



Appeal Decision

Site visit made on 1 March 2023

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2023

Appeal Ref: APP/A1530/W/22/3298692

Shatters Farm, Shatters Road, Layer Breton CO2 OPY

- 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 Mr Dobson against the decision of Colchester Borough Council.
 - The application Ref 213354, dated 8 December 2021, was refused by notice dated 2 February 2022.
 - The development proposed is described on the application form as cessation of use of established builders yard and erection of one dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Colchester Borough Local Plan 2017-2033 Section 2 (CBLP2) was adopted on 4 July 2022. Policies of the new plan replace those of the Colchester Borough Core Strategy (amended 2014) and the Colchester Borough Development Policies (amended 2014). I have determined the appeal on this basis.

Background and Main Issues

3. On the basis of information in the appellant's statement, the Council is no longer of the view that the proposal would result in the loss of an existing rural employment site. Accordingly, the second reason for refusal has been overcome.
4. During the appeal process the appellant has also submitted a planning obligation in relation to the fourth reason for refusal, which relates to the potential effects of the development on habitats sites. I have considered that matter at the end of my decision.
5. The main issues are therefore:
 - whether the site would be a suitable location for housing, with particular regard to accessibility to services and facilities; and
 - whether the development would result in undue risk to human health or to other relevant receptors, arising from contamination of the land.

Reasons

Location

6. Layer Breton is identified as an 'Other Village', in the third tier of the 'Spatial Hierarchy' established by CBLP2 Policy SG1, which sets Colchester's spatial strategy. The appeal site is located in the countryside close to, but outside of, the defined settlement boundary, and is therefore in the fourth, and final, tier.
7. The appeal site is not located within the defined settlement boundary for Layer Breton, but even in the village there are very few, if any, community facilities other than a church and bus stops. I have not been provided with bus timetables, but the Council advise that the service is not frequent, and there is none at weekends. With the information before me this location would therefore not provide realistic sustainable transport choices for access to essential day-to-day services. Being in the lowest tier of the spatial hierarchy, and without reasonable access to basic services and facilities other than by car, it would not be an accessible or suitable location for new housing.
8. Paragraph 79 of the National Planning Policy Framework (the Framework) seeks to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities, and I have seen no evidence demonstrating that the proposed development would do so. The Planning Practice Guidance (PPG)¹ notes the role that a wide range of settlements can play in delivering sustainable development in rural areas, and the village is acknowledged as a lower tier settlement in the Local Plan, but the appeal site is not located within the settlement for Local Plan purposes.
9. In conclusion, the development would not be a suitable location for housing, with particular regard to accessibility to services and facilities. It would conflict with Colchester Borough Local Plan 2013-2033 Section 1 (2021) (CBLP1) Policy SP3, which requires development to be accommodated within or adjoining settlements, and CBLP2 Policy SG1, which directs growth to the most accessible and sustainable locations, where real travel choice is provided and sustainable travel for different purposes is promoted throughout the day. It would also conflict with Paragraph 79 of the Framework, which is described above.
10. CBLP1 Policies SP1 and SP4, and CBLP2 Policies SG2 and OV2 establish a framework for the policies above, but I have not found direct conflict with them.

Contamination

11. The main parties acknowledge that contamination may be present on the land as a result of its use for the storage of building materials, although the appellant considers there is no evidence of chemicals or fuels being stored at the site.

¹ Paragraph: 009 Reference ID: 67-009-20190722

12. The PPG² advises that applicants should provide proportionate but sufficient site investigation information, prepared by a competent person, to determine the existence or otherwise of contamination. Such reports should establish its nature and extent, the risks it may pose, and to whom/what, so that the risks can be assessed and satisfactorily reduced to an acceptable level. It states that unless this initial assessment clearly demonstrates the risk from contamination can be satisfactorily reduced to an acceptable level, further site investigations and risk assessment will be needed before the application can be determined. As that information is not currently before me, this matter is therefore not one which can be addressed by a planning condition.
13. In conclusion, I cannot be certain that the development would not result in undue risk to human health or to other relevant receptors, arising from contamination of the land. It would therefore conflict with CBLP2 Policies ENV5 and DM1, which require applicants to demonstrate that risks to health or the environment will be adequately mitigated. It would also conflict with Paragraph 183 of the Framework, which requires planning policies and decisions to ensure that a site is suitable for its proposed use taking account ground conditions and any risks from contamination.

Other Matters

14. One new dwelling would make a small contribution to the supply of housing locally on previously developed land. It would also remove dilapidated buildings and a small number of materials stored externally. However, the Council can demonstrate a five-year supply of housing, and I have found the location to be poorly located for housing. There is only very limited visibility of materials stored externally on the appeal site³ from the road, and the grass surface of the site means it retains its rural character. Even if the appeal site were landscaped, there would be no improvement of the appearance of the remainder of the land parcel outside the appeal site to the rear. These matters therefore attract limited weight in favour of the development.
15. A Certificate of Lawful Use or Development (CLEUD) (reference COL/94/0437) was issued by the Council in 1994. In summary, the CLEUD acknowledged the establishment of the use of the land by a building contractor for storage of building materials and supplies, plant and machinery and a mechanical digger, in specific circumstances. The appellant advises that, in the event that planning permission is not granted for the proposed development, the land will be sold to a building contractor, and that noise and disturbance and other harm would occur to local residents, arising from the operation of that use.
16. The Council imply that, despite the issue of the CLEUD in 1994, it is not certain that that use it describes would currently be lawful. I have not been provided with sufficient information to determine whether or not that may be the case. For the purposes of this appeal I have therefore made my decision on the basis that the use could be operated under the terms of the

² Paragraph: 007 Reference ID: 33-007-20190722

³ An area to the rear, outside the appeal site, contains more external storage, and is more prominent.

certificate at the present day, without making any determination on that matter.

17. The CLEUD does not appear to limit hours of operation of the use, the volume of storage, or the height materials could be stored. Nevertheless, it provides very specific limitations in relation to each of its three categories. The storage of building materials and supplies is limited only to those surplus from a completed job; which will be used in an existing job; or for a job for which an agreement has already been entered into. Reference to plant and machinery is qualified by that 'such as' scaffolding, cement mixers and wheelbarrows. And the storage of a single mechanical digger is limited to one vehicle of a specific size and type. At my site visit I also noted that the site was unsurfaced.
18. It therefore appears to me that the impacts of any use which could take place in accordance with the CLEUD would be very limited. Although I attach some limited weight to these potential impacts, and the limited weight to the supply of one new dwelling, these matters would not outweigh the harm I identify in relation to the main issues.
19. Effects on the integrity of Habitats sites and on protected species, and the Council's comments on the planning obligation in relation to financial contributions for community facilities, open space, sport and recreational facilities would, at best, be neutral matters in the planning balance. Having found harm in relation to the main issues, these matters could not change my decision, and I have therefore not considered them further.

Conclusion

20. For the reasons above, I conclude the development would conflict with the development plan as a whole and the approach in the Framework. There are no other material considerations that require a decision to be made other than in accordance with the development plan, and the appeal should therefore be dismissed.

Peter White

INSPECTOR