
Appeal Decision

Site Visit made on 6 January 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2022

Appeal Ref: APP/A1530/W/21/3272501

Land to the Rear of 100 Church Road, Tiptree, Colchester CO5 0HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr Gavin Bays against the decision of Colchester Borough Council.
 - The application Ref 210344, dated 2 February 2021, was refused by notice dated 24 March 2021.
 - The development proposed is described on the application form as 'residential development'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Planning Practice Guidance (the PPG) explains that the Town and Country Planning (Permission in Principle) (Amendment) Order 2017, is an alternative way of obtaining planning permission for housing-led development, which separates the consideration of matters of principle for development, from the technical detail. This consent route has 2 stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle, and the second (technical details consent) stage, is when the detailed development proposals are assessed. This appeal relates to an application under the first stage for a residential development of between 2 and 4 dwellings.
3. The PPG explains that the scope of the considerations for permission in principle (PiP) is limited to location, land use and the amount of development. I have approached the appeal on that basis. Other matters are considered as part of a subsequent Technical Details Consent (TDC) application if PiP is granted.
4. The main parties have had opportunity to comment on the revised National Planning Policy Framework 2021 (the Framework). I have had regard to it in this decision.

Main Issue

5. The main issue is whether the site is suitable for residential development, having regard to its location, the proposed land use and amount of development.

Reasons

Location

6. The appeal site comprises an area of vacant land, located within Tiptree. It would be accessed from Church Road via Century Mews. Century Mews comprises a number of units which include employment and retail uses. The site is also adjacent to the rear service/delivery and parking area of a large retail store. A high close-boarded fence separates the appeal site from this area. There are several trees within the appeal site, which are the subject of a Tree Preservation Order (TPO). These trees help to visually break up what is otherwise a predominantly urban character. In this regard, they make a relatively positive contribution to the character and appearance of the surrounding area.
7. The Council's Officer Report outlines that the site is located within the settlement development boundary. The Officer Report confirms that the proposed development is 'considered acceptable' in this regard. Whilst there are many commercial properties within the surrounding area, I saw that there are also residential properties, including those on the opposite side of Church Road and those to the rear of the appeal site.
8. However, the appeal site is within the zone of influence for a number of areas of ecological interest. Namely, European sites that include the Colne Estuary SPA and Ramsar site, Blackwater Estuary SPA and Ramsar site, Dengie SPA and Ramsar site, Stour and Orwell Estuaries SPA and Ramsar site (south shore) and Essex Estuaries SAC. In general terms adverse effects to those areas may arise from additional recreational pressure, which is likely to occur the more dwellings are located nearby to them. This would likely have a significant effect on habitats and areas protected by these designations. In order to mitigate these effects, the Council require contributions from qualifying developments towards the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). During the life of the planning application, the appellant paid a sum of money to the Council in accordance with RAMS. I have seen a copy of the receipt.
9. The Council did not include this issue as a reason for refusal and I appreciate that the payment was offered in good faith, that it complies with the SPD numerically, and that it is clearly intended to mitigate any adverse effects. However, in the absence of a sufficiently robust mechanism to satisfactorily show how the monies paid by the appellant will be spent, such as a planning obligation in this case, I cannot be satisfied that the harm that would arise from the appeal scheme will be mitigated appropriately. Indeed, certainty that appropriate mitigation will be enacted is necessary at PiP stage in this instance, given the statutory protection which is given to the aforementioned sites.
10. The PPG indicates that there is no scope to secure obligations at the PiP stage. Consequently, in the absence of a planning obligation there would not be the necessary certainty that an adverse effect on integrity would be avoided. One way of addressing this would be for an appellant to provide an obligation alongside the PiP application or appeal that includes the relevant mitigation provisions with the 'trigger' for its delivery linked to the associated TDC. This would provide certainty about what the mitigation entailed but would also ensure that that it would be secured if planning permission is actually

forthcoming (through grant of a subsequent TDC). However, no such obligation is before me.

11. As such I cannot conclude that likely significant effects to the ecological integrity of the above mentioned areas would not occur. In the absence of a planning obligation or other legal agreement therefore, the appeal scheme would conflict with Core Strategy¹ Policy ENV1, which seeks to ensure, amongst other things, that the natural environment is conserved and enhanced through protection and enhancement of sites of international and national importance.
12. There would also be a conflict with Paragraph 174a of the Framework, which requires in part that planning decisions should protect sites of biodiversity value in a manner commensurate with their statutory status.
13. For these reasons, the location of the proposed development, in the absence of the aforementioned planning obligation, is not acceptable in principle.

