



Appeal Decision

Site visit made on 11 October 2021

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2021

Appeal Ref: APP/A1530/W/20/3253130

Land adjacent 13 Fingringhoe Road, Colchester, Essex CO2 8EA

- 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 John Anderson against the decision of Colchester Borough Council.
 - The application Ref 200557, dated 3 March 2020, was refused by notice dated 12 May 2020.
 - The application sought planning permission to change 2-bedroom house approved on application 172549 to a 3-bedroom house; also extend both porches by 50cm each to accommodate 2 disabled accessible downstairs toilets without complying with conditions attached to planning permission Ref 190382, dated 28 May 2019.
 - The conditions in dispute are Nos 10, 15, 18 and 19 which state that:
No 10: All existing trees and hedgerows shall be retained throughout the development construction phases, unless shown to be removed on the approved drawing and all trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site in accordance with the Local Planning Authorities guidance notes and the relevant British Standard. All existing trees and hedgerows shall then be monitored and recorded for at least five years following contractual practical completion of the development. In the event that any trees and/or hedgerows die, are removed, destroyed, fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, with the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.
No 15: Prior to the occupation of the proposed development, details of the provision for the storage of bicycles for each dwelling sufficient for all occupants of that dwelling, of a design this shall be approved in writing with the Local Planning Authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted and shall be maintained free from obstruction at all times for that sole purpose in perpetuity.
No 18: No works in connection with the proposed development shall commence until such time as the bus stop immediately adjacent to the proposed development site has been replaced with a standard Essex County Council 3 bay shelter of 1500mm x 3930mm roof size with side panels of 730mm. The shelter is to be a low barrel roofed Queensbury Arun in black and relocated approximately 4.0m southerly and leaving a working space between the back of the shelter and the boundary treatment of 300mm for access to undertake maintenance and also being provided with level entry kerbing, new post and flag, timetable and road markings, all provided entirely at the Applicant/Developer's expense to the specifications of the Highway Authority.
No 19: Prior to the occupation of the proposed development a new bus stop shall be provided immediately adjacent the Public Open Space at the junction of Speedwell Road and Old Heath Road commencing 2.7m southerly from the existing vehicular access to No 277 Old Heath Road for a distance of 5.0m including level entry kerbing, new post
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and flag, timetable and road markings, all provided entirely at the Applicant/Developer's expense to the specifications of the Highway Authority.

- The reasons given for the conditions are:

No 10: To safeguard the continuity of amenity afforded by existing trees and hedgerows.

No 15: To promote the use of sustainable means of transport.

No 18: To make adequate provision for unobstructed and adequate intervisibility at the new vehicular access in the interests of highway safety.

No 19: To make adequate provision for the additional bus passenger traffic generated as a result of the proposed development.

Decision

1. The appeal is allowed and planning permission is granted to change 2-bedroom house approved on application 172549 to a 3-bedroom house; also extend both porches by 50cm each to accommodate 2 disabled accessible downstairs toilets without complying with conditions attached to planning permission Ref 190382, dated 28 May 2019 at land south of 13 Fingringhoe Road, Colchester CO2 8EA in accordance with the application Ref 200557 dated 3 March 2020 without compliance with condition number 19 (for an additional bus stop) previously imposed on permission Ref 190382 dated 28 May 2019 and subject to the conditions at the end of this decision.

Background and Main Issues

2. Planning permission has been granted for the development of two dwellings. The appeal seeks to carry out the development without complying with conditions 10, 15, 18 and 19.
3. Condition 10 protects a retained hedgerow on-site during the development and for 5 years after practical completion. However, I understand that the remediation of ground contamination requires the replacement of the top 600mm of soil. This cannot be completed without the removal of the tall hedgerow which stands along part of the back boundary of the site. The hedgerow presently reduces the overlooking of neighbours from the occupiers of the new development. The main issue around this condition is whether the retention of the back boundary hedge is necessary to maintain the privacy of surrounding occupiers, and if it is, and in the event of its removal, whether alternative conditions could secure measures with similar effect.
4. Condition 15 requires the details of bicycle storage which the appellant considers unnecessary as bicycles could be stored in the gardens should future occupiers use bicycles. The main issue is whether the condition is necessary to promote the use of sustainable means of transport.
5. There is a bus stop and bus shelter close to the access into and out of the site. Condition 18 requires the bus stop and shelter to be shifted further from the access so as to ensure adequate intervisibility at the access. The main issue is whether the condition is necessary for highway safety.
6. Condition 19 requires the erection of an additional bus stop and shelter a few tens of metres from the site. The main issue is whether the condition is necessary and whether it is fairly and reasonably related to the development in scale and kind.

