



## Appeal Decision

Hearing Held on 8 June 2021

Site Visit made on 10 June 2021

**by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB**

**an Inspector appointed by the Secretary of State**

**Decision date: 19<sup>th</sup> August 2021**

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**Appeal Ref: APP/A1530/W/18/3211685**

**Land at Armoury Road, West Bergholt, Colchester CO6 3JW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
  - The appeal is made by NEEB Holdings Ltd against the decision of Colchester Borough Council.
  - The application Ref 180733, dated 16 March 2018, was refused by notice dated 7 August 2018.
  - The development proposed is 26 dwellings including 30% affordable housing, vehicular and pedestrian access from Coopers Crescent, pedestrian access from Armoury Road, public open space and landscaping with details of access.
  - This decision supersedes that issued on 10 July 2019. That decision on the appeal was quashed by order of the High Court.
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### Decision

1. The appeal is allowed and outline planning permission is granted for 26 dwellings including 30% affordable housing, vehicular and pedestrian access from Coopers Crescent, pedestrian access from Armoury Road, public open space and landscaping with details of access at Land at Armoury Road, West Bergholt, Colchester CO6 3JW in accordance with the terms of the application, Ref 180733, dated 16 March 2018, subject to the attached Schedule of Conditions.

### Preliminary Matters

2. During the planning application process the proposed accesses were altered to consist of a pedestrian access from Armoury Road and a vehicular and pedestrian access from Coopers Crescent. The Council determined the planning application on this basis. The application was made in outline with all matters reserved for future consideration except for access and landscaping. During the hearing the main parties confirmed that landscaping is a matter for future consideration and only details relating to access are sought to be approved. I have therefore used the description of development from the decision notice in the header and decision above removing the wording relating to the reserved matters and assessed the appeal on this basis.
3. It was also confirmed by the main parties during the hearing that the Proposed Site Plan drawing number PA02 rev D and Proposed Street Elevations drawing number PA04 rev C are to be regarded on an indicative but informative basis and I have assessed the scheme accordingly.
4. Since the hearing, the updated National Planning Policy Framework (Framework) was published. I consulted the main parties accordingly and have taken their comments into account in my assessment.

## **Main Issue**

5. The main issue is whether the location of the proposed development would accord with the Council's development plan strategy for housing.

## **Reasons**

6. The site lies outside of and adjacent to the settlement boundary of West Bergholt. The Colchester Borough Local Plan 2013-2033 Section 1 North Essex Authorities' Shared Strategic Section 1 Plan Adopted February 2021 (Section 1 Plan) supersedes parts of the Local Development Framework Core Strategy Adopted December 2008 Selected Policies revised July 2014 (CS) which relate generally to housing numbers with the remainder remaining as part of the development plan. The relevant parts of the CS Policies were set out in the Statement of Common Ground (SoCG). Since those policies are consistent with the Framework, I attribute full weight to the sections of the CS which have not been superseded.
7. CS Policy SD1 states among other things that throughout the borough, growth will be located at the most accessible and sustainable locations in accordance with the Settlement Hierarchy and the Key Diagrams. While the site lies outside of the broad areas indicated in the Hierarchy, the Policy does not preclude development outside these areas.
8. CS Policy H1 adds a level of detail to the spatial strategy set out in CS Policy SD1. The Policy states among other things that housing development will be expected to contribute to the achievement of sustainable development that gives priority to new development in locations with good public transport accessibility and/or access by means other than the private car, and also previously developed land (PDL).
9. Given the location of the site adjacent to the boundary of West Bergholt, it has a good level of accessibility to a number of services and facilities including shops, doctor's surgery and school such that future occupiers would be unlikely to be wholly reliant on the private car for access to daily needs. Accordingly, the scheme would not conflict with the aims of these Policies in terms of the accessibility of the location. While the site is not PDL, CS Policy H1 does not preclude development outside of the stated areas and therefore the proposed scheme would not conflict with this Policy.
10. CS Policy ENV1 states that unallocated greenfield land outside of settlement boundaries will be protected and where possible enhanced, in accordance with the Landscape Character Assessment. Within such areas development will be strictly controlled to conserve the environmental assets and open character of the Borough.
11. The site is unallocated greenfield land outside of settlement boundaries. However, compliance with the Policy is dependent on the conservation of environmental assets and the open character of the Borough.
12. The site is undeveloped, overgrown land bound on three sides by built development and on the remaining side by The Brambles, a residential property. As I observed during my site visit, a tall hedge along the boundary with The Brambles restricts views to the apparent open countryside beyond. In addition, the site has no specific landscape designations or outstanding scenic quality.