Amount

14. The proposed development comprises residential development of between 2 and 4 dwellings. The Council's reasons for refusal outline that the site is 'cramped' and would struggle to accommodate the number of dwellings proposed, particularly when taking into account the parking and private outside space requirements set out within the Development Plan.
15. No indicative layout plan has been provided to illustrate how the proposed dwellings could be accommodated within the site and no indicative elevation plans have been provided by the appellant. Nonetheless, the site is relatively large and could therefore be capable of accommodating between two and four dwellings of a modest scale. This is particularly apparent when comparing the size of the appeal site with the size of other residential plots fronting Church Road.
16. The site location plan submitted with the planning application shows that the site would be accessed from Church Road. However, it is not clear whether the existing access would need to be widened to facilitate the proposed development. There is a line of protected trees along the boundary between the existing access and the adjacent Tesco service/delivery yard. Whilst I have found that these trees make a positive contribution to the character and appearance of the surrounding area, there is no certainty, at this stage, that they would require removal or be harmed as a result of the proposed development.
17. Therefore, taking all of these considerations into account, a proposal could, in my view, come forward in this location that would integrate appropriately with its surroundings subject to a sensitive approach being taken in respect of TDC matters. As such, the development would not conflict with Core Strategy Policy UR2, Development Policies Document² Policies DP1 and DP12 or the advice contained within the Supplementary Planning Document³ (SPD). Together, these policies seek to ensure that development is of a high-quality design.

¹ Colchester Borough Council Local Development Framework – Core Strategy (Adopted December 2008)

² Colchester Borough Council Local Development Framework – Development Policies (Adopted October 2010, revised July 2014)

³ Colchester Borough Council – Supplementary Planning Document – Backland and Infill Development (Adopted September 2009, revised December 2010)

18. There is similarly insufficient evidence before me to indicate that any required widening of the access would adversely impact upon the existing parking provision serving the adjacent units. Concerns have also been raised by interested parties regarding the effect of the proposed development on deliveries to these units. In addition, the Highway Authority has raised concerns that there is insufficient information pertaining to manoeuvrability for emergency vehicles.
19. With regard to these concerns, the limited information provided with the appeal application is commensurate with the nature of the PiP stage process, which only seeks to determine whether the location, land use and amount of development is acceptable in principle. These highways and parking considerations can be considered as part of the TDC stage, and there can be no guarantee that just because the PiP has been granted, that the TDC will follow. It takes approval of both stages for a planning permission to be secured.
20. There is insufficient evidence before me, at this stage, to conclude that safe and suitable access arrangements could not be achieved (or would be a fundamental impediment in terms of location, noting my reasoning in paragraph 19). As such, the proposed development would not conflict with Development Policies Document Policy DP17, which seeks in part to ensure that development does not adversely affect highway safety and that the access does not 'unreasonably harm the surroundings' insofar as is relevant to this PiP proposal.
21. As such, taking all of these matters into consideration, the amount of development proposed is acceptable in principle.

Proposed land use

22. The Council's reasons for refusal suggest that the close proximity of the site to the adjacent retail delivery yard and bottle bank would result in a significant detrimental impact on future occupiers of the proposed development, with particular regard to noise and vibration. Whilst I acknowledge that the site is in close proximity to these adjacent uses, their likely effect on the future occupiers of the proposed development cannot be ascertained on the basis of the evidence before me. This is because the siting, layout and design of the proposed development, including any potential noise attenuation measures, are matters which should be considered at the TDC stage.
23. The area is characterised by a mix of uses, including employment, retail and residential development. The close proximity of the site to neighbouring uses which are not residential is not a reason in itself, at this stage, to conclude that there would inevitably be harmful impacts upon users of surrounding development.
24. Therefore, the evidence before me does not indicate that there would be an adverse impact on surrounding businesses, users of those businesses or upon the living conditions of future occupiers of the proposed development. These are matters which would need to be considered further at TDC stage. As such, the proposed development would not conflict with Development Policies Document Policy DP1, which seeks in part to ensure acceptable living conditions, with particular regard to noise and disturbance resulting from new development.

25. As such, the proposed land use is acceptable in principle.

Conclusion

26. Whilst I have found that the amount of development and land use are acceptable in principle, there is insufficient information before me to demonstrate that the proposal would protect the integrity and special interest of the SAC, Ramsar Sites and SPA. As such, in the absence of a suitable mechanism to secure appropriate mitigation, the location of the development is not acceptable in principle. Therefore, having had regard to the development plan and the Framework and having taken into consideration all relevant material considerations, the appeal is dismissed.

Luke Simpson

INSPECTOR