The Planning Inspectorate

Appeal Decision

Site visit made on 6 November 2023

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st December 2023

Appeal Ref: APP/A1530/W/22/3308598
Captains Field, Peldon Road, Abberton, Essex CO5 7PB

- 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 Matthew Marfleet against the decision of Colchester Borough Council.
- The application Ref 220529, dated 25 February 2022, was refused by notice dated 20 April 2022.
- The development proposed is the erection of a single dwelling and car port, with access.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council issued its decision, it adopted Colchester Borough Local Plan 2017-2033 Section 2 in July 2022. Therefore, the development plan now comprises Section 1 and Section 2 of the Colchester Borough Local Plan. I have therefore had regard to these in my decision. Policies contained within the Core Strategy 2008 and Development Policies 2010 (revised 2014) have been superseded and no further reference will be made to them in my decision. The parties have had an opportunity to address these changes in policy.

3. The government published a revised National Planning Policy Framework (the Framework) on 19 December 2023. This does not materially change the planning policy context in respect of the main issues and I have determined the appeal on the basis of the new Framework.

Main Issues

4. The main issues are:

    - Whether the appeal site is in a suitable location for the proposed development having regard to local and national policies and access to services and facilities;
    - The effect of the proposed development on the character and appearance of the site and the area;
    - The effect of the proposed development on the living conditions of the existing occupiers of Captain's Field House with particular regard to overlooking; and
    - The effect of the proposed development on the integrity of the Essex Coast European Protected Sites.

Reasons

Locational Suitability

5. Policies SP1 and SP3 of the North Essex Authorities' Shared Strategic Section 1 Plan[1] (LPS1) set out the Council's spatial strategy and hierarchy of settlements. Policy SG1 of Section 2 of the Colchester Local Plan[2] (LPS2) identifies Abberton and Langenhoe as a sustainable settlement where appropriate growth is planned for. These policies are intended to ensure housing is located in areas which are accessible and sustainable.

6. The appeal site lies outside the defined settlement boundary of Abberton and Langenhoe to the south of the village on Peldon Road. It is formed of a triangular field enclosed by hedges on all sides adjacent to Captain's Field House, a detached two storey dwelling on substantial plot. The site is physically separated from the existing built-up part of the settlement beyond the defined settlement boundary which includes a recent outline planning permission[3] for housing.

7. Abberton and Langenhoe is designated as a sustainable settlement and contains a number of shops and services including a convenience store, a primary school and a village hall. However, the appeal site is located some distance from these along an unlit lane with no footway, some distance beyond the 30mph speed limit for the village. Therefore, to access services and bus stops in the village on foot occupiers of the proposed dwelling would need to walk or cycle along the lane with no footways for some distance. Furthermore, I have not been provided with any information as to the destination or frequency of services from the bus stops in the village. As such, I therefore cannot be certain that public transport would be a realistic alternative to the private car to access shops and services further afield.

8. An outline planning permission on land allocated for housing growth between the appeal site and the built-up part of the village requires a footway to be provided between that site and the current end of the footway. Whilst I understand that this would bring a footpath link closer to the appeal site than it is at present, I have no precise details of this before me. Furthermore, the permission is in outline and a reserved matters application is yet to come forward. Consequently, I have no certainty that the extended footway would be delivered in a reasonable timeframe, if at all.

9. The appellant refers to *Corbett* [4] concerning development immediately adjoining a settlement. Policy SP3 of the LPS1 states that 'development will be accommodated within or adjoining settlement according to their scale, sustainability and existing role within each individual district…'. Notwithstanding the outline permission, the appeal site is, in my opinion, not sufficiently close to the settlement so as to be immediately adjoining it and therefore *Corbett* is not relevant in this instance. Furthermore, LPS1 Policy SP3 is of a strategic nature directing individual planning authorities within the wider North Essex area as to where future growth might be accommodated for plan making purposes.

[1] North Essex Authorities' Shared Strategic Section 1 Plan
[2] Colchester Borough Local Plan 2017 – 2033 Section 2 Adopted July 2022
[3] Local Planning Authority Reference 213530 dated 11/07/2023
[4] Corbett v Cornwall Council [2022]EWCA Civ 1069

10. Therefore, the site is less than ideally located in terms of pedestrian or cycling access to services, facilities and amenities and occupiers are likely to prefer the convenience of the private car. As a result, the environmental and social impacts arising from the proposal would be a negative rather than positive benefit.

11. For the above reasons, I therefore conclude that the appeal site is not a suitable location for the development proposed, having had regard to the development plan and national planning policy. The principle of the proposed development would be unacceptable and would conflict with Policies SP1 and SP3 of the LPS1 and Policy SG1 of the LPS2 which seek to ensure that development is focussed on accessible locations to reduce the need to travel.

12. The Council have referred to conflict with Policy OV2 of the LPS2 in the context of locational suitability. However, this policy requires housing in the countryside where acceptable to respect the character and appearance of landscapes and built environment, which I turn to later. Therefore, I find no direct conflict with it on this main issue.

Character and Appearance

13. The proposed dwelling would be centrally located within the appeal site. It consists of a two-storey building with single storey elements and a detached single storey pitched roofed building described as a cart shed providing covered car parking facilities. The buildings incorporate a variety of external materials including brick, render and timber cladding.

14. At this point, Peldon Road has an overriding rural character. Dwellings are generally detached, set back from the highway on substantial plots with high boundary hedging. There is no consistent approach to the appearance of dwellings, or to the relationship of dwellings with the highway. With the exception of a small timber cottage opposite, dwellings generally are relatively substantial in scale and vary in design and use of materials. Many properties close by are irregular in form and layout and host outbuildings or detached garages.