13. Therefore, while the site is undeveloped, given its modest size and that the majority of views from the site are to the surrounding existing built development, the site is seen very much in the context of surrounding suburban development. Therefore, the site does not have a rural character. Rather, it has an enclosed character with a far closer relationship to the surrounding residential built development than to the open countryside that lies beyond The Brambles. As such, it does not have particular environmental assets and is not reflective of or contributes to the open character of the Borough.
14. The proposal for 26 dwellings would introduce built development including road, driveways and domestic gardens to an undeveloped site. However, subject to future consideration of the reserved matters, the scheme would continue the existing pattern of development without having an adverse effect on the environmental assets and open character of the Borough. Consequently, any conflict with CS Policy ENV1 that would arise from the proposed development would not offer a basis to refuse the scheme.
15. Since the Council determined the original planning application, the West Bergholt Neighbourhood Plan (NP) was made. NP Policy PP9 states that the settlement boundary is shown on Map PP9/1. The minimum number of dwellings to be provided over the Neighbourhood Plan period will be 120. These dwellings will be provided on 2 sites shown on Map PP9/2.
16. The proposed site is not on one of those allocated sites and lies outside the settlement boundary. While the Policy directs new housing to the allocated sites, it does not restrict development in other areas. Furthermore, the Policy states that 120 is a minimum number of dwellings and therefore does not preclude more dwellings being provided over the NP period. Accordingly, the proposal would not conflict with this Policy.
17. NP Policy PP12 states that development will not be supported in the area shown on Map PP12 if individually or cumulatively it would result in increasing the coalescence between West Bergholt village and Braiswick, reducing their separate identity by reducing the separation between these two settlements. The site lies within the area shown on Map PP12. However, compliance with this Policy is reliant on a lack of increasing coalescence rather than the development simply being located outside of the relevant area.
18. Since the site is bound on three sides by built development and a residential property on the remaining side, it would not either individually or cumulatively result in increasing coalescence between the two settlements. Accordingly, the proposal would not conflict with this Policy.
19. Consequently, the location of the proposed development would accord with the Council's development plan strategy for housing. Therefore, it would not conflict with CS Policies SD1, H1 or ENV1.

### **Other Matters**

20. I agree with The Highway Authority that the existing roads, Maltings Park Road and Coopers Crescent, are suitable in highway terms for use by the traffic generated by an additional 26 units.
21. Concerns were raised regarding the impact of the scheme on highway safety with respect to the visibility at the junction between Coopers Crescent and Maltings Park Road as well as the visibility around the bends of Maltings Park Road and the

width of these roads. Other highways related concerns include congestion at the junction of Maltings Park Road and Colchester Road and the manoeuvrability of larger vehicles such as refuse trucks and I note the evidence relating to the possibility of a vehicular access from Armoury Road and associated financial contributions.

22. While the proposal would result in an increase of the number of vehicles travelling through Coopers Crescent and Maltings Park Road which are private roads, given the particularly slow speed limit in the area, drivers would have sufficient visibility and adequate time to react to oncoming vehicles at these junctions and bends in the road. In addition, the traffic from the scheme would not be sufficient to have a severe residual cumulative impact on highway safety.
23. Concerns were also raised regarding the width of the proposed access at Coopers Crescent. Since the access would be of a sufficient width to allow large vehicles in one direction and would continue the existing width of the road and footpath without narrowing, the proposed access would not result in an unacceptable impact on highway safety. While the flank wall of the garage of the adjacent property on Coopers Crescent would be in line with the edge of the proposed access, given the width of the proposed access, unacceptable harm to highway safety would not occur in this respect. I also acknowledge concerns regarding the effect of construction vehicles travelling through Maltings Park Road and Coopers Crescent. However, the Highway Authority has indicated that construction vehicles may enter the site from Armoury Road and this could be secured via a suitably worded condition requiring a construction method statement. As such, these matters have not altered my overall decision and do not offer a basis to resist the scheme.
24. I acknowledge other local concerns including those relating to wildlife and biodiversity. However, from the evidence, I am persuaded that conditions relating to a hazel dormice survey and biodiversity management would adequately mitigate any adverse effects as result of the proposal. In addition, landscape is a matter for future consideration. Accordingly, these matters have not altered my overall decision.
25. I acknowledge the dedication of the local community who have worked with the Council over a number of years to produce the NP and note concerns that the proposal would undermine the NP. I also recognise that the planning system should be genuinely plan-led. The NP appears to be silent on development outside of the allocated sites and I have found an absence of conflict with the policies within. In addition, Section 1 Plan Policy SP3 states that development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role. As such the site's location outside but adjoining the settlement boundary would not in itself conflict with the development plan. Therefore, I see no reason why the proposal would undermine the NP or wider development plan and would not accord with the development plan as a whole.
26. A number of previous appeal decisions were submitted by the main parties which generally bolster their respective positions. While I have had regard to the decisions, each case must be determined on its own merits and these cases have not altered my overall decision.

