



Appeal Decision

Hearing held on 18 July 2023

Site visit made on 18 July 2023

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2023

Appeal Ref: APP/W1525/W/22/3311482

Land Between 15 And 17 Sherborne Road, Springfield, Chelmsford

- 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 Top London Construction Ltd against the decision of Chelmsford City Council.
- The application Ref 22/00042/OUT, dated 7 January 2022, was refused by notice dated 18 May 2022.
- The development proposed is the erection of a new dwelling.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant seeks outline planning permission for the erection of a dwelling with all matters reserved. The Statement of Common Ground listed only drawing number PL01, and the appellant confirmed at the Hearing that drawing numbers PL02 and PL03 are indicative only. I have considered the appeal on this basis.
3. The appellant has submitted a s106 planning obligation which includes a RAMS¹ contribution. As a result, the Council no longer pursues its fourth reason for refusal, which relates to likely significant effects on habitats sites.

Main Issues

4. The main issues are therefore the effect of the development on:
 - amenity green space provision;
 - the character and appearance of the area; and
 - protected trees.

Reasons

Amenity Green Space:

5. The land in the vicinity of the appeal site was developed for housing in the 1960s, and was once part of the extensive gardens and estate of Springfield Place, a grade II listed 18th century house. The appeal site is part of a parcel of green space in the urban area between Sherborne Road and Lawn Lane, and is designated as Open Space in the Chelmsford Local Plan (2020) (CLP). A

¹ Recreational disturbance Avoidance and Mitigations Strategy

footpath runs along one edge of the appeal site, which is part of a link to other green spaces and a small neighbourhood shopping area.

6. CLP policy S5 seeks to protect existing community assets from inappropriate changes of use or redevelopment. CLP Policy DM21, among other things, permits the redevelopment of existing open space only in certain circumstances. Those include where an assessment has been undertaken which clearly shows the facility to be surplus to requirements; or where the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.
7. The Chelmsford Open Space Study 2016-2036 (COSS) was a part of the evidence base for the CLP. It aimed to assess needs and deficiencies in open spaces to inform policy in the CLP and aid monitoring and implementation. The study identified sufficient supply of Amenity Green Space (AGS) within the Lawns Area, but an undersupply within many of the surrounding wards and the wider Chelmsford City Centre study area.
8. Insofar as it related to AGS, the COSS audit of existing open space assets excluded sites of less than 0.15ha, such as the appeal site, from the quantum and access assessments. They also made no contribution to the assessment of supply, being considered to be too small to be of genuine recreational value.
9. Even if accessibility of the appeal site had been considered, the COSS considers the access standard to be 480m, or 10 minutes' walk time, which significantly restricts its accessibility from other areas. Given its limited reach, and that the appeal site did not merit consideration of its accessibility or inclusion in the amount of AGS, its contribution beyond The Lawns area is relatively small. The development would therefore have only a limited recreational effect, despite increasing the overall deficit for this type of open space within the wider area.
10. The COSS attributes the site a relatively low quality rating, albeit not within the lowest 25% of sites evaluated in The Lawns area, and identifies it as having poor potential for improvement. Although unfenced and physically open, the appeal site is also now private land, over which the appellant advises there is no legal right of access.
11. The appellant references comments made in a 2016 Council officer report which commented that an open space would not be considered as such in the emerging local plan because it was no longer publicly accessible and therefore not identified in the latest open space study. From the information before me the COSS generally appears to exclude land which is not publicly accessible, but the Council advise the appeal site was publicly accessible at the time the study was undertaken.
12. Irrespective of the findings of the COSS, and ownership of the site, it is designated as open space in the CLP, and I have seen no evidence of any proposals to remove that designation. The text supporting CLP Policy DM21 states that open spaces offer amenity value and contribute to the character of an area in general. It is also common ground between the parties that the appeal site acts as a 'green lung' and a visual break in what is otherwise a built-up environment². I agree with that view, and note that the appeal site has

² Statement of Common Ground paragraph 2.3

aesthetic value and plays a role in providing linkage to other green areas, even if it is not publicly accessible.

