



Appeal Decision

Site visit made on 9 January 2024

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th January 2024

Appeal Ref: APP/A1530/W/23/3325312

Kenmore Lodge, Plummers Road, Fordham, Colchester, Essex CO6 3NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mrs S Forrest against the decision of Colchester City Council.
 - The application Ref 230623, dated 6 March 2023, was refused by notice dated 14 April 2023.
 - The development proposed is described as 'application for permission in principle for demolition of existing shed and development of single residential dwelling on previously developed land using existing access'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. An application for an award of costs was made by Mrs S Forrest against Colchester City Council. That application is subject to a separate decision.
3. A revised version of the National Planning Policy Framework (the 'Framework') has recently been published but the alterations are not significant in the context of this appeal and therefore I have not invited further comments.

Main Issue

4. The proposal is for Permission in Principle (PiP), which is the first part of a two-stage process. The PiP establishes whether a proposal is suitable in-principle. This is then followed by an application for Technical Details Consent (TDC). Planning permission is conferred when TDC is granted. The scope of the considerations in an application for PiP is limited to the location, land use and amount of development. I have determined the appeal on this basis with reference to the spatial strategy in the development plan, including access to services and facilities, and the effect of the proposed development on the character and appearance of the area and the integrity of Habitat Sites.

Reasons

Spatial strategy and access to services and facilities

5. Policy SP3 of the Section 1 Plan¹ sets out the spatial strategy for North Essex and explains that existing settlements will be the principal focus for additional growth, which will be accommodated within or adjoining settlements. Policy SP3 goes on to explain that future growth will be planned with reference to a

¹ North Essex Authorities Shared Strategic Section 1 Plan

settlement's role, distinctive character and setting. The reference to future growth being *planned* means future allocations and criteria-based development management policies setting out the circumstances when development in and adjoining settlements will be supported. Therefore, Policy SP3 should not be read in isolation. Indeed, the reference to development 'adjoining settlements' needs to be interpreted with reference to the development plan as a whole².

6. To this end, Policy SG1 of the Section 2 Plan³ sets out the spatial strategy for Colchester and explains that growth will be located at the most accessible and sustainable locations in accordance with a hierarchy. This is underpinned by the dual aims of respecting the landscape and promoting sustainable transport by providing real travel choices.
7. As a result, the focus for growth is Colchester as the largest settlement with the highest concentration of services and facilities. This is followed by a second tier that includes 'Sustainable Settlements', of which Fordham is one. The last tier includes the 'Countryside' where new development will only be permitted where it accords with Policy OV2 of the Section 2 Plan. The appeal site adjoins the settlement boundary of Fordham and is therefore in the countryside and thus subject to Policy OV2.
8. However, before considering whether the proposal adheres to Policy OV2 it is necessary to assess whether future occupants of the appeal scheme would have adequate sustainable travel choices, as this is a core requirement of Policy SG1 and therefore must be satisfied as a prerequisite to any assessment under Policy OV2. This is presumably why Policy OV2 does not refer to access to services and facilities.
9. The services and facilities in Fordham include a school, public house, village hall, playing field and public transport. This provision was considered sufficient to justify designating the village a 'Sustainable Settlement'. Indeed, the supporting text to Policy SS6 of the Section 2 Plan states that Fordham is 'well served' by key community facilities. This is a strong indicator that future occupants of development within or adjoining the settlement would have adequate access to services and facilities. On this basis Fordham has been allocated residential development adjacent to the settlement boundary.
10. That said, there may be local circumstances that would prevent future residents of the appeal scheme from having adequate travel choice and therefore accessibility needs careful consideration. In this respect, most of the services and facilities in the village are located towards the south of the settlement. The village hall and bus stop are about 850m from the appeal site and the primary school about 1500m. The pub is located in between.
11. It would be possible to walk to all these facilities. However, the need for an immediate return journey by the escorting parent could increase the likelihood of a short car journey. Moreover, the distance to the school exceeds the definition of walkable in the National Design Guide (NDG), which is generally considered to be no more than 10 minutes (800m). That said, the position of the bus stop and village hall only marginally exceeds this distance. The pub and village hall are also destinations where pedestrians would likely spend some time and may be prepared to walk a bit longer to get there as a result.

