



Appeal Decision

Site visit made on 17 November 2022

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 February 2023

Appeal Ref: APP/A1530/W/22/3291688

Hewthorn, Anglesea Road, Wivenhoe CO7 9JR

- 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 Mr Simon Weir against the decision of Colchester Borough Council.
 - The application Ref 212141, dated 30 July 2021, was refused by notice dated 26 November 2021.
 - The development proposed is demolition of existing dwelling and partial demolition of existing boundary wall, erection of 2 no semi-detached dwellings (Use Class C3), creation of off-street car parking, and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Colchester Local Plan 2017-2033 Section 2 (Local Plan Section 2) was adopted in July 2022. The Council has confirmed that the policies they refer to from the Development Plan Policies document (adopted 2010, amended 2014) and the Core Strategy (adopted 2008, amended 2014) are now superseded by the adoption of the Local Plan Section 2. The Council has provided copies of those policies from the Local Plan Section 2 which they consider relevant.
3. Both parties have had an opportunity to comment on the adoption of the Local Plan Section 2 and the updated list of policies, and so are not prejudiced by this change. While the appellant contends some of the Local Plan Section 2 policies referred to by the Council do not correspond with the superseded policies listed in the decision notice, I am required to consider the appeal in the context of the development plan currently in place and have had due regard to the adopted policies before me where I consider they are relevant to the proposal.
4. The appellant submitted a Phase 1 Geo-Environmental Desk-Study and Preliminary Risk Assessment as part of their final comments on the appeal. I am not aware that this information has been subject to public consultation. However, as this is primarily a technical matter in which the views of third parties are unlikely to be decisive, I am satisfied that no injustice would occur should I determine the appeal on the basis of this information. Furthermore, the Council has had an opportunity to comment on the additional information and has confirmed that, subject to planning conditions, this appropriately addresses their second reason for refusal, concerning the vulnerability of the proposal to contamination.

5. The appellant also submitted a signed unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 as part of their appeal submission. The Council has also confirmed that this addresses their third reason for refusal, concerning the failure to provide a legally binding mechanism to secure a range of planning obligations required in association with the proposal.

Main Issue

6. The main issue in this case is therefore the effect of the proposal on the character and appearance of the area, including the Wivenhoe Conservation Area (CA) and existing building, and whether there is clear and convincing justification for any identified harm.

Reasons

7. The appeal site comprises a large detached traditional dwelling (Hewthorn) and its associated curtilage. It features a frontage onto Anglesea Road, an unadopted route with a gravel surface, and is in a prominent location at a bend in the road. The site is located inside but close to the boundary of the CA, which is delineated by a railway cutting to the north. To the rear, the site slopes down towards the open countryside and river Colne beyond. Hewthorn sits in an elevated position when approaching from the south and at the entrance to the CA when approaching from the north.
8. The evidence indicates the building was constructed circa 1900. Its notable features include a red brick exterior with red brick detailing, a slate pitched roof with chimneys, a projecting gable to the front, an external porch with a brick archway and glazed timber door, and timber sliding sash windows with vertical emphasis. Though there have been later additions to the side and rear, from the front the building remains largely unaltered. I saw on my site visit however that it is now in a state of disrepair, having been vacant for some time, and the land around it is somewhat unkept.
9. The appellant acknowledges the CA character appraisal identifies Hewthorn as a building of townscape merit. I note from the decision in the previous appeal case (ref APP/A1530/W/20/3255231) that the Inspector also highlighted Hewthorn as a well-preserved example of good quality domestic architecture, displaying details and materials of its era. The appellant's Built Heritage Statement similarly recognises it is a good example of modest, domestic, turn of the century architecture. The Council considers the building to be intrinsically a Non-Designated Heritage Asset (NDHA) and that it meets the criteria for inclusion in the local list.
10. I recognise the building is not on the Council's local list, however the entry of a building in a local list or the Historic Environment Record is not a pre-requisite for it being considered a NDHA. Despite its current condition, Hewthorn remains an attractive example of the domestic architecture of its time. I saw on my site visit that its prevailing features can still be appreciated from public vantage points, and it remains a prominent building that positively contributes to the street scene. I do not find the current condition of the building to have significantly harmed its value in terms of architectural interest or townscape merit. The evidence and my own observations therefore lead me to conclude that the building is of sufficient value to be considered a NDHA.

11. The surrounding area is residential in nature. The street scene along this section of Anglesea Road is characterised primarily by traditional dwellings. Opposite the appeal site there is a row of terraced houses that sit close to the road, enclosing the street. On the appeal site's side of the road however, dwellings are typically detached or semi-detached, with space between providing a greater sense of openness and sporadic views of the landscape beyond. A few contemporary houses are interspersed amongst the traditional dwellings in places.
12. The significance of this part of the CA relates to its formation as part of the late nineteenth and early twentieth century suburban development that grew around the earlier core of Wivenhoe. Given my findings above, I consider Hewthorn is sufficiently well preserved that it continues to positively contribute to the character and appearance of the area, and the significance of the conservation area as a constituent part of the town's historic expansion.
13. Paragraph 197 of the National Planning Policy Framework 2021 (the Framework) indicates that local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation. Paragraph 199 stipulates that when considering the impact of a proposed development on the significance of a designated heritage asset, in this case the CA, great weight should be given to the asset's conservation. Paragraph 200 confirms that any harm to the significance of a designated heritage asset should require clear and convincing justification. Paragraph 203 advises that the effect on the significance of a NDHA should also be taken into account in determining an application. A balanced judgement is required having regard to the scale of harm or loss and the significance of the heritage asset.
14. The demolition of Hewthorn would result in total loss of the NDHA and its significance. Additionally, given my findings on the continued contribution of the building to the character and appearance of the area, I agree with the appellant's Built Heritage Statement and the Council that this would result in less than substantial harm to the significance of the CA. The appellant considers this harm to be low level. However, given the prominent location of the building and its positive contribute to the significance of the CA, and as the proposal will result in its total loss, I do not agree with this conclusion.
15. The appellant considers that demolition of Hewthorn and associated harm to the conservation area is inevitable due to the current poor condition of the building, structural deficiencies and the prohibitive costs associated with its repair and restoration. A building survey and estimate of the costs associated with restoration of the building have been provided in support of the proposal. The appellant has also provided details of their attempts to market the property, which they consider further demonstrates that it is extremely unlikely that there is a viable use of the building that is consistent with its conservation.
16. The submitted Building Survey Report (BSR), prepared in March 2019 and updated in June 2021, suggests the standard of construction of the dwelling was poor. It indicates the building has been subject to structural movement over many years beyond what would normally be expected, which has presented itself in various ways including numerous cracks, repairs and distortion to external brickwork and similar damage to internal finishes. It concludes widespread major structural repairs are required to reduce further

serious movement and that this would not be economical. The later update to this report indicated the condition of the house had worsened, and that it is now beyond a state of reasonable repair. It also warns that the movement of the building may eventually result in collapse. The Estimate of Construction Costs (ECC) prepared in July 2021 indicates that the repair and renovation of the building would cost approximately £470,000, excluding VAT.

