



Appeal Decision

Site visit made on 24 November 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 April 2022

Appeal Ref: APP/A1530/W/21/3269958

The Coach House, Halstead Road, Eight Ash Green CO6 3PT

- 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 Boulding and Moore Ltd against the decision of Colchester Borough Council.
 - The application Ref 202842, dated 20 December 2020, was refused by notice dated 12 February 2021.
 - The development proposed is change of use of a building used for short term accommodation to a residential dwellinghouse (C3).
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of a building used for short term accommodation to a residential dwellinghouse (C3) at The Coach House, Halstead Road, Eight Ash Green CO6 3PT in accordance with the terms of the application, Ref 202842, dated 20 December 2020, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Preliminary Matters

2. Part 1 of the Council's new Colchester Borough Local Plan (the CLP1)¹ has been adopted. The Council has confirmed that Policies SD1 and HD1 of the Core Strategy 2014 (CS) have been partially superseded by CLP1 Policies SP3, SP4 and SP5 in relation to the overall housing requirement figures. The settlement hierarchy elements of these policies remain in force. The final section of Policy SD1 which outlines the presumption in favour of sustainable development is superseded by CLP1 Policy SP1. All other policies relied upon by the Council in its reasons for refusal remain relevant. Accordingly, I shall determine the appeal in accordance with the most up-to-date policies, on which the parties have had the opportunity to comment during the course of the appeal.
3. Part 2 of the new plan (CLP2) is still emerging and is currently under examination. It is therefore subject to change and thus it attracts only limited weight in my decision.
4. On 20 July 2021 a revised National Planning Policy Framework was issued. The main parties had the opportunity in their appeal submissions to comment on the implications of the resulting changes for this appeal and I have had regard to the comments made. The references to 'the Framework' made within my decision are to this revised version.

¹ Colchester Borough Council Local Plan 2013-33, North Essex Authorities Shared Strategic Section 1 - adopted 1 Feb 2021

Main Issue

5. The Council no longer pursues its reasons for refusal, numbers two and three, relating to financial contributions and European sites mitigation. Therefore, the main issue is whether the location of the proposed development is appropriate, having regard to the development strategy for the area and access to services and facilities.

Reasons

6. The appeal site falls outside the defined settlement boundaries and is therefore within the countryside for planning purposes. CS Policy H1 seeks to direct the majority of housing development towards regeneration areas and allocated sites. CS Policy SD1 also seeks to direct growth to the most accessible and sustainable locations, which have good access to services and facilities by means other than the private car, in accordance with a settlement hierarchy which identifies Eight Ash Green as one of a number of rural communities. This approach is broadly consistent with the aims of the Framework of promoting sustainable development in rural areas by requiring housing to be located where it will enhance or maintain the vitality of rural communities. Policy DP1 of the Council's Development Policies 2014 (DP) seeks a high standard of design in development and requires development to demonstrate social, economic and environmental sustainability.
7. The Eight Ash Green Neighbourhood Plan 2019 (NP) in Policy VSB1 provides an extended settlement boundary which does not include the appeal site. This Policy states that on land outside the Village Settlement Boundary, there will be a general presumption against new development, unless it accords with the special circumstances set out in the Development Plan or the Framework.
8. Although the site is removed from the physical limits of the settlement boundary of Eight Ash Green, it is situated within a linear cluster of houses to the south of Halstead Road. The appeal building already exists and benefits from planning permission for use for short term accommodation purposes. Its change of use would not impact on the character or appearance of the area, nor would the proposed development result in an isolated home in the countryside which is resisted under the Framework.
9. I note the Council's conclusion that future occupiers would be largely reliant on private motor vehicles to access day to day facilities and services. I further note that the Inspector in a previous decision found the location not to be well served by sustainable transport modes. However, that Inspector indicated that very little information was before them regarding the local bus service. The evidence before me indicates that there is an unmarked request bus stop within approximately 40 metres of the site which is accessible via the pavement opposite the site. A regular and frequent bus service is provided which serves, amongst other locations, Eight Ash Green and Colchester, the latter being a journey of approximately 15 minutes. Frequent railway services are also available from Colchester to London, Ipswich, Norwich and other places between.
10. In considering this matter, I am mindful of paragraph 105 of the Framework which recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. I recognise the limited attractiveness of the walking route to the services in Eight Ash Green, in particular with

regard to the volume of traffic passing by, and the narrow width of the pavement and its unlit nature. Nevertheless, the existence of this pedestrian facility does provide an alternative option to reliance on private motor vehicles for some journeys. When this option and the potential for short cycle trips are combined with the accessible public transport provision, I consider that the appeal site offers reasonable alternative modes of transport, such that future occupiers would not be overly reliant on the use of private motorised transport.

