



Appeal Decision

Site visit made on 13 December 2023

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th February 2024

Appeal Ref: APP/A1530/W/23/3319234

253-255 Old Heath Road, Colchester CO2 8BN

- 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 MMM Investment Holdings Limited against the decision of Colchester Borough Council.
 - The application Ref 221153, dated 6 May 2022, was refused by notice dated 26 September 2022.
 - The development proposed is outline application for residential development with all matters reserved.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development with all matters reserved at 253-255 Old Heath Road, Colchester CO2 8BN in accordance with the terms of the application, Ref 221153, dated 6 May 2022 (as amended), subject to the conditions set out in the Schedule at the end of this decision.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. Both main parties have had the opportunity to comment on any relevant implications for the appeal. I have had regard to the Framework in reaching my decision.

Background and Main Issues

3. The planning application was submitted in outline, with all matters reserved. The planning application form indicates that the original proposal consisted of 16 dwellings. During the course of the planning application, the Council has indicated that the proposal was reduced to 9 residential units. As part of the appeal, the appellant has submitted an indicative site plan which shows 8 residential plots. However, the description of the development only refers to 'residential development' and does not specify the number of dwellings proposed. I have treated the indicative plans and the number of dwellings shown as being for illustrative purposes.
4. Despite the indicative nature of the site plan depicting 8 dwellings, I consider that this layout is representative of potential development within the constraints of the site, and I have had regard to it accordingly.

5. The Council's 3rd and 4th reasons for refusal relate to the effect of the proposal on habitats sites and a lack of obligations required in respect of sport, recreation, and community facilities. However, the appellant has submitted a Planning Obligation which the Council has confirmed addresses these reasons for refusal.
6. Based on the above, the main issues are the effect of the proposal on the:
 - Character and appearance of the area; and
 - Living conditions of future residents in respect of outlook, privacy, noise and disturbance, odour and light pollution.

Reasons

Character and Appearance

7. The appeal site is in a commercial use and includes a large building extending from the frontage across almost the full depth of the site. It is adjacent to the busy highway of Old Heath Road, and the streetscape of the area is of a suburban character consisting primarily of detached and semi-detached dwellings. That said, there is residential accommodation provided in large blocks to the south of the site.
8. Notwithstanding the indicative nature of the submitted plans, the Council considers that 9 dwellings on the site would be an overdevelopment. The Council has maintained its concerns in its Statement of Case which was submitted following the submission with the appeal of an amended indicative plan for 8 dwellings.
9. The indicative plan for 8 dwellings shows 6 semi-detached dwellings to the front, with 2 detached dwellings set to the rear accessed via a garage, parking and circulation area.
10. The appellant has provided evidence of an outline planning permission¹ for residential development of the site which was approved following the submission of this appeal. This permission was accompanied by an illustrative plan showing 6 dwellings along the site frontage with an access leading to car parking and garages to the rear. The Council's officer report for the outline permission indicates that a rear parking court would be acceptable, subject to details of the parking court arrangement.
11. The Council considers that the appeal proposal would be out of character with the prevailing rhythm and pattern of the area. The area to the north of the site consists of dwellings set along the streetscape with long gardens to the rear, and the indicated backland nature of the proposal would conflict with this. However, there is not a clear pattern of development to the south of the site, and this area includes a mix of layouts which project beyond the main frontage. The extant substantial building on the appeal site also projects a significant distance to the rear. Within this context, dwellings located to the rear of the site would not appear to be unduly incongruous. I am also mindful that the Council has indicated that built development to the rear consisting of a garage court and an associated access would be acceptable when granting a separate outline permission.

¹ Ref: 23010, approved 24 August 2023

12. The Council considers that the indicated layout would be an overly intensive form of development. However, the indicative plans submitted with the appeal show that dwellings to the rear could be set in relatively generous plots. Dwellings to the front of the site could also be arranged to reflect the pattern and density of other frontage development. The access and circulation areas would introduce an extent of hard surfacing, but subject to suitable consideration of the reserved matters including landscaping, layout and appearance, I consider that potential harm to character and appearance could be mitigated. The Council refers to the footprint of the dwellings and the introduction of wide gables, but these issues are more appropriately addressed at the reserved matters stage.
13. Based on what I have seen and read, with due regard to the indicative plans, I consider that the appeal proposal would not harm the character and appearance of the area. The proposal would therefore not be contrary to Policy SP7 of the Section 1 Local Plan² in respect of high standards of urban and architectural design. The proposal would also not conflict with the advice of the Backland and Infill Development SPD³ in respect of overdevelopment or the character of the area.
14. The Council's reason for refusal on this issue also refers to the Section 2 Local Plan⁴, but does not specify which policies it considers are relevant.

