



Appeal Decision

Hearing Held on 21 September 2021

Site visit made on 21 September 2021

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2021

Appeal Ref: APP/A1530/W/20/3249858

Site of Colchester North Growth Area Urban Extension, West of Mile End Road, Colchester

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Brad Davies (Mersea Homes Ltd and Countryside Properties PLC) against the decision of Colchester Borough Council.
 - The application Ref 191581, dated 17 June 2019, was refused by notice dated 30 September 2019.
 - The application sought planning permission for mixed use development comprising residential dwellings, a neighbourhood centre including commercial, residential and community uses, education uses, strategic landscaping, green infrastructure and areas for outdoor sport facilities, access (in detail where specified) related infrastructure and other works and enabling works without complying with conditions attached to planning permission Ref 121272, dated 2 July 2014.
 - The conditions in dispute are Nos 7 and 62 which state that:
 - 7. Subject to compliance with the requirements of any other conditions, the submission of Reserved Matters for any part of the site or phase shall be carried out in accordance with the following drawings unless otherwise agreed in writing with the Local Planning Authority:
 - Location Plan – drawing no. MHC002/PA/001
 - Development Framework Plan – drawing no. MHC002/DFP/01 Rev H
 - Movement Network Plan – drawing no. MHC002/DFP/02 Ref F
 - Residential Density – drawing no. MHC002/DFP/03 C
 - Building heights – drawing no. MHC002/DFP/04 C
 - Landscape Framework Plan – drawing no. MHC002/DFP/05 Rev C
 - 62. Residential Parcels R18 to R25 (as defined by the Development Framework Plan) of the development hereby permitted shall not be occupied until the Primary Street between Parcel R16 and Mile End Road, via Bartholomew Court as shown on drawing number VN20059-706-B has been completed in accordance with details that shall have previously been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the agreed details.
 - The reasons given for the conditions are:
 - 7. To ensure that the development is carried out in accordance with the Environmental Statement and the Environmental Impact Assessment Regulations and in the interest of proper planning.
 - 62. In the interest of highway safety and the efficient operation of the highway network and in order that the development promotes public transport, walking and cycling and limits the reliance on the private car.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council adopted the Colchester Borough Local Plan 2013-2033 North Essex Authorities' Shared Strategic Section 1 Plan in February 2021 (the Local Plan 2013-2033), which now forms part of the development plan for the area. This has replaced some policies of the Core Strategy, which does not include those policies cited in the Council's decision notice.
3. The Government published a revised version of the National Planning Policy Framework (the Framework) in July 2021. The main parties were given the opportunity to comment on any implications for the appeal of this change, and I am satisfied that no prejudice would be caused by my consideration of the appeal in light of the revised Framework.
4. Outline planning permission was previously granted in July 2014 (the original planning permission) for a mixed-use development, described in the heading above, which has been partially implemented. Housing has been delivered at the northern end of the site, and construction works are progressing. The original scheme showed that the main vehicular access into the development would be from the north, off the A134, which would run through the site and connect to a secondary access at Bartholomew Court. The secondary access would be for buses, pedestrians and cyclists only, which would be secured through the provision of a bus gate close to the junction with Mile End Road.
5. The appeal scheme proposes to remove or vary Conditions 7, 8, 28, 62 and 64 of the original planning permission. In respect of Condition 7 (approved drawings), it is proposed to substitute drawing No MHC002/DFP/02 Rev F with revised drawing No MHC012/DFP/02 Rev G, which shows the re-positioning of the bus gate to enable 160 dwellings to be permanently accessible by vehicles from Bartholomew Court. This is a matter of dispute between the main parties. Furthermore, this alteration requires the variation of Condition 8 (highway works plans) to delete drawing Nos VN20059-706-B (Primary Street connection to Bartholomew Court Bus Gate) and VN20059-526-A (Bartholomew Court Bus Gate).
6. Condition 62 precludes occupation of residential parcels R18 to R25 until the Primary Street between parcel R16 and Mile End Road has been completed. The appeal scheme proposes that restrictions are lifted in relation to parcels R20 to R25 but remain for parcels R18 and R19. This is a matter of dispute between the parties.
7. Condition 64 precludes occupation of residential parcels R18 to R25 until the footpath/cycleway connection to Tufnell Way has been completed. It is proposed that restrictions are lifted in relation to parcels R20 to R22 but remain for parcels R18, R19, and R23 to R25. At the Hearing, the appellant indicated that the variation of this condition is required for practical reasons because the footpath/cycle connection would be located where subsequent construction works are to be carried out in accordance with the build out timetable. The main parties have agreed amended wording which allows for the early completion of works to the public highway at Bergholt Road, but later

implementation of on-site works to establish a new footpath/cycleway connection within the site.

