
Appeal Decision

Site visit made on 18 April 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2023

Appeal Ref: APP/A1530/W/21/3289217

Brook Hall Cottages, Factory Hill, Tiptree CO5 0RE

- 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 Hayward against the decision of Colchester Borough Council.
 - The application Ref 201401, dated 3 July 2020, was refused by notice dated 25 August 2021.
 - The development proposed is six detached bungalows, with associated access, layout, parking, amenity and landscaping.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal seeks outline permission, with details of access, landscaping and layout submitted for consideration. I have considered the appeal on this basis and have treated any plans in relation to other matters as illustrative.
3. On 4 July 2022 the Council adopted Section 2 of the Colchester Local Plan 2017- 2033 (the LPS2). This has resulted in some of the policies referred to in the Council's decision being replaced by the newly adopted policies. I have determined the appeal on the basis of the most up to date development plan. The main parties have been invited to comment on the implications of this change and I have taken the responses received into account.
4. A Unilateral Undertaking has been submitted and I have had regard to this document in determining the appeal.

Main Issues

5. The main issues are:
 - Whether the site is suitable for new housing, having regard to the accessibility to services and facilities;
 - The effects on the setting of the Grade II listed building of Brook Hall;
 - The effects of the proposal on the character and appearance of the area.

Reasons

Accessibility

6. Policy SG1 of the LPS2 contains Colchester's spatial strategy and seeks to focus development in accessible locations to reduce the need to travel. It goes on to

provide a settlement hierarchy to focus development in the most well connected and sustainable locations for growth. The appeal site is outside a settlement boundary and in the countryside, where Policy SG1 states new development would only be acceptable where it accords with other policies OV1 and OV2, and in the countryside development will be required to respect the character and appearance of landscapes and the built environment. I return to this part of Policy SG1 below.

7. The appeal site is a short distance from Tolleshunt Knights, which is not identified as a Sustainable Settlement, or Other Village, by the LPS2. While a footpath connects the site to Tolleshunt Knights, given its size and limited number of services and facilities, that settlement would be unlikely to provide for the day-to-day needs of the future occupants of the development.
8. Tiptree to the north contains a wider variety of services and is identified as a Sustainable Settlement for the purposes of the LPS2. Despite the centre of Tiptree being approximately 1km from the appeal site, the footpath which links them is predominantly unlit and passes through open countryside. At the time of my site visit I observed the road to be fairly heavily trafficked with vehicles traveling at high speeds, albeit slowing on the approach to the settlements. As a result of these characteristics the use of the footpath would only be an attractive alternative to car use at certain times of the day and for certain types of users. It is unlikely to provide an attractive route throughout the year or to serve the daily needs of future occupants.
9. The route to Tiptree may be attractive to some cyclists, however this would similarly not be attractive to all, given the unlit nature of the route and the speed of the traffic. The bus services operating outside the site would also provide some sustainable means of transport, but this would be restricted by the operating hours of those services, which is particularly limited in the evenings and at weekends.
10. Considered in combination, the above factors lead me to conclude that future occupiers would not benefit from sustainable travel choices for different purposes throughout the day. Given these attributes the site is not a location which would reduce the need to travel and would not have suitable accessibility to services and facilities.
11. Consequently, the proposal would conflict with policies SG1 and SG2 of the LPS2 insofar as they seek to focus development in sustainable locations, and with Policy SP3 of the Local Plan Section 1 2013- 2033 (the LPS1), which reiterates those objectives. While the National Planning Policy Framework (the Framework) acknowledges opportunities to maximise sustainable transport solutions will vary in rural areas, this would not provide justification for heavily reliance of the proposal on car use and the proposal would conflict with the objectives of the Framework insofar as they seek to promote sustainable transport options.
12. Policy SG1 also links to Policy OV2 of the LPS2 in relation to development in the countryside, and this is considered further below. Insofar as this main issue is concerned I do not find conflict with Policy SP4 of the LPS1, which relates to the need for authorities in the County to provide land for housing.

Setting of Brook Hall

13. Brook Hall is a grade II listed building which adjoins the site to the north and Section 66¹ requires that special regard is given to the desirability of preserving the building or its setting. Brook Hall is described as a late 18th Century house in red brick comprising two storeys with cellars and an attic within a grey slate mansard roof. It was previously an isolated country house, historically surrounded by open space. The appellant's Heritage Statements identify that a pair of semi detached cottages were added to the north western side of the appeal site from around 1922, close to the side entrance to Brook Hall. These have since been removed. The ground levels of the site are predominately flat, and views are possible from the road across the site to the open countryside beyond.
14. Despite the recent planning permissions, the appeal site is currently undeveloped and Brook Hall adjoins open countryside and arable land to all sides including on the opposite side of the road. A line of trees and a brook separate the open countryside from the settlement of Tolleshunt Knights to the south east. Together the rural landscape surrounding Brook Hall contributes to its significance and to its ability to be appreciated when travelling along Factory Hill.
15. The proposed new houses would be set back from the road and positioned behind a combination of trees and hedgerows on the boundaries which would help to reduce the visibility of the buildings, hard surfaces and paraphernalia from the road. However, the development would still experience visibility to some degree at the point of the access, and very likely in gaps and glimpses through the planting, particularly during winter months, when the homes and their associated paraphernalia would be apparent. In addition to these visual effects, the proposal would increase general activity on the site arising from the occupation of six houses, including vehicular and pedestrian movements, light emissions and some noise.
16. The appellant accepts that there would be a degree of harm to the setting of Brook Hall through the erosion of its rural setting. Together, the visibility of the development as well as the activity associated with the use, would significantly undermine, and result in the loss of, the open and rural character of the site, which contributes positively to the setting of Brook Hall. In turn the proposals would result in harm to the heritage asset through the harm to its setting and those effects would be significant and long lasting. The proposal would conflict with policy ENV1 and parts of policies OV2 and DM16 of the LPS2 insofar as they seek to conserve and enhance the historic environment.
17. I find the extent of the harm to the significance of the heritage asset to be less than substantial. In line with the requirements of paragraph 202 of the Framework and Policy DM16, this harm should be weighed against the public benefits of the proposal. I return to this matter as part of the overall planning balance below.

Character and Appearance

18. The brook and tree belt to the south east provide a visual buffer to the edge of Tolleshunt Knights and separate the settlement from the open countryside. The proposal would effectively be the wrong side of that buffer and would be positioned in an area perceived as countryside. The site, in its current form,

¹ Planning (Listed Buildings and Conservation Areas) Act 1990

contributes to the open and rural character of the countryside that exists between Tolleshunt Knights and Tiptree.

19. The proposed cul de sac and cluster of homes, together with their car parking areas and paraphernalia including boundary treatments, would be of a suburban character in stark contrast to the character of the site and the surrounding countryside. As above, while landscaping would assist in providing a degree of screening, some visibility would be inevitable including from the point of access. In those views the proposal would appear heavily at odds with the prevailing character of the area. There is not substantive evidence to suggest this would not be the case and, given the importance of this issue, and the likelihood that visibility would remain in any event, it would not be reasonable to leave full details of the landscaping or screening to a condition. While the removal of permitted development rights would provide the Council with control over future alterations to the site, this would not mitigate for, or reduce, the visual harm arising from the proposal.
20. The open spaces and proposed landscaping would assist in softening the relationship of the development with the surrounding countryside, and the design of the houses could respect those outbuildings of Brook Hall. However, these matters would not sufficiently mitigate for the effects of the distinctly residential character of the development described above.
21. For the reasons given, the proposal would cause harm to the character and appearance of the area. It would conflict with policies ENV1 and DM15 of the LPS2, which relate to design and seek to conserve and enhance the natural environment and countryside and ensure development does not have an adverse impact on the intrinsic character of the countryside and visual amenity. In turn the proposal would also conflict with Policy OV2 of the LPS2, which requires residential development in the countryside to respect the character and appearance of landscapes and the built environment.
22. In the absence of evidence relating to the relationship of the site to coastal environments, I do not find conflict with policy ENV2 of the LPS2 which relates to coastal areas.

