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# 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: 6 April 2023**

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**Appeal Ref: APP/A1530/W/22/3297000**

**Lynch Cottage, Mill Lane, Birch, CO2 0NH**

- 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 & Mrs Wright against the decision of Colchester Borough Council.
  - The application Ref 212812, dated 11 October 2021, was refused by notice dated 18 January 2022.
  - The development proposed is 4 bedroom dwelling and garage/store.
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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.

## Main Issues

4. The appellant has also submitted a duly executed unilateral undertaking in order to overcome the third and fourth reasons for refusal which I have taken into account, and I have contemplated this further later in my decision.
5. Therefore, the main issues in this appeal are:
  - the effect of the proposed access arrangements; and
  - the effect of the development on the character and appearance of the area.

## Reasons

### *Proposed Access*

6. The proposed development would be served by a vehicular access off of Public Footpath No. 13 (Birch) (PROW), which also provides access to six residential properties, including Lynch Cottage which operates as a bed and breakfast. A number of parking spaces have been provided in the verge along the north side of the access track.
7. The PROW is surfaced with unbound material and measures between 2.6m and 4.5m in width. Whilst average vehicle movements indicate that the development would not result in frequent conflicts between vehicles entering and exiting the site, as a result of its limited width and the designation as a public footpath it would also be a shared space between pedestrians and vehicles, which could lead to conflict between these users.
8. The evidence before me indicates that whilst it may be possible for pedestrians or wheelchair users to seek refuge on the grass verge, given that parts of this verge have now been given over to parking spaces there would still be times where vehicles would pass in close proximity to those pedestrians.
9. To my mind, this arrangement would place additional vehicular movements along the PROW and result in a less than ideal situation for pedestrians and would be a safety concern for those trying to access the public right of way network contrary to policy DM21 of the LP. This sets out that all new developments should seek to enhance accessibility for sustainable modes of transport and give priority to the movement of people walking and cycling. It also seeks to ensure access to developments should maintain the right and safe passage of all highway users, with priority given to the needs of cyclists and pedestrians.
10. Paragraph 100 of the National Planning Policy Framework (the Framework) states that planning decisions should protect and enhance public rights of way and access. The proposal fails to protect or enhance the existing right of way and as such also conflicts with the Framework in this regard.
11. It has been put to me that the appellant is willing to cease the use of Lynch Cottage as a bed and breakfast, and this would lead to a reduction in the traffic using Mill Lane. However, although it is suggested that the existing bed and breakfast use accommodates an average of 352 visitors a year I have not been provided with details of the number of bedrooms which are in use or the trip generation associated with the existing business.
12. Furthermore, there is nothing in the evidence before me to indicate that traffic associated with the bed and breakfast use is directly comparable to the movements associated with a dwelling or that the cessation of such use would result in an overall reduction of vehicles using the PROW.
13. I have also not been provided with a mechanism to secure the cessation of the existing bed and breakfast use or details of whether this is a use which has the benefit of planning permission or has operated under permitted development. The appellant has also not suggested that it would be willing to have a condition imposed on the proposed dwelling to prevent its future use as a bed and breakfast. Therefore, I have given this suggestion limited weight in my consideration of this appeal.

### *Character and appearance*

14. The appeal site is located off Mill Lane, to the north of the village of Birch. This part of Birch is characterised by detached and semi detached dwellings in good sized plots. The site currently forms part of the garden of Lynch Cottage and is adjacent to a large detached property, Lane End. As a result, the site does not contribute to the open rural nature which is experienced beyond the appeal site, with open fields interspersed with native hedging.
15. The site appears part of the domestic surroundings of Lynch Cottage and the grouping of housing which exists along this part of Mill Lane, rather than as part of the open countryside opposite the appeal site.
16. The development whilst increasing the density of development within the locality, would have a similar plot size to Lynch Cottage. The development of the site would result in the infilling of the existing gap between Lynch Cottage and Lane End and together with the other dwellings located off this part of Mill Lane would appear part of a small cluster of development
17. As a result of the presence of other two and a half storey development within Mill Lane, I consider that the overall height of the proposed dwelling would not appear overbearing or visually prominent within the street scene.
18. Having regard to the general character of the area with its range of dwelling styles and heights, I consider that whilst the proposal would have a wider frontage than Lynch Cottage, the dwelling would contribute to the overall character of the area and would be appropriate within the street scene.
19. Thus, the impacts on the character and appearance of the area would be limited. The introduction of a dwelling into the site would be appropriate within this rural setting, having regard to the infill nature of the existing site. The development would protect the character of this part of the countryside and result in a small infill between the existing built development.
20. In conclusion, the proposed dwelling would be in accordance with policy SP7 of Section 1 of the LP which requires all new development to reflect the local character and context to preserve and enhance the quality of existing places and their environs. It would also accord with policy OV1 and policy DM15 of Section 2 of the LP which sets out how Development in Other Villages will be supported which represents appropriate infill development and which seeks to enhance the character of the site.

### **Other Matters**

21. The appeal site falls within a 'Zone of influence' for a number of European designated sites. Natural England has provided advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations.
22. As the competent decision making authority, if I had been minded to allow the appeal it would have been necessary for me to complete an Appropriate Assessment for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

23. The appellant has submitted a unilateral undertaking which includes a contribution towards community and recreational facilities and the Essex Coast Recreational disturbance avoidance mitigation strategy. However, as I am dismissing the appeal for other reasons it is not necessary for me to consider whether the contributions are necessary to make the development acceptable in planning terms and is fairly and reasonably related to it in scale and kind or whether it would meet the tests for a planning obligation as set out in regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

### **Conclusion**

24. The proposal would conflict with the development plan and there are no other considerations, including the Framework and its presumption in favour of sustainable development, that outweigh this conflict.

25. For the reasons given above I conclude that the appeal should be dismissed.

*G Pannell*

INSPECTOR