



Appeal Decision

Site visit made on 30 November 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th December 2021

Appeal Ref: APP/A1530/W/21/3269196

181 Barton Olivers, Colchester Road, West Bergholt CO6 3JY

- 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 D Price against the decision of Colchester Borough Council.
 - The application Ref 201472, dated 15 July 2020, was refused by notice dated 11 November 2020.
 - The development proposed is Construction of new detached two-storey house with garage, drive, and new access.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. One of the Council's reasons for refusing planning permission was the absence of a contribution to mitigate the impact of the development due to recreational disturbance upon European designated sites in accordance with the Essex Coast Recreational Disturbance Avoidance & Mitigation Strategy (2018) (the RAMS). The Council has confirmed a payment has been received, so this matter has now been overcome. I return to this below.
3. Since planning permission was refused the North Essex Authorities Shared Strategic Section 1 Local Plan (2021) (the S1LP) has been adopted, which replaces some of the policies and parts of policies of the Colchester Borough Core Strategy (2014) (the ACS). This is reflected in my findings in respect each main issue below. I am advised Hearing sessions have taken place into the emerging Section 2 Local Plan (the S2LP). The Council and appellant have had the opportunity to comment upon its implications for their cases.
4. The Council's decision notice does not specify which neighbouring occupiers it alleges would be likely to experience detrimental effects to living conditions. I have had regard to the evidence from the Council and appellant before me in setting out this main issue below.

Main Issues

5. The main issues are:
 - the effect of the development upon the character and appearance of the area;

- whether or not the development would be in a suitable location for housing having regard to its location within the countryside and the accessibility to services and facilities; and,
- the effect of the development upon the living conditions of the occupiers of Nos 179B, 181 and 183 Colchester Road, with particular reference to overlooking, noise and disturbance, and pollution.

Reasons

Character and appearance

6. The appeal site is part of No 181, which is one of a small group of dwellings varying in terms of height, design, and appearance. However, most are along a broadly similar alignment addressing and with full width front gardens fronting Colchester Road. With the exception of No 169, they present as a linear row of properties. Most of the dwellings including those adjoining the east and west of the appeal site are positioned so they benefit from generous verdant well vegetated rear gardens with only modest buildings rear of the main dwelling. No 181 is one such dwelling, making a positive contribution to the character and appearance of the area and pattern of development.
7. The development would introduce a sizeable 4 bedroom detached dwelling of a significant scale, bulk, and mass, together with a sizeable driveway, parking and turning area, and an associated increase in intensity of use and paraphernalia. As a consequence of this it would significantly urbanise the appeal site, resulting in harm to the character and appearance of the area.
8. The proposal would differ significantly from the predominant pattern of development as the new dwelling and parking and circulation areas would be directly behind the host dwelling, with the new dwelling almost perpendicular to those nearby. The rear of plot position would relate poorly to the existing pattern of development. This and the sizeable perpendicular front and rear elevations would markedly jar and be significantly at odds with the surrounding dwellings. As a consequence, it would be significantly out of keeping with and harmful to the character and appearance of the area. While visibility would be limited from Colchester Road, it would be highly discernible from a number of nearby properties to the east and west, and from the countryside to the south.
9. For the reasons set out above the development would be significantly harmful to the character and appearance of the area. It would conflict with Policy DP1 and DP12 of the Colchester Borough Development Policies (2014) (the CBDP), Policy UR2 of the ACS and Policy PP10 of the West Bergholt Neighbourhood Plan (2019) (the WBNP). Amongst other things these expect development to be designed to a high standard and to respect and enhance the character of the site and context, including in respect of layout. It would also conflict with guidance in the Colchester Borough Council Backland and Infill Supplementary Planning Document (2010) (the SPD) which has similar objectives.
10. I do not find a conflict with sections 15.3.2 and 15.3.3 of the WBNP as these set out broad aspirations, signpost, and refer to other documents and policies.

Suitability of location

11. Policy SP3 of the S1LP states development will be accommodated within or adjoining settlements according to their scale, sustainability, and role in the

area, of which the cluster is not identified as an existing settlement. Policy PP9 of the WBNP seeks to direct development to specific sites, of which the appeal site is not one. Therefore, the location of the development conflicts with Policies PP9 and SP3, which have been adopted since an appeal at the neighbouring No 179 was allowed¹. Regardless of whether or not I share the view of that Inspector, in respect of whether the development would result in an isolated home in the countryside or not, it would not overcome the conflict I have found with the spatial strategy set out in recently adopted development plan documents.