17. I observed on my site visit various cracks and other areas of damage both inside and outside the building. However, an independent assessment of the property, and the information contained within the BSR and ECC was undertaken in September 2021 by a Conservation Accredited Engineer of Morton Partnership Structural Engineers (the MP report). This found that the original construction of the building was of reasonable to good standard, with no evidence of sub-standard workmanship or materials. It verifies that the building has been subject to reasonably significant movement in places, though not to a degree where collapse is likely. The MP report also indicates that the initial costs estimate included a significant amount of unnecessary work. It advises that a reduced approach would result in less expenditure. A revised estimate of approximately £349,000, excluding VAT was also provided.
18. I recognise this revised figure does not include additional likely costs of rectifying ongoing movement, which could be at least £50,000, nor does it account for replacement of the garden room or VAT. However, the ECC is also exclusive of VAT, it is not clear that it included the cost of the garden room, and it likewise does not account for additional costs that may arise should traditional and deeper underpinning be necessary. Even with the additional costs included therefore, it appears to me the revised figure remains considerably lower than that calculated by the initial ECC.
19. I acknowledge that the costs of repair and renovation of the property are, by any measure, likely to be significant. However, this remains contingent on the outcome of any further investigations and on the approach taken to the renovation. I also agree that prospective purchasers are likely to be put off by the extent of movement and want this risk factored into the price, or further investigations carried out to ascertain the full extent of the work.
20. The property was marketed at £600,000 in the first part of 2021, with incremental price reductions over time to £500,000. The lower price was advertised for approximately 2 months. Notably, marketing was carried out before the ECC was prepared and therefore, based on the evidence before me, without details of the costs that may be associated with the repair and renovation. Details of the market value of the property were it to be repaired and renovated are not before me. However, the marketing information confirms the average four-bedroom home in this location sells for £750,000. In view of this and the likely costs associated with the repair and renovation of the property, I am not convinced the prices at which the property was marketed adequately reflects the likely extent of work and associated costs.
21. While I consider the length of time the property was on the market to be relatively short, I recognise considerable interest was expressed in this time. Despite numerous viewings, no offers were made, with feedback raising concerns about the amount of work required and the property being uneconomical to repair. I consider however that this reinforces the above findings and suggests the house had been overvalued given its condition.

22. While there is no specific policy requirement to provide marketing information in this instance, the above information adds valuable context to the estimated cost figures, and I consider this approach is proportionate to the building's relative significance and its contribution to the significance of the conservation area, in line with the Planning Practice Guidance (PPG).
23. The Appellant contends that the nature and extent of repairs needed would likely result in the further loss of much of the historic value of the property. However, this would also depend on the approach taken. Full details of the minimum work necessary and how this may affect the prevailing features of the building are not before me. Furthermore, I note the MP report indicates that, as it stands, it can be repaired relatively easily. There is therefore no compelling evidence to demonstrate that it is likely that repairs to the building will harm its value in terms of architectural interest or townscape merit. I accept that should no further action be taken the building is likely to gradually deteriorate, which could eventually result in harm to the building and the CA in any event. However, the evidence before me does not suggest this is an inevitable outcome of the dismissal of this appeal.
24. Given the lack of certainty in the amount of work and costs associated with the repair and renovation of the building, and the limitations of the marketing exercise before me, I do not consider that the evidence adequately demonstrates retention of the building is unviable or that it is beyond repair. It therefore does not provide clear and convincing justification for the harm to the significance of the conservation area associated with the loss of the NDHA.
25. With respect to the proposed replacement dwellings, these would be a maximum of two storeys in height, with traditional materials and detailing that would be largely sympathetic to neighbouring buildings and the character of the wider area. The main two storey sections of both dwellings would also be of a form that is in keeping with the existing dwellings along the street.
26. The proposal however includes attached garages to each dwelling with living accommodation above. These connect the two dwellings and, as a result, the proposal would fill most of the width of the plot. This would be a noticeable departure from the more spacious characteristics of the existing site. It would also be at odds with the prevailing pattern of development on this side of the street which, while including narrow and / or semi-detached dwellings, typically retains gaps between buildings sufficient to allow views of the greenery and countryside beyond to permeate and soften the edge of the built-up area. This would also be exacerbated by the additional height of the proposed garages viewed from the front, required to facilitate the living accommodation above. I therefore do not consider that the proposed dwellings positively respond to their context or adequately reflect the prevailing characteristics of the area.
27. The appellant contends that the previous appeal decision established the principle of an additional dwelling along the frontage of the site. However, that was for a different proposal to the one before me, including a low-level infill dwelling alongside retention of the existing house. The inspector concluded the effect on the character and appearance of the area was acceptable in that instance. Ultimately, however, each case must be considered on its own merits.
28. I conclude that the appeal proposal would harm the character and appearance of the area, including the CA and the existing building on the site, for which there is no clear and convincing justification. It would therefore fail to preserve

or enhance the character or appearance of the CA, contrary to the clear expectations of statute in this respect¹.

