fails to ensure that adequate provision would be secured for the mitigation of the likely effects on a protected European site or sites. Consequently, it is contrary to Policy DP21 of the DP concerning nature conservation, which seeks amongst other matters to prevent harm to designated sites.

Sport and Recreation, and Community Facilities

21. The Council's methodology for quantifying the infrastructure impacts of development and the necessary contributions are set out in the *Provision of Community Facilities SPD*. This is in accordance with the approach set out in Policy DP3 of the DP concerning the use of planning obligations. The necessary contributions towards sport and recreation, and community facilities have not been forthcoming.
22. The appellants, however, contend that no request for these contributions was made during the application process. While I acknowledge this, I am not aware that the appellants contend that these contributions are not necessary and, furthermore, there was the opportunity to address this reason for refusal through the appeal submissions in the form of an agreement or undertaking to make the necessary contributions. Accordingly, based on these circumstances, I must conclude that adequate provision has not been made for sport and recreation, and community facilities. The proposal is, therefore, contrary in this regard to Policy SD2 of the CS, which states that new development will be required to provide the necessary community facilities and other requirements to meet the community needs arising from the proposal.

Other Matters

23. I have had regard to the representations made by interested parties. A number of the matters raised relate to the main issues and, therefore, have been addressed or concern reserved matters, which are outside this appeal's scope. Concern is expressed about the safety of the access close to a road junction. However, due to adequate visibility and low traffic speeds there would not be a harmful effect on highway safety and I note that the Highway Authority has not objected. I have no evidence to suggest that the proposal would result in overlooking of other properties or that it would have a harmful effect on wildlife. The possible effect on property values is not a planning matter and, therefore cannot be taken into account.
24. The appellants refer to a favourable response and certain issues not being raised through pre-application engagement. However, this does not have a direct bearing on determination of this appeal. I acknowledge that the site has good access to services and facilities, that the proposal would have some short-term economic benefits from the dwelling's construction, and that it would utilise high quality and environmentally friendly construction methods and materials. These benefits are not, however, sufficient to overcome the harm that has been found with regard to the majority of main issues in this case.

25. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (the Framework) is a material consideration in planning decisions³. It says that plans and decisions should apply a presumption in favour of sustainable development⁴.
26. I acknowledge that the appellant makes a substantive argument in this regard, including that the dwelling would contribute to housing supply. However, I have found above that the proposal would not make adequate provision to mitigate the likely effects on a protected European site or sites. In these circumstances, the Framework says that the presumption in favour of sustainable development does not apply and, therefore, I must conclude as such⁵.

Conclusion

27. I have found that with an appropriate condition in place the proposal would not be harmful with regard to one main issue, concerning trees and landscape features. However, I have also found that the proposed development would have a materially harmful effect on the character and appearance of the site and street scene; that adequate provision has not been secured to mitigate the likely effects on a protected European site or sites; and that adequate provision has not been made for sport and recreation, and community facilities. As such, the proposal is contrary to the development plan. The presumption in favour of sustainable development does not apply and there are no other material considerations that outweigh the conflict with the development plan. Accordingly, it is concluded that the appeal should be dismissed.

J Bell-Williamson

INSPECTOR

³ Paragraph 2.

⁴ Paragraph 11.

⁵ Paragraph 177.