12. While the dwelling would project significantly to the rear of most of the dwellings, it would be contained within an established residential plot part surrounded by mature vegetation and would be within and not extend the run of dwellings east or west. Therefore, it would retain the open countryside between the appeal site and West Bergholt, and Braiswick, not increasing the coalescence between them.
13. The site is approximately 400m from West Bergholt and Braiswick, with much of Colchester a short distance further east of Braiswick. There are limited facilities within West Bergholt such as a convenience store, small supermarket, pharmacy, doctor's surgery within approximately 750m – 1.1km. West Bergholt and Braiswick both have primary schools. Such services and facilities could provide for many of the day to day needs of future occupiers. Trips into Colchester are likely to be required for some retail, professional and financial services, medical and dentistry services, access to secondary education, employment opportunities, and the railway network.
14. The footways on Colchester Road can be used to access either settlement. They are of an adequate width and repair that pedestrians with groceries or products could comfortably use them. Colchester Road is of a good width and forward visibility so would not be unappealing for cyclists. Buses on the route outside the appeal site run every 30 minutes Mondays – Saturdays between West Bergholt and Colchester, and there is another service with a lesser but still good frequency between Sudbury and Colchester.
15. Walking, bicycle and bus journeys to many local services and facilities would be relatively attractive and convenient providing sustainable travel options to future occupiers. The use of a private motor vehicle might be more appealing for some trips. However, the distance to these and resulting vehicular miles per year would be limited. Paragraph 105 of the Framework acknowledges opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In this context, the development would not conflict with sustainable transport objectives of the Framework.
16. For the reasons set out above the countryside location of the development would conflict with Policy PP9 of the WBNP and Policy SP3 of the S1LP and Policy H1 of the ACS insofar as these direct new dwellings to be provided at specified sites and settlements. As the development would not extend the surrounding cluster of dwellings and would not increase coalescence, I do not find a conflict with Policy PP12 of the WBNP. I find the dwelling would be in a suitable location having regard to the accessibility to services and facilities. In this regard the development does not conflict with the objectives of Policy H1 of the ACS, Policy DP1 of the CDBP, or Policies SP3 or SP6 of the S1LP insofar

¹ APP/A1530/W/19/3225095

as these expect development to be located to be accessible by a choice of means of travel and demonstrate environmental sustainability.

Living conditions

17. The Council's reason for refusal includes a specific reference to overlooking to properties, including properties for which an extant permission exists. Permission was granted on appeal² for two dwellings at No 179 which have been built out. Bedroom 3 of this new dwelling would face the directly and overlook much of the rear garden of the closest new dwelling (No 179B) at approximately 4m. Whether or not the crown reduction works to T10 take place, it has a relatively small crown so would provide very limited screening when in leaf. When not in leaf the overlooking would be greater. The proximity and degree of overlooking would mean much of the rear garden space is overlooked at close proximity with no real privacy, resulting in harmful living conditions to the occupiers of No 179B.
18. The dwelling would be in excess of 11.5m from the neighbouring garden area of No 183, which appears of some considerable size and would be screened by existing large trees and boundary hedgerows, which are not proposed to be removed. The degree of overlooking to that rear garden would be to a comparatively small proportion of that garden and at such a distance, that it would not result in harmful living conditions to the occupiers of No 183.
19. The Council's SPD highlights rear of plot development could give rise to noise, disturbance, and pollution as a consequence of access by vehicles. While my site visit can only represent a brief snapshot in time, there was frequent vehicle movements on Colchester Road and the A12, forming the predominant source of background noise at my visit. While the access drive would be alongside No 181 at a short distance, it would be separated by a fence. The number of movements to a single property are likely to be limited and short in duration.
20. In my view it would not be significantly different to the level and nature of noise, disturbance, and pollution from a side driveway or where part of rear garden backs onto a public highway. The driveway might not meet the 3m distance from the host dwelling. However, the duration, frequency and location of noise and disturbance and level of emissions would not be such that they would result in harmful living conditions to neighbouring occupiers.
21. However, for the reasons set out above the development would result in harmful living conditions to the occupiers of No 179B in respect of overlooking. This would conflict with the aims of Policies DP1 and DP12 of the CBDP and Policy PP10 of the WBNP. Amongst other things these expect development to be guided by high standards of design that protects the living conditions of neighbouring occupiers in respect of overlooking. It would also conflict with the guidance in the SPD which has similar objectives.

Other Matters

22. One of the reasons that permission was refused related to a failure to address the impact of the development on a European designated site, by reason of increased recreational pressure, as a development within the designated Essex Coast zone of influence. The appellant has subsequently paid a contribution towards mitigation measures in accordance with the Essex Coast RAMS. The

² APP/A1530/W/19/3225095

contribution would mitigate impacts on European designated sites. It has not been put to me the contribution would have benefits that would weigh in favour of the scheme. Therefore, in light of my findings on the main issues above, it is not necessary to look at this matter in detail, given the proposal is unacceptable for other reasons.

Planning Balance

23. It is understood that at the time the application was refused permission the Council could demonstrate a 5.4 year housing land supply (HLS), which has increased with the adoption of a new lower housing requirement, to approximately 6.3 years. Therefore, the tilted balance in paragraph 11d) of the Framework does not apply, although a 5 year HLS does not represent a ceiling to delivery.
24. The proposal would result in a small economic benefit during construction, once complete some small on-going spend in the local economy and a small contribution to the vitality of rural communities and services. Even based upon the lower HLS position, the social benefit and contribution to supply from one dwelling to supply is a small benefit. Therefore, overall, the benefits of the development attract limited weight in favour of the scheme.
25. Compliance with policies in respect of accessibility and the living conditions of Nos 181 and 183 are neutral matters in the planning balance. If I were to agree the development is compliant with policies in respect of matters such as design, materials, and highway safety, these would also be neutral matters.
26. However, the development would be significantly harmful to the character and appearance of the area, it would result in harmful living conditions to the occupiers of No 179B, and the countryside location conflicts with policies for the location of new development. This harm is such that these matters attract significant weight against the scheme. Therefore, the harm from the development significantly outweighs the benefits of the development. Therefore, the appeal should not succeed.

Conclusion

27. The development conflicts with the development plan taken as a whole. There are no material considerations, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR