



Appeal Decision

Site visit made on 31 January 2023

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2023

Appeal Ref: APP/A1530/W/21/3288368

Streamlines, Dyers Road, Stanway, COLCHESTER, CO3 0LH

- 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 Kenneth Glozier against the decision of Colchester City Council.
 - The application Ref 201580, dated 29 July 2020, was refused by notice dated 1 October 2021.
 - The development proposed is residential development in front garden. One 4 bedroom dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council issued its decision, it has adopted Section 2 of the Colchester Borough Local Plan 2017-2033 in July 2022. Therefore, the development plan for Colchester City now comprises the adopted Section 1 and Section 2 of the Colchester Borough Local Plan (LP).
3. It is incumbent upon me to base my decision upon the most up to date planning policy and this is what I have done. The policies in the LP supersede those referred to in the Council's delegated report. The parties have had an opportunity to address these changes in policy.
4. The original application was made in outline but with all matters to be considered. I have dealt with the appeal on this basis and I have confirmed with the council that this was also how they considered the original application.

Main Issues

5. The main issues in this appeal are:
 - the effect of the development on the Colne Estuary SPA and Ramsar site, Blackwater Estuary SPA and Ramsar site, Dengie SPA and Ramsar site, Stour and Orwell Estuaries SPA and Ramsar site (south shore) and Essex Estuaries SAC;
 - the effect of the development on the character and appearance of the area, with particular reference to trees; and
 - whether the proposed development would provide acceptable living conditions for future occupants, with regard to amenity space.

Reasons

Designated sites

6. The site is within the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) zone of influence for the Colne Estuary SPA and Ramsar site, Blackwater Estuary SPA and Ramsar site, Dengie SPA and Ramsar site, Stour and Orwell Estuaries SPA and Ramsar site (south shore) and Essex Estuaries SAC. The Essex coastline is one of importance for birds and their habitat. It is home to internationally important numbers of breeding and non-breeding birds and their coastal habitats.
7. The proposed development falls within the scope of the RAMS as relevant development. Given that the proposal is for additional housing, and its proximity to the designated sites there is a reasonable likelihood that it would be accessed for recreational purposes by future occupants of this development. This additional activity would have the potential, either alone or in combination with other development in the area, to have a likely significant effect on the European sites.
8. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPAs and SAC. The likely significant effects arising from the proposal need to be considered in combination with other development in the area and adopting the precautionary principle.
9. The Essex Local Planning Authorities within the Zones of Influence have developed a mitigation strategy to deliver the measures to address direct and in-combination effects of recreational disturbance on SPAs and SACs. The RAMS sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England (NE), I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPAs and SAC. A tariff to fund the mitigation, which is payable for all additional new dwellings is set out within the RAMS.
10. Whilst the appellant has not indicated an unwillingness to pay this contribution I have not been provided with a signed and dated Unilateral Undertaking making provision for the required contribution. Accordingly, without such mitigation, I am unable, therefore, to conclude other than that the proposed development would have an adverse effect on the integrity of the SPAs and SAC.
11. Moreover, it would also fail to comply with policies ENV1 and SG7 of the LP, which require measures to be secured which mitigate the impact of recreational disturbance on habitats sites.

Character and appearance

12. The proposed dwelling would be located fronting onto and accessed from Dyers Road which is characterised by the existing hedging and large trees which exist along the front boundary with a wooded area opposite. This contributes to a semi-rural feel which is disrupted by a newly constructed housing estate including an electricity substation located on the side boundary of the appeal site.
13. The site is subject to a Tree Preservation Order (TPO) No 22/88 protecting 4 individual trees, T1 Walnut, T2 Yew, T3 Oak and T4 Oak. There are also a number of other trees within the site, some of which are of high or moderate value and should be retained for their amenity and value, which adds to the character of the area. Three Category C1 False cypress trees would be felled as a result of the proposed development.
14. The hedging along the front of the site is a mixture of Laurel Prunus and Leyland Cypress and therefore whilst it is a substantial hedge it is considered of low value within the submitted arboricultural impact assessment (AIA). The report indicates that the landscape value of the site is slightly limited as a result of the non-native stock within the site. The AIA indicates that these will be felled and replaced with hornbeam hedging.
15. On this basis the loss of the frontage hedgerow, whilst established, would not be detrimental to the rural character of Dyers Road, as the species are of limited landscape value and there would be a modest benefit to the semi rural character of the area with its replacement with hornbeam hedging. Furthermore, beyond the appeal site, the character of Dyers Road changes to that of a suburban residential development.
16. The proposed dwelling would be sited predominantly outside but close to the root protection area of the trees protected by the TPO which are located along the front and side boundary of the site. In addition, the AIA identifies that there would be seasonal tree nuisance arising from those trees and that this could include leaf and fruit dispersal. It also notes that patios and sheds should be located outside present and future crown spread to prevent future nuisance occurring. However, the proposed layout indicates that it would be possible for these areas to be provided outside of these areas.
17. The Council have suggested that the positioning of a dwelling close to the trees would place additional pressure on those trees to be removed in the future. However, given the trees closest to the proposed dwelling are protected by virtue of the Tree Protection Order, the Council would have control over any future works proposed to the trees and the evidence before me indicates that if the mitigation measures set out within the AIA were properly adhered to during the construction of the dwelling then the risk to the trees would be minimal.
18. The siting of the dwelling, fronting onto Dyers Road, would respect the wider context of the area as other examples of similar frontage development already exist.

19. Therefore, I conclude that the risk from the development to the long term health and viability of the trees is adequately mitigated and that the proposal would respect the character of the site and its context. It would also integrate within the existing built environment and arboricultural assets, in accordance with policy DM15 of the LP.

Amenity Space

20. Policy DM19 states that all new development will be expected to provide easy access to private amenity space. For 4-bedroom dwellings this would be a minimum of 100m². However, a larger amount may be required for small infill schemes to reflect the character of the area. Furthermore, proposals for infill development will not be permitted if they unacceptably reduce the amount of existing private amenity space provision for existing dwellings.
21. It is not part of the Council's case that the size of the proposed amenity space would be below the required standards. However, the size of the plot would be commensurate and, in some cases, larger than others within the locality and is therefore appropriate for the proposed dwelling.
22. Whilst part of the proposed private amenity space would be shaded by the existing tree cover, a proportion of the site would be unaffected by the existing trees. This area is closest to the living room and breakfast room and would be appropriate for an outdoor seating area.
23. There is sufficient tree cover between the existing and proposed dwelling to enable a degree of privacy and any rear boundary treatment to enclose the private garden area would not be unduly prominent. The Council have raised concerns about the introduction of boundary treatment along the frontage of the site, however the submitted plans indicate a hedgerow would be planted on the front boundary which would be appropriate in this location.
24. In conclusion the proposed amenity space would accord with policy DM19 of the LP, where the siting, orientation, size and layout would make a usable space, appropriate to the surrounding context.

Other matters

Planning obligations

25. The Council has advised that financial contributions are required towards the provision of community and leisure facilities. The appellant has not indicated an unwillingness to provide these contributions but they have cited a lack of understanding of the process and I have not been provided with a planning obligation.
26. Local Plan Policy SP6 indicates that all development must be supported by the provision of the infrastructure that is identified to serve the needs arising from the development. It sets out that it will work with developers to facilitate the delivery of a wide range of social infrastructure. Contributions will be sought to mitigate the adverse effects that new development may have on the local community and infrastructure. Policy SG7 will only be granted if it can be demonstrated that there is sufficient appropriate infrastructure capacity to support the development. Small sites can have a cumulative effect on infrastructure and proportional contributions will be sought from all developments where this is demonstrated to be the case.

27. However, I have not been provided with any detailed evidence to define the extent of any local deficiencies in community and leisure facilities or the effect that the appeal proposal might have on them. Nor has any detailed information been provided to show how and where any contributions would be spent.
28. Accordingly, I cannot be certain that the contributions sought would be necessary to make the development acceptable or that they would be directly related to the development and fairly and reasonably related in scale and kind.
29. Consequently, and notwithstanding the aims of development plan policy, I am unable to conclude that a planning obligation seeking to provide these contributions would comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010. In these circumstances, the absence of a planning obligation does not weigh against the development.

Conclusion

30. In conclusion, whilst I have found that the development would not be detrimental to the character and appearance of the area and the proposed amenity space is sufficient for the proposed dwelling, I cannot be satisfied that the appeal proposal would not cause harm to the integrity of designated habitats sites.
31. The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict. For the reasons outlined above, I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR