



Appeal Decision

Site visit made on 7 June 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th July 2022

Appeal Ref: APP/A1530/W/21/3277732

Land West of Oxley Parker Drive, Mill Road, Colchester

- 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 Eastern Counties Educational Trust Ltd against the decision of Colchester Borough Council.
 - The application Ref 193145, dated 3 December 2019, was refused by notice dated 8 March 2021.
 - The development proposed is Outline application (all matters reserved) for the construction of up to 40 dwellings, public open space and associated infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). The appeal process has provided sufficient opportunity for the main parties to comment on it and I have had regard to it in considering this appeal.
3. The application is for outline planning permission with all matters reserved. I have had regard to the Indicative Site Layout Plan but only insofar as it is illustrative.
4. Both parties have referred to the emerging Section 2 Local Plan. In addition, the Council informed me that the plan was to be considered for adoption at a meeting of the Full Council on 4th July 2022. However, despite numerous requests to ascertain the outcome of the Full Council meeting, neither the Council nor the appellant have indicated whether or not the plan has been adopted. I must consider this appeal on the evidence before me and I have proceeded on that basis. Therefore, given the limited information I have been provided with in relation to the emerging Local Plan (including whether or not there are unresolved objections to relevant policies), I can only afford it minimal weight.
5. During the course of the appeal process the appellant provided a Unilateral Undertaking (UU), which amongst other things, sought to address the Council's reasons for refusal in relation to affordable housing contributions (Reason two) and Special Protection Area mitigation (Reason three). The Council has confirmed that it is satisfied that the UU addresses reasons for refusal two and three. I have therefore considered this appeal on that basis.

6. Given that I am dismissing the appeal, it is not necessary to consider whether the planning obligation meets the tests set out under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations). Notwithstanding this, for the purposes of considering the benefits associated with the proposed development, I have assumed that the contributions and obligations in the UU would be made. This represents a best-case scenario for the appellant.
7. With regard to the third reason for refusal, notwithstanding the Council's indication that this reason for refusal has been addressed, there is insufficient evidence before me to identify exactly which protected site or sites the Council is referring to (albeit the UU does specify various European Sites). Nonetheless, given that I am dismissing the appeal on other grounds it is not necessary to consider this matter further, nor undertake an appropriate assessment.

Main Issue

8. The main issue is the effect of the proposed development on the provision of open space within the local area.

Reasons

9. The appeal site comprises an area of grassland which is located adjacent to residential development on Oxley Parker Drive. Based on observations during my site visit, the grassland appears to be unmanaged and the site is privately owned and not publicly accessible. The evidence before me indicates that the land formerly provided playing fields associated with a school, which has now been demolished. The evidence also indicates that much of the undeveloped land surrounding the site is subject to plans or permissions for housing development. The appeal site is allocated within the Development Policies Document¹ as 'Open Space' and within the emerging Local Plan² as 'Public Open Space'. The proposal is for a residential development comprising 40 dwellings, public open space and associated infrastructure.
10. Sport England's initial consultation response to the Council makes clear that they are not a statutory consultee given that the land has not been used as a playing field for more than five years. The response also notes that Sport England opposes the loss of playing fields or land last used as playing fields unless one or more of five exceptions within its playing fields policy apply.
11. As such, it is clear that Sport England's response is focused on the loss of the site in relation to its former use as a playing field. However, the appeal site is allocated as open space and is not currently in use as a playing field. Indeed, it should be noted that open space goes well beyond the provision of playing fields. The Framework defines open space as 'all open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity'.
12. Therefore, whether or not the site is suitable for the provision of playing fields is not the only factor of consideration with regard to its suitability as an area of

¹ Colchester Borough Council Local Development Framework – Development Policies (Adopted October 2010, revised July 2014)

² Section 2 Colchester Publication Draft Local Plan (October 2021)

- open space. Other forms of open space could be provided on the appeal site and the adopted and draft allocations do not preclude this.
13. The appellant has provided a copy of a masterplan pursuant to an application for planning permission to the north of the site (Council reference: 190665). This does include some informal open space but it is by no means certain that this will come forward, particularly given that it is understood that the application is yet to be determined.
 14. Development Policies Document Policy DP15 sets out the Council's approach to the retention of open space. It states in part that development which includes the change of use of existing or proposed public or private open space will not be supported unless certain criteria are met. The first of the relevant criteria requires that alternative and improved provision will be created in a location well related to the functional requirements of the relocated use and its existing and future users.
 15. The proposed development would include small areas of open space on-site, but these would be nowhere near equivalent to the amount of open space capable of being accommodated on the appeal site at present. As such, the appellant has sought to meet the first criterion of Policy DP15 through the provision of a financial contribution secured via a UU.
 16. Sport England, in response to this appeal, has provided advice on the appellant's proposal to provide a commuted sum to mitigate the loss of the former playing field. The representations also make clear that the site is actually capable of providing more than one playing field (subject to the provision of changing facilities) but that from a strategic perspective it would be better to invest in expanding or enhancing an existing larger playing field site elsewhere. This runs contrary to the appellant's suggestion that the site is a superfluous area of land which is incapable of delivering playing fields.
 17. The UU sets out provision of a sum of £483,504 for an 'outdoor sport contribution'. However, it does not identify a specific alternative area of open space to be created, expanded or improved. As part of this appeal, the Appellant has provided details of the locations and extent of existing open space within the local area. However, none of these sites have been specified within the UU.
 18. Sport England's representations outline that a specific playing field associated with the contribution would need to be identified and agreed. However, the representations also indicate that if no such site can be identified, then the UU could broadly define an area (with reference to the Playing Pitch Strategy and Action Plan 2015) within which an appropriate playing field project could be identified.
 19. Indeed, the appellant has opted to incorporate, within the UU, wording requiring new, extended or enhanced playing field projects to be identified within the Central/East analysis area identified in the Council Playing Pitch Strategy and Action Plan (2015). However, whilst there is potential for a project or projects to be identified which would be located in close proximity to the appeal site (and serve the same existing and future residents) the Central/East area referred to is large and includes a population of over 120,000. As such, there is no certainty that the UU would ensure that provision would be secured within an area serving the existing and future local

population (comprising those who would have utilised the open space had it been provided on the appeal site).

20. For this reason, there would be no certainty that 'alternative and improved provision will be created in a location well related to the functional requirements of the relocated use and its existing and future users' as required by both Policy DP15 and emerging Policy DM17. The appellant's evidence focuses on the provision of playing fields. However, the evidence before me does not demonstrate that other types of open space, which would primarily serve residents in the local area, would not be appropriate, suitable or policy compliant. Indeed, in this context, the 'functional requirements' can reasonably be considered to relate to open space functions to serve the population of the local area within which the allocation is located.
21. The proposed development would have a harmful impact on the future provision of open space within the local area, with no certainty that suitable alternative and improved provision can be provided locally. As such, the development would be contrary to Policy DP15.
22. The proposed development would also conflict with Policy DM17 for the same reasons, given that its requirements are almost identical to those of Policy DP15. Whilst the emerging Local Plan is at an advanced stage, I have not been provided with copies of representations in relation to Policy DM17 nor information as to whether any such objections have been resolved. Indeed, the appellant has indicated that they have made such representations. As such, this policy can only be afforded limited weight.

Other Matters

23. The appellant has suggested that the Policy DP15 is based on out-of-date evidence and has provided a summary of open space within the surrounding area. However, this does not include sufficient information to demonstrate that there is a surplus of open space provision, it merely shows that there are several open spaces within the broad surrounding area (many of which are beyond a reasonable walking distance). Furthermore, the allocation of the site under Policy DP15 is consistent in broad terms with the emphasis at Framework Paragraph 84 on the retention and development of accessible local community facilities, including open space.
24. Indeed, as with housing provision, there is no maximum cap on the provision of open space. Incidentally, the Council can currently demonstrate a housing land supply in excess of five years. As such, even if the Borough does have a surplus of open space, this is not preventing the Council in meeting housing needs within the Borough. For these reasons Policy DP15 can be afforded full weight.
25. With regard to housing supply, I recognise that a five-year supply of deliverable sites for housing does not represent a ceiling figure. Indeed, there would be significant social and economic benefits arising from the provision of market and affordable housing as a result of the proposed development, which also represents an efficient use of land. However, these benefits are not sufficient to indicate a decision should be made other than in accordance with the development plan. This conclusion is only further re-enforced by the inclusion of the site as an area of open space within the emerging Local Plan.

26. The fact that the site is currently in private ownership and is not currently accessible to the public is not a factor which outweighs the harm which would be caused to the future provision of open space within the local area. This is because the existing allocation is consistent with the emphasis at Framework paragraph 15 on a plan-led system. This is an objective which would be fundamentally undermined by the development. The fact that access to the public has not historically been granted does not mean that this will not be forthcoming in the future. Indeed, there is no substantive evidence before me to indicate why the site could not be made accessible in the future. Therefore, this is not a consideration which outweighs my findings.
27. The application is in outline and as such, the design of the proposed development cannot be said to be a benefit which weighs in favour of the scheme. Even if it were to be accepted that there was a benefit in this regard, it would not outweigh the conflict with the development plan.
28. I recognise that the appellant is a charity which carries out beneficial work elsewhere, but this is not a factor which outweighs the harm which I have identified.
29. There have been a large number of representations made from members of the public and Myland Community Council. Some of these refer to the loss of open space but many other issues are also raised. Nonetheless, given that I am dismissing the appeal on other grounds it is not necessary to consider these matters in further detail.

Conclusion

30. The proposed development would have a harmful impact on the provision of open space within the local area and it would therefore conflict with the development plan taken as a whole. There are no material considerations of sufficient weight to indicate that a decision should be made other than in accordance with the development plan. As such, the appeal is dismissed.

Luke Simpson

INSPECTOR