8. Condition 28 relates to the prohibition of motorised traffic from the appeal site using Braiswick Lane. The parties have agreed amended wording, which accommodates drawings that have been previously approved by the Council and secures the implementation and maintenance of the scheme.
9. During the course of the appeal, the appellant requested the Arboricultural Impact Assessment to be withdrawn from the proposal and considered as part of a future reserved matters application. The Council has raised no objections and so I have considered the appeal on this basis.

Main Issue

10. The main issue is whether the proposed development would promote the use of sustainable modes of transport and minimise trips by the private car.

Reasons

Bus gate (Conditions 7 and 8)

11. The appeal site forms part of the Northern Growth Area Urban Extension. Policy SA NGA 2 (Greenfield Sites in the North Growth Area) of the Site Allocations Plan (adopted 2010) requires, amongst other things, provision for sustainable transport and highway improvements including continuous links through the site for public transport, cycling and pedestrians; comprehensive travel planning to reduce the need to travel by private car; provision of a convenient, cohesive, safe and attractive walking and cycling network to ensure local facilities are accessible; and, provision of public transport infrastructure and services to meet local needs and link into the wider network. Policy SA NGA4 of the Site Allocations Plan contains similar objectives, stating that attractive walking and cycling networks will be provided to connect to major external attractors such as the railway station and the town centre, and a comprehensive programme of Travel Planning and promotion of "smarter choices" will be required.
12. The North Colchester Growth Area Supplementary Planning Document June 2012 (the SPD) states that the growth area will develop a layout and spatial arrangement that maximises the potential for modal shift. This includes a new junction onto the A134 at the northern end of the site providing a sole general vehicular access, and a bus gate at the southern end as well as cycle and pedestrian links. The SPD states that this is intended to further assist in discouraging private vehicle trips and encourage the use of more sustainable modes of travel such as public transport, cycling and walking.
13. The original planning permission meets these objectives by providing a neighbourhood centre at the northern end of the site, including public transport, schools, community and local services, which would reduce the need to travel. Moreover, the scheme includes travel plan measures and pedestrian/cycle connections to Mile End Road and Bergholt Road, which encourage the use of sustainable modes of transport. The use of the Bartholomew Court access for buses and pedestrians/cyclists only would provide a hard infrastructure measure that would prioritise sustainable modes of transport and deliver an attractive route for users.

14. The re-positioning of the bus gate to enable 160 dwellings to be accessible for vehicles from Bartholomew Court would make the route south towards the railway station and the shops and services in the town centre more direct, which would inevitably render short journeys by car more convenient. This would undermine the objectives of the development plan insofar as it seeks to change travel behaviour and encourage the use of sustainable modes of transport. I acknowledge that the proposal would not cause material harm to highway capacity or safety, however this is not an overriding consideration.
15. I have had regard to the evidence provided by the appellant that the 2011 Census shows that more people travel to work on foot and by train in this area than across Colchester as a whole. Furthermore, I acknowledge that the number of dwellings accessed from Bartholomew Court would represent a small proportion of the overall development, and there would be no change to the route of the pedestrian/cycle route connections. However, I do not consider that this justifies the increased convenience of car use for short trips towards key local destinations, and it would not take the opportunity to optimise modal shift towards sustainable transport. I appreciate that the Council could influence travel choices through other approaches, including parking charges at local destinations such as the railway station, however this would not negate the requirement for the development itself to encourage a change in travel behaviour.
16. The revised position of the bus gate would prevent vehicles travelling north through the Primary Street to the neighbourhood centre and community uses. The appellant suggests that this would encourage trips to these facilities by walking and cycling because the original planning permission would enable residents to travel by car. However, the neighbourhood facilities would be accessible by sustainable transport modes, and the travel plan is in place to encourage these trips by walking and cycling. I therefore attach limited weight to this consideration.
17. The appellant submits that the proposal would reduce travel distance by car because vehicles travelling south would have to head north before looping back. It is indicated that the proposal would reduce travel distance by 2.5 kilometres for vehicles travelling south, which would assist the Council in meeting the objectives in its Climate Emergency Action Plan January 2020. Nevertheless, there is little before me to quantify any reduction in greenhouse gas emissions arising from the proposal, and it would not justify greater convenience and precedence being given to vehicles.
18. The Residential Travel Plan¹ sets targets for trip rates against which its success can be measured, and I note that the proposal makes no change to the targets agreed as part of the original planning permission. The appellant indicates that they would be willing to agree to a condition requiring a new travel plan with bespoke measures and targets for the southernmost 160 dwellings should it be deemed necessary. However, I find that the provision in the original planning permission for the Bartholomew Court access to be dedicated to walking, cycling and buses would be an effective hard infrastructure design measure to influence travel behaviour. Despite that the Travel Plan targets are unchanged, the use of this access for vehicular traffic would weaken the previously