15. The Council is concerned that the proposal does not follow design principles for traditional vernacular dwellings. I have, however not been provided with any evidence where these principles are set out. Whilst elements of the design are contemporary in nature, I do not find the harm that the Council have described in relation to the dwelling's size, scale, form, proportions and elevational composition. The proposed dwelling would be broadly consistent with the prevailing pattern, form and scale of development along the road, insofar as there are any unifying or defining characteristics, such as materials, scale and layout.

16. Although the dwelling would not face the road, the single storey elements, chimney features and the corner porch feature would provide visual and design interest. Space around the dwelling would be characteristic of the site's surroundings and the overall composition of the lane. In this context the proposal would be consistent with the prevailing mixed pattern of development.

17. Local distinctiveness along Peldon Road is derived more from the variety of architectural styles and design approach of the dwellings than any sense of definitive or repeated design, scale or form. In this context, the proposed

dwelling would be neither incongruous within nor harmful to the character or appearance of the road.

18. Policies SP7 of LPS1 and Policy DM15 of LPS2 set out the Council's approach to securing high quality development reflective of local distinctiveness. In amongst other factors, they state that new development should be designed to a high standard which responds positively to local character and preserves and enhances the quality of existing places and its environs including its layout, architectural approach, height, scale, form, massing density, proportions, materials, townscape and landscape qualities, and detailed design features. For the reasons set out, I am satisfied that the proposed development would achieve these aims and there would be no conflict with Policies SP7 of LPS1 and Policy DM15 of LPS2.

Living Conditions - overlooking

19. The proposed dwelling would have windows at both ground floor and first floor facing the side elevation of Captain's Field House, where there are windows at both ground and first floor which I note from my observations on site, differ from those indicated on the submitted plans.

20. The distance and orientation of the proposed windows and the intervening steeply pitched roofed garage would mean that direct overlooking between the two dwellings would be unlikely. A first-floor bedroom window would face the rear garden of Captain's Field House. I have not been provided with any guidance which sets out recommended separation distances for dwellings. The appellant indicates that there would 25 metres between the proposed property and a patio at the rear of Captain's Field House. Whilst I do not agree that this is an appropriate measurement to demonstrate an adequate separation between properties, from the information before me, there would be a reasonable distance between the proposed dwelling and the boundary. Furthermore, intervening trees and a boundary hedge would reduce the ability of occupiers of the proposed dwelling to overlook into the garden, even during winter months when trees would not be in leaf.

21. Therefore, having regard to the site's context and all relevant considerations, there would not be any significant adverse impact on the occupiers of Captain's Field House as a result of the proposal. The dwelling would, in this respect deliver appropriate privacy and living conditions for the occupiers of Captain's Field House. Consequently, in this respect the proposal would not conflict with LPS1 Policy SP7 and LPS2 Policy DM15, which, amongst other things seek to protect residential amenity.

Integrity of the Protected Site

22. The appeal site lies within the Zone of Influence of European Protected Sites on the Essex coast, which are recognised for their value as coastal habitats and support internationally important populations of breeding and non-breeding bird species. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (SPD) establishes mitigation for pressures created by recreational disturbance on this area.

23. A tariff-based system has been established for housing developments, which would contribute towards a range of measures set out in the SPD. The SPD is

clear that this should be secured by way of a planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended)[5].

24. The appellant has indicated that a payment has been made to the Council. However, I have no confirmation from the Council that a payment has been made. Nor do I have a signed and dated planning obligation before me as set out in the SPD as the appropriate means of securing financial contributions.

25. Had I been minded to allow the appeal, it would have been necessary for me to establish that any payment which either had been made or was due to be paid prior to commencement of the development was in accordance with Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended). However, given my findings above, it has not been necessary to pursue this matter further.

Other Matters

26. I have been provided with an appeal decision for a site elsewhere in Abberton which comes to an alternative view with regard to its locational suitability. I do not have a location plan nor the precise details of this appeal before me, I therefore cannot be certain that the circumstances are directly comparable with the appeal under consideration. The weight attributable to this matter is therefore limited and as such does not outweigh the harm that I have found. Nor does it persuade me to come to an alternative conclusion on this main issue.

27. The Council did not object to the proposal on the grounds of highway safety and appropriate visibility splays from the site can be provided. The site is also not in a conservation area nor within the setting of heritage assets, and not within a flood risk zone. These are neutral factors which do not weigh in favour of allowing the appeal and do not diminish the harm that I have found on the main issue.

Planning Balance and Conclusion

28. The proposal would add positively to the supply of housing in the area. There would be some economic benefits associated with supporting amenities and services in the area, although again this would be limited given the quantum of development proposed. There would be some economic benefit from construction employment although this would be short lived.

29. However, it has not been demonstrated that the appeal site is in appropriate location for the nature of the development proposed and would therefore be contrary to the aims of the Framework in seeking to promote sustainable patterns of new development. I ascribe this matter substantial adverse weight. Furthermore, I have not been presented with any evidence that one additional unit in this location would address any identified housing needs.

30. Whilst there would be no harm caused to the living conditions of the occupiers of the neighbouring property in terms of overlooking and I have found no harm in relation to the character and appearance of the site and the surrounding area. The lack of harm I find on these matters does not override the harm that I have found on the first main issue in relation to the locational suitability of the site for housing.

[5] Paragraphs 4.10 – 4.19

31. Therefore, for the reasons set out, the proposal would conflict with the development plan when read as whole. There are no material considerations of sufficient weight to indicate the decision should be taken otherwise. The appeal is therefore dismissed.

K L Robbie

INSPECTOR