



Appeal Decision

Site visit made on 22 November 2022

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 16 January 2023

Appeal Ref: APP/A1530/W/22/3294044

West Oaks, Foxes Lane, Eight Ash Green, CO6 3PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr P Walker against the decision of Colchester Borough Council.
- The application Ref 212729, dated 5 October 2021, was refused by notice dated 30 November 2021.
- The application sought planning permission for demolition of three bed detached house with adjoining conservatory and associated outbuildings. Erection of new five bedroom two storey detached dwelling including separate garage without complying with a condition attached to planning permission Ref 181199, dated 18 June 2018.
- The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers SKK2041- 101P04, SKK2041- 102P04, SKK2041-103P04, SKK2041-104P04, SKK2041- 105P04, SKK2041- 106P04, SKK2041-107P04, SKK2041-108P04, SKK2041-110P03 and the submitted Arboricultural Impact Assessment, Arboricultural Methods Statement and Tree Protection Plan (Ref. 180201).
- The reason given for the condition is: For the avoidance of doubt as to the scope of this permission and in the interests of proper planning.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In July 2022, subsequent to issuing the decision for the appeal proposal the Council has adopted the Colchester Borough Local Plan 2017-2033 Section 2 (2022)-the Local Plan Section 2- which now carries full weight. The local development plan is, therefore formed of the Colchester Borough Local Plan 2017-2033 Section 1 (2021) -the Local Plan Section 1- and Local Plan Section 2. With the adoption of the Local Plan Section 2 the policies within the Colchester Borough Core Strategy are now out of date.
3. The Council has identified the following policies from the current Development Plan as being of relevance to this appeal: -
 - Section 1 Plan Policy SP7;
 - Section 2 Plan Policy DM15; and
 - Section 2 Plan Policy DM16.

4. I have, in the interests of fairness and natural justice, provided the appellant with the opportunity to comment on the above policies in regard to his appeal.
5. The Council has raised concerns that, as Condition 6 has not been cleared by the Council the permission may have lapsed or be in breach of conditions. At the time of my visit the dwelling previously occupying the site had been demolished and the main structure of the new dwelling and separate garage had been built, albeit not in accordance with the plans set out in Condition 2 of the original permission (Council Ref 181199) -the 2018 permission. Condition 6, in substance, prohibits the development beginning until all trees, shrubs and other natural features not scheduled for removal on the approved plans have been safeguarded to the satisfaction of the Council.
6. Whether, or not, the current works are in breach of the 2018 permission and should be subject to enforcement action is a matter for the Council to determine.

Main Issue

7. The main issue is the effect that varying Condition 2 would have on the character and appearance of the site and the surrounding area, having particular regard to local and national policies for design.

Reasons

8. The appeal site lies in a rural area of open land containing sparse development and small settlements or groups of buildings. Nearby buildings exhibit variety in their design, but, overall, the character and appearance of the area is of tranquil countryside with occasional built form, sometimes in groups of buildings of simple, unfussy, predominantly traditional rural design and detailing.
9. The appeal site fronts onto Foxes Lane. At the time of my site visit a two storey dwelling and detached garage were being built and these had reached a late stage of construction. Mantills Farmhouse, a Grade II Listed Building (the LB), lies adjacent to the site. Behind and to the south of the site lies open farmland. The site contains numerous mature trees and other planting. The planting along the boundary with the LB and to the rear of the site is dense and limits views into and out of the site. The front of the site is more open. The planting along the southern boundary, whilst restricting visibility into and out of the site to a degree, is less dense than that to the rear, or between the site and the LB.
10. The works as constructed differed in detail from the details provided on the approved drawings listed within Condition No 2 of the 2018 permission. The proposal seeks to substitute revised drawings which show altered detailing.
11. In the Officer's Report the Council identifies four main issues of concern relating to proposed changes in design, relating to; -
 - Changes to the front porch;
 - Alterations to the number and size of rooflights;
 - Changes to the fenestration on the rear elevation, replacing a single, glazed panel with a variety of windows; and
 - Alteration of the size of the rear balcony and details of its glazing.