¹ Prepared by Vectos transport planning specialists Ref. VN50453 dated September 2015

approved sustainable transport measures, and the potential for additional measures would not alleviate my concerns.

19. The information before me indicates that Bartholomew Court would not have a dedicated cycle lane. Whilst the number of vehicular movements generated by 160 dwellings would be quite modest, the introduction of additional cars would change the character and feel of the access from Bartholomew Court to the extent that it would reduce the priority given to cycling. I acknowledge that this section is short, however the shared use of the road would feel less safe and attractive for cycling, which would undermine the objectives to promote a change in travel behaviour. Although there is an opportunity to require the submission of additional drawings through an amended Condition No 63, I do not have sufficient certainty that this would address my concerns. Furthermore, whilst there are other proposed walking/cycling routes, this would be the main route from the southern part of the development towards the town centre.
20. For the above reasons, I find that the proposed re-positioning of the bus gate would undermine objectives to encourage the use of sustainable modes of transport and minimise trips by the private car.

Primary street (Condition 62)

21. As set out above, I find that the permanent vehicular access to the dwellings should be from the north of the site rather than from Bartholomew Court. Therefore, this requires the Primary Street between parcel R16 and Mile End Road (via Bartholomew Court) to be provided prior to the occupation of the dwellings to ensure that there would be suitable vehicular access. The condition is therefore necessary and reasonable, and its variation would be unacceptable.

Conclusion on main issue

22. For the above reasons, I conclude that the proposed development would undermine objectives to promote the use of sustainable modes of transport and minimise trips by the private car. The proposal would therefore conflict with Policies SP6 and SP7 of the Local Plan 2013-2033, Policies PR2, TA1, TA2 and TA3 of the Core Strategy Adopted 2008, Policy DP17 of the Development Policies Adopted 2010, revised 2014, Policies SA NGA2 & SA NGA 4 of Site Allocations 2010 and guidance in the North Colchester Growth Area SPD. Amongst other things, these policies seek to change travel behaviour towards sustainable modes, including walking, cycling and public transport, and give priority to pedestrian, cycling and public transport access above use of the private car.
23. The proposal would also be contrary to the National Planning Policy Framework, which, amongst other matters, states that development should ensure that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location; and development should give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas.

Other Matters

24. I have had regard to the appellant's comments that the proposal would facilitate a second point of sale and enable homes to be delivered sooner.

Nevertheless, the Council has previously granted planning permission² for 160 dwellings to temporarily use Bartholomew Court as a vehicle access, which would provide the aforementioned benefits relating to housing delivery. This limits the weight that I give to this consideration. The appellant suggests that buyers may be concerned about the temporary nature of the vehicular access from Bartholomew Court, which could have potential to harm the housing delivery rate. However, there is no substantive evidence before me that this would be the case, and it would not outweigh the objectives to change travel behaviour.

Conclusion

25. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal is dismissed.

C Osgathorp

INSPECTOR

² Council Ref. 183077

APPEARANCES

For the Appellant	
Arwel Owen	Partner, David Lock Associates
Adam Smith	Director, Vectos
For the Council	
Lucy Mondon	Principal Planning Officer, Colchester Borough Council
Rachel Forkin	Planning Policy Officer, Colchester Borough Council
Martin Mason	Essex County Council Highways Officer
Matthew Bradley	Essex County Council Highways Officer