11. Accordingly, despite the site being situated within the countryside for planning policy purposes, I consider that it represents a suitable location for the proposed development in terms of access to services and facilities. I acknowledge that the Council has a five year supply of deliverable housing land. However, the Framework does not restrict the provision of housing in excess of identified targets, and it provides support for the boosting of the supply of homes. Moreover, paragraph 79 of the Framework advises that housing in rural areas should be located where it will enhance or maintain the vitality of rural communities and, in this regard, it is likely that future occupiers would use the services and facilities at Eight Ash Green.
12. Consequently, whilst the proposal would result in a new dwelling in the countryside and would conflict with CS Policies H1 and SD1 and NP Policy VSB1 in that respect, the reasonable accessibility of the site to services and facilities, absence of harm to the character and vitality of the countryside, and the use of previously developed land, leads me to conclude that the proposal would not undermine the overall intention of these policies or the development strategy as a whole. This weighs in favour of the proposal.
13. Further, I conclude that the proposal would not conflict with DP Policy DP1. Whilst the lack of environmental and other harm would not amount to a benefit, future occupiers would make a small but meaningful social and economic contribution to local services and facilities. The proposal would accord with the Framework's aim of boosting the supply of housing and its recognition of the importance of small and medium sized site delivery.
14. In light of these findings and in the particular circumstances of this case, it is my view that the proposal would constitute a sustainable form of development, which leads me to conclude that the conflict with the development plan is outweighed by other considerations in this case. Accordingly, for the reasons set out above, the site is a suitable location for a dwelling having regard to the development strategy for the area and access to services and facilities.

Other Matters

15. 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 towards open space, sport and recreational facilities and towards community facilities.

Open space, sport and recreational facilities

16. CS Policy SD2 states 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.

17. 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 2005 and the number of bed spaces in a development. However, the Council has not identified the project to which 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.

Community facilities

18. The Council's Provision of Community Facilities Supplementary Planning Document 2013 sets out a tariff of charges depending on the number of bedrooms and dwellings in a development. Normally, it states, 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.
19. 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.
20. From the information provided, I cannot be certain that the contribution sought is necessary to make the proposed development acceptable in planning terms, nor that it is fairly and reasonably related in scale and kind to the development.
21. I therefore consider, based on the information provided, 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 Framework. I am therefore unable to take account of these obligations.

European sites

22. 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 European sites². 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 Avoidance & Mitigation Strategy Habitats Regulations Assessment Strategy document 2018-2038 (RAMS).
23. The proposed development, of a new dwelling, would be located within the zone of influence of the European sites as set out in the RAMS. The development is therefore likely to result, in combination with other projects and plans, in significant adverse effects upon the integrity of the identified

² Now the 'national site network' when referring to the network of European sites in the UK, following the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

European 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 Conservation of Habitats and Species Regulations 2017 (the Regs).

24. The Council has adopted the RAMS which sets out the mitigation requirements for development proposals. The appellant has made payment to the Council of the required contribution of £125.58 towards mitigation in accordance with the RAMS. Given the evidence before me, I am satisfied that the mitigation measures have been secured and also that satisfactory measures are in place to ensure that the mitigation would be provided in a timely manner. Consequently, the proposed development, in combination with other projects and plans, would not have an adverse effect on the integrity of the European sites. The proposal would comply with the habitats and species protection criteria set out in DP Policy DP21, CLP2 Policy ENV1 and the Regs.
25. I note the concerns of the Parish Council regarding the proposed parking arrangements. However, the Council consider that the proposal would provide adequate parking and on-site turning provision. In the absence of any substantive evidence to the contrary, this matter does not affect my conclusion in relation to the main issue.
26. I am mindful of the concern that the proposal could set a precedent for other similar proposals. However, I have dealt with the appeal on the basis of the particular circumstances of this proposal. These are unlikely to be exactly replicated in other cases, which should, in any event, be considered on their own merits.
27. I have not been directed to any development plan policy that requires this type of proposal to demonstrate that the existing use is not viable. Therefore, whilst I acknowledge the evidence relating to the impact of the Covid19 pandemic on the viability of the existing use, this has not been determinative in my decision.

Conditions

28. In addition to the standard time limit condition, it is necessary to impose a condition specifying the approved drawings as this provides certainty. A condition for obscure glazing and restricted opening for the first floor west facing dormer windows is necessary to protect the living conditions of neighbouring occupants.
29. In the interest of highway safety, it is necessary to impose a condition requiring the provision and permanent retention of the approved parking and turning areas.

Conclusion

30. For the reasons given, I conclude that the appeal accords with the development plan, taken as a whole, and other material considerations in this case do not indicate that permission should be withheld. Therefore, the appeal is allowed.

S Tudhope

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan; Site Location and Block Plans Drawing Number 2015121/20 Rev.B; and As Built Plans and Elevations Drawing Number 2015121/21 Rev.B.
- 3) Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), the first floor dormer windows in the West elevation shall be non-opening and glazed in obscure glass to a minimum of level 4 obscurity (up to a level of 1.7 metres above the floor of the room in which they are installed) before the development hereby permitted is first occupied as a dwelling and shall thereafter be permanently retained in this approved form.
- 4) Prior to first occupation of the dwelling hereby permitted, two parking spaces shall have been laid out within the site in accordance with the approved plan (Drawing Number 2015121/20 Rev.B). The approved parking spaces and associated turning area shall thereafter be maintained free from obstruction and available for parking use and turning use at all times.