13. Considering all these matters, although the COSS considered the appeal site to be too small to be of genuine recreational value, it acknowledged the role of aesthetic value, and did not show the land to be surplus to requirements. The appeal site has also been allocated as Open Space in the CLP, confirming its value. The development proposed therefore does not gain the support of criterion (i) of CLP Policy DM21(B), which permits redevelopment where an assessment has been undertaken which clearly shows the facility is surplus to requirements.
14. In relation to alternative provision, to provide better open space provision elsewhere in terms of quantity and quality, the appellant has provided a s106 planning obligation which makes a financial contribution of £8692.61 to the Council.
15. At the Hearing the appellant updated their position on the potential use of these funds, highlighting open spaces with existing play areas in the vicinity which could be improved. They also refer to development permitted by the Council on existing open space, which they consider demonstrates a precedent of the Council accepting improved facilities off-site. Although in that case the construction of a sports hall on playing fields was considered to be a significant benefit to a school without a sports hall, gained the support of Sport England, and is not directly comparable to the development before me.
16. However, although areas such as those suggested by the appellant would benefit from additional expenditure, as acknowledged in the COSS, the appellant's contribution would only provide a one-off quality improvement. In my judgement, that would not provide long term provision equivalent to the permanent loss of the appeal site, despite considering its limited recreational value. Even if quality improvements could be made elsewhere, I have not seen compelling evidence that the sum offered would result in equivalent or better replacement provision in terms of quantity and quality in a suitable location.
17. The development proposed would therefore not be replaced by equivalent or better provision in terms of quantity and quality in a suitable location, and does not gain the support of CLP Policy DM21(B)(ii).
18. Furthermore, as the contribution would not meet the policy requirements, the obligation cannot be considered necessary to make the development acceptable in planning terms. It therefore fails to meet the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the National Planning Policy Framework. And I am therefore unable to take the obligation into account in determining this appeal.
19. In conclusion, although the development would have only limited effects on amenity green space provision across the overall Chelmsford Central study area it would result in the loss of a local area of designated open space with aesthetic value. It has not clearly been shown that the facility is surplus to requirements, or that the loss resulting from the proposed development would be replaced by equivalent or better provision. Consequently, the development conflicts with CLP Policies S5 and DM21, which are described above.

Character and Appearance:

20. The wider area is a suburban housing estate, and part of the Lawns area of Chelmsford. The area comprises residential dwellings and associated schools, shops and other community facilities with irregularly shaped formal and informal open spaces.
21. An Article 4 Direction³ removes 'permitted development' rights from a number of local open spaces, including the appeal site, relating to gates, fences, walls and other means of enclosure. Planning permission would therefore be required for any such boundary treatments.
22. Most of the dwellings on Sherborne Road are single storey bungalows, with narrow driveways between them to garages at the rear. Although the frontages are open without boundary enclosures, and some have well-kept lawns, many have been converted into driveways and parking areas. Sherborne Road is of concrete construction, with pedestrian footways on either side, and the appeal site makes a positive contribution as a green space in this urban environment.
23. The appeal site is the only significant area of green space on Sherborne Road and, together with the open land adjacent, it provides a visual link to trees and green spaces on Lawn Lane, which themselves connect to other green spaces. It also provides a pleasant and open setting for the footpath along its northern boundary, contrasting with the narrow alleyway between Sherborne Road and the neighbourhood shops on Torquay Road.
24. The proposed development could accommodate an open frontage in a similar manner to other dwellings on the road. However, it would result in the loss of this green visual link, and would enclose the footpath, negatively changing the character of the area. I therefore find that the appeal site is an important green buffer which softens the urban landscape in this location.
25. The appellants confirmed at the Hearing that they no longer pursued the arguments originally made in relation to crime. But I note the challenges that unfenced privately owned land may pose for the appellants, and that the character of the land will change over time without the grass cutting regime previously carried out by the Council. Nevertheless, the undeveloped nature of the appeal site as a green space is likely to continue to provide a much needed 'green lung' in this location.
26. In conclusion, the development would harm the character and appearance of the area, and would conflict with the relevant provisions of CLP Policy DM23, which supports development which respects and is compatible with the character and appearance of the area.

Protected trees:

27. Young trees on the appeal site and adjoining land are protected by Tree Preservation Order⁴ (TPO), including three Field Maples identified as T4, T5 and T6. Two are located close to the site frontage (T4 & T5), and one is set back into the site (T6) in a central location. Whether original trees, or replacements, there is no dispute between the parties that they are protected by the TPO.