² This is a finding consistent with the Inspector in APP/A1530/W/22/3301862

³ Colchester Borough Local Plan 2017 - 2033 Section 2

12. The section of road between the appeal site and the footpath at the corner of Rams Farm Road is devoid of a pavement. This is not unusual in a rural context as many lanes have low traffic speeds and volumes, thereby allowing pedestrian and vehicles to safely coexist. Chappel Road being a possible example. However, in this instance Plummers Road appears to be more intensively used than a typical rural lane and for this reason it has road markings. Thus, the frequency of vehicular traffic and the absence of a pavement could suppress the desirability of walking, especially for those with young children or mobility difficulties. It is unlikely anyone would wish to regularly walk on this road after dark.
13. That said, the speed limit is 30mph meaning traffic speeds are generally low. There are also driveways and grass verges at frequent intervals which allow pedestrians to step off the road. Generally good forward visibility also allows pedestrians and motorists to see each other. And there are plans for a new footway as part of the allocation in Policy SS6 of the Section 2 Plan. In addition, there is a very pleasant alternative route via Public Footpaths 12 and 13. Although this latter route is unsurfaced, it would nevertheless provide an option in better weather when future occupants may be more inclined to walk.
14. Cycling would also be an option to access the services and facilities in the village given the reasonably level gradient. However, this would be tempered by the inherent limitation that residents may not have the fitness, confidence or proficiency to cycle regularly if at all. I understand the bus service is every other hour between 0937 and 1657 and provides a link to Colchester. This is not comprehensive and unlikely to be used regularly by someone in full time work, but in a rural context this would be beneficial to some. There is nothing to suggest it is an untypically poor service for a Sustainable Village.
15. Bringing these points together. As a start point the level of services in the village was considered sufficient by the Council to designate it a Sustainable Settlement. Access to these services, including the bus route, is possible from the appeal site by walking and cycling. There would, however, be some limitations, but only a single dwelling is proposed. This all needs to be considered in the context that the occupants of the appeal scheme would have near identical access to the available services and facilities as those in the neighbouring homes immediately to the south. These homes have been placed within the settlement boundary of Fordham. It would have made little sense to do so if they had poor access to services and facilities. Therefore, on balance, and when having regard to the local context, future occupants of the appeal scheme would have real travel choices by sustainable transport.
16. Policy OV2 states that residential development proposals in the countryside outside defined settlement boundaries will need to demonstrate that the scheme respects the character and appearance of landscapes and built environment. It seems to me that these tests are written with Policy SP3 in mind, as they would be hard to overcome if a scheme is away from a settlement - i.e. not adjoining it. Moreover, the settlement boundaries were carefully considered and provide a useful indicator of where the built-up character of settlements becomes more rural and open. Therefore, in many instances development adjacent to the settlement boundaries would harm the rural landscape and/or setting of the village.

17. Nevertheless, for reasons I go into below, the location, land use and amount of development proposed would not inherently harm the landscape or built environment. Thus, in conclusion, the proposal would adhere to Policies OV2, SG1 and SP3. There would be no conflict with the spatial strategy as a result.

The effect on the character and appearance of the area

18. The appeal site is located at the northern extent of Fordham and occupies a parcel of land at the end of a section of domestic ribbon development. It encompasses part of the large and undivided garden of Kenmore Lodge. The existing outbuilding within the appeal site is currently used to store domestic paraphernalia. There is no substantive evidence before me to support the Council's suggestion that it is not residential in use. The building has a simple unobtrusive appearance due to its low height, position back from the road and the filtering effect of existing landscaping. There is a highway access serving this outbuilding and a gravel driveway linking a parking area in front of it with the site entrance.
19. The garden of Kenmore Lodge, including the appeal site, is planted and managed in a conventional domestic way and therefore has a residential character and appearance. This is unlike the land to the north, east and west of the appeal site which incorporates paddocks, stables and arable fields. The latter in particular reflects the historic rural field system/pattern. These areas form part of the open countryside and therefore exhibit a rural appearance distinct from the domestic and built character of the village.
20. Given that the large outbuilding and driveway are in a well-manicured domestic garden, the appeal site reads as part of the settlement of Fordham when viewed on the ground from Plummers Road. In this respect, Camilla Cottage does not represent a clear edge to the settlement. It therefore follows that a dwelling could be accommodated in the appeal site without appearing as a stark incursion into the countryside beyond the settlement boundary or an expansion of the village. In this respect, the proposal would conserve the landscape of the Rochfords Farmland Plateau (Landscape Character Area B5) and the intrinsic character and beauty of the countryside.
21. For similar reasons, a new dwelling within the spacious appeal site need not inherently break down the character of the settlement if done sensitively and with regard to the transition currently apparent. For example, the graduated sense of change could prevail if the new dwelling also appeared as a low-key single storey semi-rural building much like the existing outbuilding. Indeed, this may be necessary to safeguard the living conditions of the occupants of Camilla Cottage in terms of outlook, privacy and light. A future scheme could also make use of the existing access point, driveway and garden, whilst retaining and supplementing existing soft landscaping. Thus, the street scene need not change significantly and therefore a sense of the status quo would be apparent. These are, of course, matters for TDC, but they are indicative that a single dwelling in this location would not inherently harm the character and appearance of the rural landscape or that of Fordham.
22. In conclusion, the location, land use and amount of development proposed would not inherently harm the character and appearance of the area. Consequently, the proposal would adhere to Policy SP7 of the Section 1 Plan and Policies OV2, ENV1 and DM15 of the Section 2 Plan, which seek to

safeguard the character and appearance of the landscape, built environment and area more generally.