Reasons

7. Condition 10: The new houses are unusually close to the houses standing behind the back boundary. Without the hedge, which rises well above the common height of a garden back fence, there is a significant risk of the future occupiers overlooking into the bedrooms and living spaces of these houses.
8. A standard 1.8m high close boarded-fence would help secure the privacy between the new and existing neighbours from the garden and ground floor of the southernmost new house. It would be effective immediately. However this would do little to stop overlooking from the first floor of the development into the rooms of these neighbouring occupiers. Therefore, in the event of the hedge being removed, a condition to secure a fence along the back boundary of the southernmost house is necessary to secure the privacy of the neighbours in the short-term. Similarly, in the event that the hedge is removed, a condition to secure its replacement is necessary to maintain the privacy of the occupiers of the houses behind the development, from the future occupiers of the development in the long-term.
9. I have noted the appellant's response to my draft conditions, in that the hedge will now remain. However, my proposed conditions would not interfere with that. They would only bite in the event of the hedge being removed before occupation.
10. Condition 15: The new houses have small back gardens, and the parking area will be taken up with car spaces and the turning area. Therefore, in order to promote the use of sustainable means of transport, and with space at a premium on this site, this condition is necessary in order to secure the provision of effective bicycle storage. I have therefore retained this condition albeit with some adjustment to its wording to ensure it meets the tests for conditions in the Framework¹.
11. Condition 18: The access from the development site lies in a short, straight section of road. At each end of this straight section the road then bends gradually in opposite directions. While there is good visibility to the left-hand side of the access when exiting the site, the access is so close to the bus shelter to the right-hand side that intervisibility is substantially reduced to the right.
12. I appreciate that if drivers can nudge out slowly into the road then a better view to the right-hand side can be gained. However, the right-hand side is the nearside lane, in which oncoming drivers would have little time to react, because of the lack of intervisibility.
13. I note the appellant's point that the occupier of No 13 was not consulted before the installation of the bus shelter. However, he reports that she complains that she cannot see properly when pulling out of her drive. Her drive is further from the bus shelter than the proposed access, and it has greater intervisibility than the exit from the appeal site. This adds to my concern about the lack of intervisibility to the right-hand side.
14. In these circumstances, and because of the bus shelter position, I have grave concern for the safety of road users from the risk of collision caused by vehicles exiting the development and the lack of intervisibility between them and

¹ National Planning Policy Framework, paragraph 56

oncoming traffic from the right. A condition to remove the bus stop and shelter is therefore necessary for highway safety.

15. There is no evidence to suggest that the bus stop is superfluous. Indeed, at my site visit I saw it was a popular stop. I have therefore adjusted the wording of the condition to make it meet the precision, reasonableness, and enforceability tests for conditions. In particular, in regard to timing, there is no need to restrict the use of the parking and turning area after the removal of the bus stop, so I have split the condition to accommodate this. I saw the development is nearing completion, in which case, a prior to occupation clause is necessary in the condition for the replacement bus stop to ensure it is installed without delay and consequential disruption to passenger journeys.
16. Condition 19: I appreciate the Council's desire to improve the bus service by providing an additional bus stop further up the road. However, there is no evidence to suggest that this additional bus stop, which would be further from the development than the existing bus stop, is necessary to deal with additional passengers generated by the development, or that without it the development would have been unacceptable. The condition places an unjustified and disproportionate burden on the appellant. It is unnecessary, not relevant to the development, and unreasonable in the scale of its demand. I have omitted this condition.

Conditions

17. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the other conditions imposed on the original planning permission, I have re-imposed all the other conditions. These can be addressed as appropriate by the appellant and the Council. I have invited comments from both parties on drafts of my new conditions, and taken their responses into account.

Conclusion

18. I therefore conclude that the appeal should be allowed, and grant a new planning permission including new conditions to deal with the hedge, adjusting the condition for bicycle storage, amending the condition to relocate the bus stop, and omitting the condition for an additional bus stop.

Patrick Whelan

INSPECTOR

Schedule of Conditions

- 1) The development to which this permission relates shall begin not later than 3 years from 28 May 2019.
- 2) The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 8402.PL 1804 Revision C received on 13 May 2019, 8402.PL 1804 received on 21 February 2019 and Location Plan received on 7 March 2019.
- 3) No works shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval, in writing, of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:
 - (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;
 - (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments;
 - (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.
- 4) No works shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared and then submitted to and agreed, in writing, by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 5) No works shall take place other than that required to carry out remediation, the approved remediation scheme must be carried out in accordance with the details approved. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification/validation report that demonstrates the effectiveness of the

remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

- 6) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 4, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 5, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 6.
- 7) Prior to the first occupation of the development, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 5.
- 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 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:
 - 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 shall thereafter be completed prior to development, or in such other phased arrangement, as agreed, in writing, by the Local Planning Authority. The development shall not be occupied or brought into use until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

- 9) No works shall take place until all trees, shrubs and other natural features not scheduled for removal on the approved plans have been safeguarded behind protective fencing to a standard that will have previously been submitted to and agreed, in writing, by the Local Planning Authority (see BS 5837). All agreed protective fencing shall thereafter be maintained during the course of all works on site and no access, works or placement of materials or soil shall take place within the protected area(s) without prior written consent from the Local Planning Authority.