Other Matters

23. Planning permissions have been granted for development on the appeal site previously, dating from December 2011. The appellant reports that the latest planning permission² (the 2017 scheme) has been implemented through demolition and remains extant. As such the construction of the 2017 scheme remains a legitimate fall back position for the appellant and can be afforded substantial weight.
24. The 2017 scheme would entail the creation of a large dwelling set centrally on the site and comprising two storeys with reasonably decorative elevations including chimneys. A detached car port would also sit forward of its building line and the full width of the front portion of the site would be used as private amenity space. Given these attributes, this scheme would undoubtedly dilute the rural character of the site to some degree.
25. By comparison the houses of the appeal scheme would be more modest in their individual scale, be set further from the road and have a lesser footprint overall

² Colchester Borough Council Ref 161859 dated 11 April 2017

than the 2017 scheme. The new houses together with their parking areas, individual curtilages and paraphernalia would, however, have a greater spread across the site overall. The appeal scheme would lead to a notable increase in activity on the site beyond the 2017 scheme, arising from the movements of future occupants and the use of those outdoor spaces, and there is not substantive evidence to demonstrate that the extent of movements would be similar to a six bedroom home.

26. While the 2017 scheme would cause some erosion of the rural character of the area, I find the effects of the appeal scheme on the character and appearance of the area and the setting of Brook Hall would be greater, and more harmful. The appeal scheme would also entail a greater number of properties being reliant predominantly on private cars, with poor accessibility to services and facilities. For these reasons the fall back position in this instance would not provide a justification for the appeal scheme.
27. While there have been other relevant planning permissions, including permission for two houses³, in the absence of details of whether they would otherwise be implemented, I ascribe these little weight in favour of the proposal.
28. A signed UU has been provided with the appeal. This is intended to secure financial contributions including Habitat Sites mitigation, open space and recreation facilities, community facilities and for archaeological purposes, as well as a monitoring fee. There is not substantive evidence before me relating to the need for these obligations or whether they meet the required tests for such obligations as set out in the CIL Regulations and the Framework. I also have concerns regarding the execution of the document including its reference to planning permission granted by the Council, which would not be the case here if the appeal were allowed. In any event, as the appeal is being dismissed for other substantive matters it is not necessary for me to consider this matter further.

Planning Balance

29. In line with paragraph 202 of the Framework, the less than substantial harm identified to the significance of the heritage asset must be weighed against the public benefits of the proposal. The proposal would deliver six new homes, which would contribute to the national objective to boost the supply of homes, and these would be on a site which is, at least in part, previously developed land. The proposal would also deliver new planting including an area of ecological enhancement adjacent to the brook. Together these public benefits attract moderate weight given the scale of the proposal and in the absence of an identified local housing shortfall, or substantive evidence of need for housing of this type. Overall, the public benefits would not outweigh the harm to the heritage asset, to which I must give considerable importance and weight.
30. In the absence of evidence relating to the obligations contained in the UU, I have not ascribed those matters weight as benefits of the proposal, public or otherwise.

³ Colchester Borough Council ref 140576 dated 9 April 2014

31. The proposal would be in conflict with the Council's spatial strategy through being poorly located in terms of accessibility, and it would cause harm to the character and appearance of the area, and to the designated heritage asset through harm to its setting. Taken together the benefits of the proposal would not outweigh the totality of the harm identified, which would be significant and long lasting, and to which I ascribe substantial weight.
32. My consideration of the appeal adheres to the principles of Policy SP1 of the LPS1, which reiterates part of the presumption in favour of sustainable development contained in the Framework.

Conclusion

33. There are no material considerations, including the approach of the Framework, that are worthy of sufficient weight that would indicate a decision other than in accordance with the development plan. The appeal is therefore dismissed.

C Shearing

INSPECTOR