Appropriate Assessment

23. Given the foregoing, the appeal scheme would be acceptable when having regard to the spatial strategy in the development plan and the effect on the character and appearance of the area. However, Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) states that before deciding to authorise a proposal that is likely to have a significant effect on a European Site (Habitat Site), it is necessary to undertake an appropriate assessment of the implications of that project for the European Site(s) in view of the conservation objectives.
24. The appeal site is located within a zone of influence placed around relevant Habitat Sites as established in the Essex Recreational Disturbance Avoidance and Mitigation Strategy (Essex RAMS). The evidence outlined in the Essex RAMS, supported by Natural England, is that new residential development within these zones would, in combination with other residential development, be likely to result in an increase in harmful recreational disturbance and damage at the Habitat Sites given the pathway, this being the ease of access to the sites for recreation. Accordingly, the proposal, in combination with other plans and projects, would be likely to have a significant adverse effect on the relevant Habitat Sites when following a precautionary approach. Moreover, the proposal is not directly connected with or necessary to the management of the Habitat Sites. It therefore follows that an appropriate assessment is required.
25. The Habitat Sites have been designated because they include habitats that support rare bird species. Their overarching conservation objectives can be summarised as avoiding a deterioration of habitats and a minimisation of disturbance, thereby ensuring their integrity is maintained. To achieve this, the Essex RAMS sets out a tariff whereby financial contributions are paid on a dwelling-by-dwelling basis and then pooled to provide strategic access management and monitoring at the Habitat Sites. This includes measures to manage visitor pressure. The financial contribution in this case would be £156.76 and the appellant and Council agree it needs to be secured to make the proposal acceptable. The appellant has sought to do this through a direct payment to the Council.
26. An application for PiP cannot be approved if it is likely to have a significant effect on a Habitat Site and that effect would be unmitigated. There is no mechanism to positively require a financial contribution by planning condition⁴ (or to impose conditions when allowing PiP) and therefore a planning obligation would be necessary. This would ensure that there is the necessary legal certainty that the mitigation would be paid. The payment would also be linked to the permission preventing occupation until it is paid. This approach also provides a transparent audit trail.
27. A direct payment is inadequate because there would be no legal link between it and the permission. In effect, the mitigation would be unsecured, and this would lead to uncertainty. For example, the appellant may be able to ask for the money back as there is no legal requirement for it to be paid.

⁴ Planning Practice Guide Paragraph: 005 Reference ID: 21a-005-20190723

28. The need for a planning obligation is significant in this instance because one has not been submitted. I am also mindful that the Planning Practice Guide⁵ indicates that there is no scope to secure obligations at the permission in principle stage. In the absence of appropriately secured mitigation, I cannot rule out the possibility that the proposal would likely have a significant effect on the Habitat Sites through recreational disturbance and damage. As a result, the condition and integrity of the Habitat Sites would likely deteriorate. For this reason, the appeal scheme would fail to adhere to the conservation objectives. There are alternative solutions to providing unmitigated housing at the appeal site and a scheme for a single dwelling would not provide imperative reasons of overriding public interest to justify allowing the appeal.
29. Consequently, and as directed by the Habitat Regulations, permission must not be granted⁶. The proposal would also be at odds with Policy SP2 of the Section 1 Plan, and ENV1 of the Section 2 Plan, which require mitigation measures to be secured. This is a matter that goes to the central principle of whether the location, land use and amount of development is acceptable.

Conclusion

30. Policy SP1 of the Section 1 Plan states that proposals which comply with the development plan will be approved without delay unless material considerations indicate otherwise. The corollary being that the policy also works in the alternative.
31. The appeal scheme would adhere to the spatial strategy and would not harm the character and appearance of the area. However, it would be likely to have a significant adverse effect on Habitat Sites. The proposal would be at odds with the development plan taken as a whole given the importance of this matter. This would be the case despite the purported benefits advanced by the appellant, including the reuse of previously developed land and the economic advantages from construction and occupation as supported by the Framework. Reference has also been made to the 'self-build' nature of the project, but as there is no mechanism before me to secure this it is a matter of limited weight.
32. Accordingly, for the reasons set out above, the appeal has been dismissed.

Graham Chamberlain
INSPECTOR

⁵ Paragraph: 022 Reference ID: 58-022-20180615

⁶ Regulation 63(5) of the Conservation of Habitats and Species Regulations 2017 (as amended)