12. The overall design of the building in the 2018 permission would have resulted in a simply-detailed, unfussy building of a rural character., including some neo-vernacular references, which acted to break up the massing of the elements.
13. During my site visit I observed several porches attached to dwellinghouses, however porches were not a predominant feature of the locality. The amended design provides an open alternative to the glass enclosed structure as shown on the 2018 permission. This unenclosed design appears more in keeping with traditional rural architecture.
14. The locality has examples of narrower and wider porches. However, the porch, as constructed, has an increased in width and depth and becomes a much more prominent feature on the front of the building than that originally shown of the approved drawings. In this case, the increase in width apparent on the timber uprights on the elevation drawings that I have been provided with, for the approved and proposed schemes, results in a change in roof slope. Whereas the slope of the porch roof reflected that of the roof of the projecting front gable, there is now variance between the two. This produces a discordant mismatch of roof slopes, and, together with a more complicated design than the original, results in a heavier-looking, dominant, eye catching feature on the front face of the building and, taken overall, provides a more discordant feature than that of the 2018 permission.
15. The balcony, as constructed features substantial white metal members with a shiny finish and the glazing panels are larger. Taken together, these give the balcony a more modern industrial appearance than is illustrated on the approved drawings. The overall result is a heavier-looking structure than that shown on those drawings that is at more odds with those details and materials used elsewhere on the building that are more reflective of rural vernacular architecture.
16. The 2018 permission incorporated a large, single window element in the rear face of the dwelling. On the original design this provided an acknowledgement to the large opening of a midstrey in a traditional barn and reflective of treatments of such features in barn conversions, and this approach was acceptable to the Council. Whether, or not, this was the original intent of the architect, the feature provided reasonable grounds for such interpretation. The proposed design replaces this with separate glazing elements at ground and first floor, separated by a prominent horizontal feature, disrupting the simplicity of the design solution featured in the 2018 permission with the result of undermining the rural vernacular referencing of the original design as permitted.
17. The proposal would add an additional rooflight to the front face of the main roof. Both of the proposed rooflights would be larger than that originally proposed. This would increase the prominence of the rooflights in views from Foxes Lane, making them a more dominant feature in the main roof than that illustrated in the original proposal.
18. I note that, overall, there has been no increase in the number of rooflights. However, I have considered the proposal with regard to its effect on the overall design structure. The replacement of one feature with a similar one on another element, in this case, moving a window from a rear roof slope to a front roof slope has other impacts beyond maintaining numerical totals.

19. Whilst there are limited views of the rear of the dwelling from the public realm, features on the front are clearly visible from the road. During my site visit, whilst approaching the site from the south along Foxes Lane, my attention was drawn by the bright, reflective nature of the materials on the balcony projecting to the rear of the dwelling. The materials used in its construction give an unwarranted prominence to the balcony. The southern boundary to the site is less well screened by planting, particularly during the winter months, leaving the balcony noticeable from the road.
20. The proposed changes would have the effect of diminishing the referencing of the design to rural vernacular architecture and would, when compared to the permitted scheme reduce the effectiveness of the proposal in fitting in with its rural surroundings. The balcony, porch and rooflights to the front roof slope would be clearly visible from the public realm.
21. Whilst the rear glazing would be well-screened by existing planting and experienced only from within the site, from viewpoints to the rear of the property, I am mindful of the aims of Paragraph 135 of the National Planning Policy Framework – 2021- (the Framework) that “Local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used)”. The alterations to the rear fenestration, particularly taken in conjunction with other proposed changes, would reduce the referencing of the original design to the ruralism of the location and vernacular architecture which I have identified above as important to the character and appearance of the locality. These changes would therefore result in harm to the character and appearance of the building and the surrounding area.
22. Additional planting could be provided, seeking to reduce the visibility of the discordant features from the wider area, and this could be secured by a planning condition. However such planting would take time to establish, and there is no evidence before me to show that it would be successful in screening the harmful aspects of the proposal.
23. Decisions regarding aesthetics should be based on professional judgement, rather than personal taste and, whilst the main parties dispute the merits of the case, I have determined it on the basis of the respective evidence presented to me.
24. There is no dispute between the parties that the plans approved under the 2018 permission contained inconsistencies in regard to the details of the balcony. However it has not been demonstrated that the proposal before me is consistent with either version of the balcony approved in 2018.
25. It is understood that some details may need to alter during the life of a project to satisfy the requirements of, amongst other things, building control. However there is no evidence before me to demonstrate that there are no alternatives to the design solutions selected in regard to the structural integrity of the balcony or the glazing on the rear façade that would satisfy the requirements of the Building Regulations or address difficulties in sourcing suitable materials that would not result in the harm that I have identified.

26. I note the selection by the appellant of vernacular materials for the porch and a "conservation" style of rooflight. However, in themselves, these measures do not address the harm that I have identified to the character and appearance of the site and surrounding area.
27. I therefore conclude that varying the condition would result in harm to the character and appearance of the site and the surrounding area, having particular regard to local and national policies for design. It would, therefore be contrary to Policy SP7 of the Local Plan Section 1 and Policy DM15 of the Local Plan Section 2, in as much as these policies seek to ensure that all new development meets high standards of design, requiring that it, amongst other things, respects and, wherever possible, enhances the character of the site, its context and surroundings; responds positively to local character and context to preserve and enhance the quality of existing places and their environs; and provide buildings that exhibit individual architectural quality within well-considered public and private realms.
28. For the reasons set out above the proposal would also be contrary to the aims Paragraph 135 of the Framework.

Other Matters

29. The appeal site lies in close proximity to the LB. Had I been minded to allow the appeal I would have been required to consider the effect of the proposed changes to the permitted scheme on the LB and its setting in accordance with the statutory duties imposed on me by the Planning (Listed Buildings and Conservation Areas) Act 1990. However, as I have dismissed this appeal for other reasons this matter cannot affect the outcome of this appeal and so I have not considered it further.

Conclusion

30. Varying Condition 2 and allowing the development to proceed in accordance with the revised drawings would be contrary to the development plan and the aims of the Framework, and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal fails.

I Dyer

INSPECTOR