



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: 11 January 2022

Appeal Ref: APP/A1530/W/21/3267347

155 Colchester Road, West Bergholt CO6 3JX

- 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 Graham against the decision of Colchester Borough Council.
 - The application Ref 201642, dated 31 July 2020, was refused by notice dated 29 September 2020.
 - The development proposed is the erection of two dwellings, complete with access and parking.
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Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of two dwellings, complete with access and parking at 155 Colchester Road, West Bergholt CO6 3JX in accordance with the terms of the application, Ref 201642, dated 31 July 2020, and the plans submitted with it, subject to the conditions at the end of this decision.

Preliminary Matters

2. The Council has referred to policies in its emerging Local Plan (eLP). As the relevant section has not yet been adopted, indeed at least one policy has been recently modified, and I have no information about any unresolved objections to the Plan, this limits the weight I can give to its policies.
3. The application was made in outline, with all matters, save for access, reserved. I have considered the appeal on the same basis and assessed accompanying imagery as merely indicative insofar as it may refer to the reserved matters.

Background and Main Issues

4. The Council no longer pursues its reasons for refusal relating to heritage, Habitats sites mitigation, and financial contributions. Therefore, the main issues are:
 - whether the appeal site is a suitable location for housing with particular regard to the coalescence of West Bergholt and Colchester Town; and
 - whether the development would have good access to services and facilities.
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Reasons

Planning Policy

5. Policies SD1 and H1 of the Colchester Local Development Framework Core Strategy 2008, revised 2014 (CS) direct new housing to the most accessible and sustainable locations which have good access to public transport by means other than the private car and which are on previously developed land. West Bergholt is allocated 50 houses in the period 2001-2021. CS policy ENV1 requires development on unallocated, greenfield land outside settlement boundaries to be appropriate in scale, siting and design and to protect landscape and townscape character including maintaining settlement separation. Colchester Local Development Framework Development Policies 2010 (DP) policy DP1 seeks a high standard of design in development and requires development to demonstrate social, economic and environmental sustainability.
6. The West Bergholt Neighbourhood Plan 2019 (NP) in policy PP9, allocates two sites for housing, both within the settlement boundary. It says in policy PP12 that development in the area of the appeal site will not be supported if individually or cumulatively it would increase the coalescence of West Bergholt and Braiswick, and reduce their separate identity by reducing the separation between the two settlements.

Coalescence

7. Though the appeal site falls beyond the settlement boundary in the development plan, in the area identified in the Neighbourhood Plan in which coalescence with Colchester should be avoided, it lies between a cluster of housing which straddles the Colchester Road, and which already brings a character of built form in this section. Behind the appeal site are dwellings and an indoor trampoline facility. Its development would not materially widen the extent of existing development, or intrude into the fields beside the existing development. As such, it could not reduce the physical separation between West Bergholt and Braiswick. Nor would the development result in isolated homes in the countryside which is resisted under the National Planning Policy Framework.
8. I appreciate that the nature and intensity of development may have a bearing on the effect of coalescence. However, the edge of the appeal site along the Colchester Road is already enclosed by a tall hedge beside a domestic-looking entrance off a spur road which betrays its present residential use. The proposed development, the reserved matters for which would be under the control of the Council, would not change the cumulative building footprint on this side or intensify the residential use to the degree that the separate identities of West Bergholt and Braiswick would be weakened.
9. I conclude on this issue that because of the site location within a cluster of existing development which already has a significant presence within the area identified to avoid coalescence, the appeal site is a suitable location for housing

with particular regard to the coalescence of West Bergholt and Colchester Town. There would be no conflict with CS policy ENV1, DP policy DP1 and NP policy PP12. Nor would there be conflict with eLP policy OV2 where it requires residential development to demonstrate that it respects the character and appearance of landscapes.

Access to services and facilities

10. While I note the Council's conclusion that the future occupiers would be largely reliant on the private car to access day-to-day facilities and services, the site is within easy reach of the settlement of West Bergholt, a settlement with shops, a GP surgery, and a school, identified for future housing development, and which is accessible by a lit, continuous footpath from the appeal site. Bus stops within 350m of the site serve Colchester and its railway station, and there is a convenience shop within 500m of the site.
11. These observations are consistent with the appeal¹ for two houses on a site on this same road but which lies 230m further from West Bergholt than this appeal site. That site was, the Inspector in that appeal concluded, reasonably accessible to nearby services and facilities and an appropriate location for housing.
12. In these circumstances, I conclude that the appeal site is in a suitable location for housing with good access to services and facilities and public transport by means other than the private car. There would therefore be no conflict with CS policies SD1 and H1, nor with the Framework which indicates that the opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and which promotes sustainable development in rural areas where this would enhance the vitality of rural communities, support local services and promote walking, cycling and public transport use.

Other Matters

13. A unilateral undertaking has been provided by the appellant, to which the Council has raised no objection. It secures the financial contributions sought by the Council to mitigate recreational disturbance of Habitats sites, towards open space, sport and recreational facilities, and towards community facilities, based on the details and date of a future reserved matters application.
14. Habitats sites: The Essex coastline is extremely diverse and features a variety of habitats and environments which are internationally important for wildlife. Most of the coast is designated under the UK Conservation of Habitats and Species Regulations 2017, and contains 10 Habitats sites. Housing and consequent population growth in Essex is likely to increase the number of visitors to these sensitive coastal areas, creating the potential for impacts from increased recreational disturbance of the birds and their habitats, unless adequately managed, as set out in the Essex Coast Recreational Disturbance

¹ Appeal Ref: APP/A1530/W/19/3225095

Avoidance & Mitigation Strategy (RAMS) Habitats Regulations Assessment
Strategy document 2018-2038.

15. The proposed development, introducing two new dwellings on the site, would be located within the zone of influence of the Habitats sites as set out in the Essex Coast RAMS. The development is therefore likely to result, in combination with other projects and plans, in significant adverse effects upon the integrity of the Habitats sites including from the increased potential for disturbance of the protected habitats from the activity of residents. An appropriate assessment is therefore required under the Habitat Regulations 2017 (as amended).
16. The Council has adopted the Essex Coast RAMS which sets out the mitigation requirements for development proposals. A unilateral undertaking (UU) has been provided by the appellant. This provides for a contribution based on the number of dwellings to be paid to the Council towards mitigation in accordance with the Essex Coast RAMS.
17. The Council has confirmed that it is satisfied with the content of the UU in respect of Habitats sites. I am satisfied that the UU would provide for appropriate mitigation in accordance with the Essex Coast RAMS and also that satisfactory measures are in place to ensure that the mitigation would be provided in a timely manner.
18. Accordingly, I am satisfied that the proposed development, in combination with other projects and plans, would not result in the likelihood of any adverse effects upon the integrity of the Habitats sites. The proposal would therefore satisfactorily accord with the habitats and species protection criteria set out in policy DP21 of the Development Policies 2010 and the Habitats Regulations 2017. The obligation meets the relevant statutory² and national policy³ tests and is therefore a material consideration in my assessment of the appeal.
19. Community facilities: CS policy SD2 says that development will be expected to contribute to strategic projects that support sustainable development and the wider community. DP policy DP3 says that the Council will seek planning obligations with details set out in supplementary planning documents.
20. The Council's Provision of Community Facilities Supplementary Planning Document 2009 sets out a tariff of charges depending on the number of bedrooms and dwellings in a development. Normally, it says, contributions will be in relation to identified projects within the vicinity of the new development, to mitigate the impact of new residents on existing community facilities. Where there is no clear need in the area, and no practical options for enhancing local facilities, the contribution will be used for facilities that serve residents borough-wide. Community facilities contributions from outline

² Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

³ Paragraph 57 of the Framework

- applications can be reserved until the number of bedrooms in the development is known.
21. The Council has not identified any clear need for community facilities in the area nor any project within the vicinity of the development which require contributions to mitigate the impact of the future occupiers of this development. Nor has it identified how or where the contribution would meet any borough-wide need.
22. From the information submitted with the appeal, I cannot be sure that the contribution sought is necessary to make the development acceptable in planning terms, nor that it is fairly and reasonably related in scale and kind to the development.
23. Open space, sport and recreational facilities: Similarly, the Council's Provision of Open Space, Sport and Recreational Facilities Supplementary Planning Document 2006 sets out a tariff of rates based on costs and projects in 2019 and the number of bed spaces in a development. However, the Council has not identified to which project the sum sought would be directed, nor has it indicated that a funding need persists for any project, to which a contribution is necessary to make the development proposed in this location acceptable in planning terms, nor that it is fairly and reasonably related in scale and kind to the development.
24. I therefore consider, on the basis of the information submitted, that the contributions for community facilities, and for open space, sport and recreational facilities do not meet the tests for a planning obligation as set out in regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the National Planning Policy Framework. I am therefore unable to take account of those particular obligations.
25. I have had regard to the new position of the heritage asset relocated from the appeal site. The proposed development would be sufficiently distant and separated by trees and hedging for its setting not to be adversely affected by the development, and therefore preserved, in accordance with section 66(1) of the Act.
26. I note the objection from the owner of the driveway about the use of the driveway for the development. However, there is no substantive evidence that the access as proposed is unrealistic or is an unlikely prospect. In the event that the access as indicated cannot be formed, that would be a matter for the appellant to address.

Conditions

27. I have considered the conditions suggested by the Council. While I have made some minor amendments to the contamination conditions for precision having regard to the tests set out in the Framework and the guidance contained in the Planning Practice Guidance (PPG), I am satisfied that they are necessary to control the timing of the development, to ensure the satisfactory layout,

appearance, and landscape of the completed development, in the interests of highway safety, the promotion of sustainable transport, to ensure that any land contamination from the former land use as a malthouse and kiln and remediation issues are properly identified and remediated, and to ensure that neighbouring residential amenity and the safety of road users are protected during the construction phase. I am therefore satisfied that the conditions meet the tests in, and the requirements of, the Framework and the PPG.

Conclusion

28. For the reasons given above, and having considered all matters raised, the appeal is allowed.

Patrick Whelan
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) Access to the development shall be carried out in accordance with the following approved plans:

6764-A-1100-P1	Site Location Plan
6764-A-1102-P1	Proposed Site Block Plan
- 5) No development shall take place, including any ground works or works of demolition, until a Construction Management Plan (CMP) 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
- 6) No development shall take place until an investigation and risk assessment has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, which shall be submitted to the Local Planning Authority and approved in writing before the commencement of development. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings shall be submitted to the Local Planning Authority and approved in writing before the commencement of development. 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'.
- 7) In the event that, in accordance with condition 6, contamination is found, and remediation proposed, then no development 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.

- 8) In the event that, in accordance with condition 6, contamination is found and, in accordance with condition 7, a remediation scheme has been agreed by the local planning authority, no works shall take place other than that required to carry out the approved remediation scheme which 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 before the commencement of development.
- 9) 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 6, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 7, 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 8.
- 10) Prior to the 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 7.
- 11) Prior to the occupation of the development, the proposed vehicular access/connection to Colchester Road shall be reconstructed to a width of 5.5m for at least the first 6.0m within the site to the specifications of the Highway Authority.
- 12) Prior to the occupation of the development, details of the provision for the storage of bicycles sufficient for all occupants of that development shall be approved in writing by 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 within the site which shall be maintained free from obstruction and retained thereafter.
- 13) No unbound materials shall be used in the surface treatment of the proposed vehicular access within 6m of the highway boundary.
- 14) The connection to the private drive serving Number 155 Colchester Road shall be provided with a clear to ground level visibility splay with dimensions of 11m by 2.4m by 11m on both sides. Such visibility splays shall be provided before the spur road is first used by vehicular traffic accessing the site of the development and shall be retained and maintained free from obstruction clear to ground thereafter.

- 15) The development shall not be occupied until such time as a car parking and turning area has been provided in accord with the Council's current Parking Standards. These facilities shall be retained in this form at all times and shall not be used for any purpose other than the parking and turning of vehicles related to the use of the development thereafter.
- 16) No demolition or construction work shall take place outside of the following times; Monday to Friday: 08:00-18:00; Saturday: 08:00-13:00; Sundays and Bank Holidays: No working.

END OF CONDITIONS