## **Planning obligations**

27. The appellant has completed a legal agreement under Section 106 of the Act (a S106) in conjunction with Colchester Borough Council which includes a number of obligations to come into effect if planning permission is granted. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. They relate to the following matters.

Affordable Housing: CS Policy H4 requires that 20% of new dwellings be provided as affordable housing. The agreement makes for 30% provision of affordable housing. While I note that the provision is greater than that required by the Policy, it is a planning benefit which I consider is fairly and reasonably related to the development proposed and as such passes the statutory tests.

28. On-Site Public Open Space and Off-Site Sport and Recreational Facilities Contribution and Community Facilities: The S106 makes provision for public open space and financial contribution towards a number of sports and recreational facilities in West Bergholt. The S106 also secures the payment of a financial contribution towards community facilities to the Council prior to the occupation of 50% of the dwellings. The sums in respect of the financial contributions are undisputed and the terms related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the CIL Regulations and the tests for planning obligations set out in the Framework.
29. Recreational disturbance Avoidance and Mitigation Strategy (RAMS) Contribution: The appeal scheme proposes 26 dwellings on a site that lies within the Zone of Influence (ZoI) of Blackwater Estuary Special Protection Area (SPA) and Ramsar, Dengie SPA and Ramsar, Essex Estuaries Special Area of Conservation (SAC), and the Stour and Orwell Estuaries SPA and Ramsar. New housing development within the ZoI would be likely to increase the number of recreational visitors to these designated sites, potentially resulting in disturbance to the integrity of the habitats of qualifying features.
30. Since the number of additional recreational visitors from 26 dwellings would be limited, the likely effects on the designated sites from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the sites. Consequently, an Appropriate Assessment (AA) is necessary to ascertain the implications for the site.
31. The qualifying features for the designations of the sites are the overall water bird assemblage and the Conservation Objectives include ensuring that the integrity of the site is maintained or restored as appropriate, and ensuring that the site contributes to achieving the aims of the Wild Birds Directive.
32. The Essex Coast (RAMS) sets out detailed mitigation measures that would be funded by S106 contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education and communication, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the designated sites.

33. The submitted S106 and deed of variation makes for financial contributions in accordance with the RAMS. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the CIL Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.
34. Primary Education Contribution: A signed Unilateral Undertaking (UU) under S106 was accepted by the Council that would ensure that 50% of the financial contribution would be paid before the commencement of development and 50% would be paid prior to the occupation of development. The sum in respect of education is undisputed and the terms related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the CIL Regulations and the tests for planning obligations set out in the Framework.

### **Conditions**

35. I have considered the conditions suggested by the Council. I have made some minor changes to these having regard to the tests set out in the Framework and the guidance contained in the Planning Practice Guidance. I have amended some of the wording of the conditions in the interests of precision and clarity.
36. I have attached conditions relating to the submission of reserved matters and the time limits associated with this. I have also included a condition specifying the relevant plans and details of the proposed vehicular and pedestrian access as this provides certainty as well as safeguarding highways safety.
37. The condition relating to the number of dwellings as well as the conditions regarding cross sections and materials can be dealt with during the reserved matters applications relating to layout and appearance and are not necessary.
38. A condition relating to a Construction Method Statement is necessary to safeguard the living conditions of neighbouring occupiers and highway safety and needs to be pre-commencement as it affects the early stages of construction.
39. The conditions relating to the trees on the site, a landscape scheme and landscape management plan are not necessary since landscaping is a reserved matter.
40. Given the length of time that has passed since the Dormouse Survey December 2018, conditions relating to hazel dormice and a biodiversity method statement are necessary to safeguard biodiversity. A condition regarding archaeology is necessary to safeguard archaeological assets and needs to be pre-commencement as it affects the early stages of construction.
41. Since the proposal does not include a vehicular access from Armoury Road, the suggested condition prohibiting such a vehicular access is not necessary. Conditions relating to highway details within the site, vehicular accesses of the dwellings, off street parking, garages, bicycle storage, highway access surface treatment and bin collection points are not necessary as they relate to layout which is a reserved matter. The condition regarding a new bus stop is necessary to accommodate the additional bus passenger traffic generated by the development.