³ Under Article 4 of the Town & Country Planning (General Permitted Development) (England) Order 2015

⁴ The Chelmsford Tree Preservation Order TPO/2019/002

They make a limited positive contribution to the visual amenity of the area at the present time, and will increasingly do so as they grow to maturity.

28. The appellant's Arboricultural Impact Assessment (AIA) identifies the trees as Category C⁵ trees, being those which could be retained or have no great visual prominence. The Council advises that at maturity they would provide a moderate level of amenity, and that the 'C' categorisation only arises as their stem diameters are less than 150mm.
29. There appears to be a degree of inconsistency between the AIA report and supplementary note, and the appellant's statement and position at the Hearing. That was particularly the case in relation to whether any, or all, of the trees could be retained, relocated, or replaced with others within the appeal site. The supplementary note advised the existing trees had the potential to reach heights of 20m+ with canopy spreads of 8-10m. And although the AIA report advises the trees could be considered suitable for the site, it acknowledges they would require constant management to prevent future conflict and recommends alternative species that would be more compatible with the proposed development.
30. The AIA report advises the trees are in a good state of health, but does not explain why it attributes T4 and T5 a life expectancy of 40+ years, but T6 less than 10 years. Given the predicted scale of the trees at maturity and the need for constant management, even if T6 were removed to facilitate the development the scale of T4 and T5 would render them incompatible with the proposed development in their current locations.
31. I have seen no evidence that the young trees could not be relocated to alternative locations within the appeal site. However, at maturity, trees of 20m+ height with 8m canopies within the 11-13m wide site would also be likely to conflict with the proposed residential use, and neighbouring residential properties. Even considering the indicative layout and tree constraints plan, significant parts of the front and rear external areas would be below tree canopies once fully grown. Further areas, internally and externally, would also be subject to shadowing from the large canopies in the mornings and evenings. And it is likely there would be long-term pressure for significant pruning or felling, even if two trees were re-located to the rear of the site.
32. It is perhaps indicative of the incompatibility of the proposed development with the trees that the AIA report recommends replanting with an alternative species. Either relocation of the trees or their replacement with other species would also reduce their prominence, and the extent of their contribution to the visual amenity of the area. That would be particularly so from Sherborne Road.
33. The removal of the trees and their replacement with smaller species could potentially limit the effects of the existing trees on existing neighbouring dwellings at maturity. However, in their current locations, the trees are not so close to neighbouring boundaries that they are likely to give rise to excessive and unneighbourly impacts. The development would also provide an additional dwelling, but the Council's 5+ year housing land supply is not disputed, and one additional dwelling would not amount to exceptional circumstances with overriding public benefits sufficient to justify the removal of the preserved trees.

⁵ As defined in BS 5837 2012

34. In conclusion, the development would harm the protected trees, and would conflict with CLP Policy DM17, which supports proposals which do not result in unacceptable harm to the health of preserved trees.

Other Matters

35. The appeal site falls within the zone of influence of the Blackwater Estuary Special Protection Area and Ramsar site, as well as The Essex Estuaries Special Area of Conservation. Other matters have also been raised against the development, including in relation to flood risk and on-site biodiversity. However, as I am dismissing the appeal for other reasons, and none of these matters would change my decision, I have not considered them further.

Conclusion

36. For the reasons above, having regard to the development plan as a whole, relevant policies of the Framework, and all other relevant considerations, the appeal is dismissed.

Peter White

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ben Du Feu – Barrister
Jonathan Brown LLB LLM MA MRTPI – Reeve Brown
Ylber Hoti – Director of Top London Construction Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Joshua Fitzwater BA (Hons), MSc - Planning Officer
Stephen Dunks BA – Planning Officer
Kirsty Dougal BSc (Hons), MSc, MRTPI – Planning Environment Manager

INTERESTED PARTIES:

Cllr Richard Lee
Angela Porter
Pauline Moore
Peter Downs

DOCUMENTS SUBMITTED AT THE HEARING:

1. Supplementary comments of the appellant's tree advisor
2. Extract of the Chelmsford Local Plan Planning Obligations Supplementary Planning Document January 2021
3. Supplementary Conditions
4. Revised condition (trees)