- 10) All existing trees and hedgerows shall be retained throughout the development construction phases, unless shown to be removed on the approved drawing and all trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site in accordance with the Local Planning Authorities guidance notes and the relevant British Standard. All existing trees and hedgerows shall then be monitored and recorded for at least five years following contractual practical completion of the development. In the event that any trees and/or hedgerows die, are removed, destroyed, fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, with the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.
- 11) Notwithstanding condition 10, in the event that the existing hedge standing along the back boundary of the southernmost house of the development is removed before the occupation of the development, details of a garden fence to be erected along the back boundary of the southernmost house of the development, shall have been submitted to the local planning authority and approved in writing before the occupation of the development.
The details shall indicate any existing fence, and include the location, extent, height, materials, finish and appearance of the new fence. The new fence shall be erected before the occupation of the development, in accordance with the approved details.
- 12) Notwithstanding condition 10, in the event that any part of the existing hedge standing along the back boundary of the development is removed before the occupation of the development, details of a replacement hedge to be planted along the back boundary of the development shall have been submitted to the local planning authority and approved in writing before the occupation of the development.
The details shall indicate the quantity, size, species, and positions or density of the stems for the replacement hedge, how they will be planted and protected and the proposed time of planting. The hedge planting shall be carried out in accordance with the approved details, in the first planting season following the occupation of the buildings or the completion of the development, whichever is the sooner.
Any parts of the replacement hedge 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.
- 13) Prior to the first occupation of the proposed dwelling, the proposed vehicular access shall be constructed to a width of 4.2m and shall be provided with an appropriate dropped kerb vehicular crossing of the footway/highway verge to the specifications of the Highway Authority.
- 14) No unbound materials shall be used in the surface treatment of the proposed vehicular access throughout.
- 15) The development shall not be occupied until such time as the car parking and turning area, has been provided in accord with the details shown in Drawing Reference Location Plan received on 7 March 2019 and 8402.PL 1804 received

on 21 February 2019. The car parking area shall be retained in this form at all times and shall not be used for any purpose other than the parking of vehicles related to the use of the development.

- 16) No doors or windows shall open over the highway maintainable at public expense.
- 17) Prior to the occupation of the proposed development, details of bicycle storage for each dwelling shall have been submitted to the local planning authority and approved in writing. The storage shall be secure, convenient, covered and provided prior to the occupation of the development. The storage shall thereafter be kept available for the parking of bicycles.
- 18) No development shall take place, including any ground works or works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. 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. wheel and under body washing facilities.
- 19) Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council.
- 20) Before the parking and turning area of the development is used for the parking and turning of any motor vehicles, the existing bus stop road markings, bus shelter, and post and flag in front of the site shall be removed, and the highway made good.
- 21) Before the development is occupied, a replacement bus shelter, post and flag, and bus stop road markings shall be installed in the vicinity of the development to details and positions which shall have been previously submitted to and agreed in writing by the local planning authority.
- 22) No works shall take place until a scheme of hard and soft landscaping works for the publicly visible parts of the site has been submitted to and agreed, in writing, by the Local Planning Authority. This scheme shall include any proposed changes in ground levels and also accurately identify positions, spread and species of all existing and proposed trees, shrubs and hedgerows on the site, as well as details of any hard surface finishes and external works, which shall comply with the recommendations set out in the relevant British Standards current at the time of submission.
- 23) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details 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 shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season

with others of similar size and species, unless the Local Planning Authority agrees, in writing, to a variation of the previously approved details.

- 24) Notwithstanding the provisions of Classes A, B, C and D of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), no extensions shall be erected unless otherwise subsequently approved, in writing, by the Local Planning Authority.
- 25) Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), the windows in the first-floor rear elevation shall be glazed in obscure glass to a minimum of level 4 obscurity before the development hereby permitted is first occupied and shall thereafter be permanently retained in this approved form.
- 26) Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no windows shall be inserted in the rear elevations except in accordance with details which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.
- 27) Notwithstanding the provisions of Classes A, B and C of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), the rooflights to be installed in the rear elevation shall be non-opening below 1.7m from finished floor level.
- 28) Prior to first occupation, the roof light windows serving the first-floor bedrooms shall be installed as shown on plan 8402.PL 1804 Revision C received on 13 May 2019. The roof light windows shall be retained in perpetuity.

END OF CONDITIONS