29. The proposal does not comply with Policy SP7 of the Local Plan Section 1 and Policies ENV1 and DM16 of the Local Plan Section 2. These policies, amongst other things, seek to conserve and enhance Colchester's history and historic environment, including the significance of heritage assets and any features of specific historic or architectural interest.
30. With respect to the balancing exercise in Policy DM16 of the Local Plan Section 2 and paragraph 202 of the Framework, less than substantial harm would be caused to the significance of the CA, which is a designated heritage asset. The proposal would marginally increase the supply of housing, temporarily provide construction jobs and improve the maintenance of soft landscaping on the site. Full details of potential ecological enhancements and additional landscaping are not before me however and so can be given little weight. Given the scale and context of the proposal, I consider these public benefits to be modest and insufficient to outweigh the identified harm.
31. The proposal also conflicts with Policy SP7 of the Local Plan Section 1 and Policy DM15 of the Local Plan Section 2 in respect of their aims of ensuring all development is designed to a high standard that respects and, where possible, enhances the character of the site, its context and surroundings, including in terms of layout, form, density, proportions, townscape and landscape qualities.
32. For similar reasons, it is contrary to Policy WIV 13 of the Wivenhoe Neighbourhood Plan 2019-2033 which, amongst other things, requires that proposals for development on garden sites in Wivenhoe reflect the character of the surrounding townscape and avoid the appearance of cramming and the loss of gardens which are visually or functionally important to it. The proposal would also be contrary to paragraph 126 of the Framework which seeks to achieve the creation of high quality, beautiful and sustainable buildings and places, and highlights that good design is a key aspect of sustainable development.
33. Policy DM12 of the Local Plan Section 2 concerns the quality of housing in terms of the effect on the living conditions of future occupiers and occupiers of neighbouring properties, accessibility, vehicle parking standards, refuse and recycling, broadband provision and fire safety. I therefore do not find direct conflict with this policy in respect of the main issue.
34. Policy SG1 of the Local Plan Section 2 seeks to locate growth in the most accessible and sustainable locations in accordance with the spatial strategy for North Essex. I have not identified any direct conflict with this policy based on the evidence before me.

Other Matters

35. A planning condition could be used to ensure the demolition of the existing building facilitates historic building recording and the public dissemination of this information. However, paragraph 205 of the Framework indicates that the ability to record such evidence should not be a factor in deciding whether such loss should be permitted. This has therefore not been a decisive consideration.

¹ Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

36. I also recognise that the submitted unilateral undertaking provides a mechanism to secure various planning obligations required in association with the proposal. As these would be to address impacts arising from the development however, this is a neutral consideration in the planning balance.
37. While there may not have been significant opposition to the scheme evident through the public consultation, and several representations expressed support, some objections were also received from interested parties. This weighs neither for nor against the proposal in this instance however and does not lead me to a different conclusion on the main issue.
38. The appeal site is within the Zone of Influence for a European designated site scoped into the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) in which proposals for new residential development have the potential to give rise to significant effects (either alone, or in combination with other proposals). As the appeal is to be dismissed for other reasons, it is not necessary for me to undertake an appropriate assessment to consider the effect on the designated site.

Conclusion

39. For the reasons set out above and having had regard to the development plan as a whole and all other relevant matters, the appeal is dismissed.

Ryan Cowley

INSPECTOR