42. A conditions relating to surface water drainage is necessary to safeguard against flooding. The surface water drainage scheme needs to be submitted a part of the reserved matters application since it would relate to layout. The condition relating to off-site flooding that would arise from construction could be dealt with as part of the condition requiring a Construction Method Statement.
43. Since no potential contaminant sources and pathways to potential receptors have been identified, a condition relating to contamination is not necessary. Since no objections were raised with respect to air quality, the relevant suggested condition is not necessary.
44. The condition regarding a residential travel pack is necessary to support the transition to a low carbon future in a changing climate. The conditions relating to lighting and removing permitted development rights with respect to extensions, enclosures and windows are not necessary since layout is a reserved matter.

### **Conclusion**

45. For the reasons given above the proposed development should be allowed.

*R.Sabu*

INSPECTOR

### SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans insofar as those plans relate to the matter of access: Site Location Plan 5333 LP\_02, Armoury Road Site Access, Coopers Crescent 1601-24 PL03 Rev. A and Armoury Road Pedestrian Access 1601-24 PL04.
- 5) No development shall take place, including any ground works until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period.
- 6) The reserved matters application(s) shall be accompanied by a survey of hazel dormice on the application site. If hazel dormice are present the survey shall be accompanied by a scheme of appropriate mitigation measures including precise details of the timing and method of protection that shall be approved in writing by the LPA. No development shall be undertaken thereafter, except in accordance with the approved scheme of mitigation.
- 7) The reserved matters application(s) shall be accompanied by a Biodiversity Method Statement, a Construction Environmental Management Plan, and a 5 to 10-year Management Plan plus a Scheme of biodiversity and habitat retention, mitigation, protection and enhancement, including an implementation timetable, to include but not be limited to the details set out in the Ecological Survey Report submitted with the outline application. The development shall thereafter be carried out in accordance with such agreed details.
- 8) No works shall take place until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation, together with a timetable for its undertaking, dissemination, and archive deposition that has first been submitted to and approved, in writing, by the Local Planning Authority. The Scheme shall include an assessment of significance and research questions; and:
  - a) The programme and methodology of site investigation and recording.
  - b) The programme for post investigation assessment.
  - c) Provision to be made for analysis of the site investigation and recording.
  - d) Provision to be made for publication and dissemination of the analysis and records of the site investigation.
  - e) Provision to be made for archive deposition of the analysis and records of the site investigation.



f) Nomination of a competent person or persons/organisation to undertake the works.

The site investigation and the dissemination of results and archive deposition shall then be undertaken in accordance with the approved timetable.

- 9) Prior to the first occupation of any dwelling a scheme shall be submitted to and approved in writing by the LPA for the provision of a bus stop to the west of Maltings Park Road, together with a mechanism for its delivery, and the approved scheme shall then be provided in accordance with the approved mechanism
- 10) The reserved matters application(s) shall be accompanied by a detailed surface water drainage scheme, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented prior to occupation and maintained in accordance with the approved details.
- 11) Prior to first occupation of any dwelling hereby permitted a residential travel pack scheme shall be submitted to the local planning authority for approval. The scheme shall provide details for the provision of a residential travel pack aimed to incentivise alternative transport means to include cycle and walking information; any car share and public transport information; map of the local area including local amenities, public and cycling links; and the provision of up to two six month bus passes per dwelling. The residential travel pack scheme shall be implemented in accordance with the approved details.

END OF SCHEDULE

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Richard Sykes-Popham	Partner, Rapleys LLP
Joanna Ede	Director, Townscape, Head of Landscape & VIA, Turley
Mr Jay Mehta	Partner, Howes Percival LLP
Beth Boucher	Trainee Solicitor, Howes Percival LLP
Julie Eeles FCCA	Finance Director NEEB Holdings Ltd
Mr Raymond Raymond	Joint Managing Director NEEB Holdings Ltd
Mr Roger Raymond	Joint Managing Director NEEB Holdings Ltd

### **FOR THE COUNCIL:**

Sandra Scott	Place Strategy Manager
Mr Simon Cairns	IHBC Development Manager
Marie Rutherford	Colchester Borough Council
Mr John Miles	Colchester Borough Council
Mr Alistair Day	Colchester Borough Council

### **INTERESTED PERSONS:**

Cllr Bob Tyrrell	West Bergholt Parish Council
Cllr Brian Butcher	West Bergholt Parish Council
Mr Robert Johnstone	Local resident
Mr Samuel Dixey	Local resident
Mr Paul Millard	Local resident
Mr Geoff Smith	Local resident
Mr Charles McSweeney	Local resident

## **DOCUMENTS**

E-mail from Natural England dated 14 July 2021  
E-mail from Mr Richard Sykes-Popham dated 30 July 2021