Living Conditions

15. The Council refers to numerous issues which I will consider in turn.
16. In respect of outlook, the indicative layout shows that dwellings to the rear of the site would look onto a shared parking and circulation area. But this arrangement is not unusual in suburban development and a suitable outlook from main habitable rooms could be provided onto rear gardens. The dwellings to the front would look onto the busy highway, but suitable outlook could also be provided onto enclosed rear gardens.
17. The rear gardens and elevations of dwellings to the rear would be overlooked by existing neighbouring development. However, a degree of overlooking of rear gardens is not unusual, and the site could be arranged so that the extent of overlooking is not unduly intrusive and that acceptable levels of privacy are provided. The dwellings could also be arranged and designed so that intrusive views are not provided into habitable rooms.
18. Residents would be aware of noise, fumes and lights from traffic movements associated with the garages and circulation areas. A shared circulation area to the front of the rear dwellings would also provide some separation from wider traffic movements generated by the proposal. Although some garages and parking spaces, as well as larger service vehicles, would use the indicated circulation area and turning head, given the limited scale of the proposal I do not consider that the effects of this would warrant the refusal of planning permission. It is also feasible that vehicle manoeuvres associated with the majority of the proposed garages and parking spaces would not rely on this turning head to enter and leave the site in forward gear.

² North Essex Authorities' Shared Strategic Section 1 Plan, 2021

³ Backland and Infill Development Supplementary Planning Document, 2009/2010

⁴ Local Plan Colchester Borough, 2022

19. The Council refers to unsatisfactory outdoor amenity space but does not elaborate on its concerns. However, based on the evidence before me, the indicative plans show that external garden areas could be provided of a suitable extent and which would provide appropriate amenity for residents.
20. I therefore conclude that the proposal would provide suitable living conditions for future residents in respect of outlook, privacy, noise and disturbance, odour, light pollution and external amenity space. The proposal would therefore not conflict with the housing standard and amenity requirements of Policy SP7 of the Section 1 Local Plan or Policies DM15, DM12 and DM19 of the Section 2 Local Plan.

Other Matters

21. A number of comments refer to matters of highway safety and capacity, access for emergency vehicles, parking congestion, cycle parking and bin storage.
22. In respect of highway safety and capacity, I am mindful that the existing use of the site would generate traffic movements and parking. The indicative site plan indicates that suitable parking provision can be made available within the site. The Highway Authority also considers that the impact of the proposal is acceptable subject to a number of conditions, which can be placed on the planning permission or addressed as part of the reserved matters. Other matters including cycle parking, bin collection and emergency vehicle access can also be conditioned or addressed as part of the reserved matters. On that basis, I conclude that the proposal would be acceptable in respect of highway safety and transport issues.
23. A number of comments have raised concerns on drainage and flooding. Comments from the County Planning and Flood Risk Officer and the Lead Local Flood Authority raised objections due to a lack of evidence in respect of flood risk and sustainable urban drainage, although the Council's Officer report sets out that the proposal is no longer considered to be a major development. The Council's Officer report specifies that the site is outside of an identified flood zone, and is now of a scale where a Flood Risk Assessment is not required. Evidence, including map extracts provided by third parties, indicates that there are areas at risk of flooding in the vicinity but it has not been demonstrated that they extend onto the site. The Council has suggested conditions in respect of sustainable drainage, and I am mindful that the Council has granted outline planning permission for residential development on the site subject to such conditions. Therefore, I conclude that suitable evidence has been provided in respect of flood risk, and that the proposal would make suitable provision in respect of flood risk and drainage subject to conditions.

Planning Obligation and Conditions

24. A signed and completed Planning Obligation under Section 106 of the Town and Country Planning Act 1990 in respect of community facilities; open space, sport and recreational facilities; and habitats sites mitigation has been submitted in support of the proposal. This Obligation meets the tests set out in paragraph 57 of the Framework, and I have proceeded to determine this appeal giving due consideration to the Obligation.
25. The Council and consultees have suggested a number of planning conditions which I have considered against the advice in the Planning Practice Guidance.

As a result, I have amended some of the conditions for clarity, accuracy and conciseness.

26. I have attached conditions relating to the submission of reserved matters and the associated time limits. I have included a condition specifying the relevant plans and documents in the interests of certainty. Both the Council and the appellants have requested that reference is made to indicative site plans. However, due to their indicative nature and the fact that all matters are reserved, the indicative plans are not part of the formal proposal and I have therefore not included them in the condition. Although the site location and block plans depict existing development, these plans also include the site boundary which specifies the extent of the outline permission.
27. Conditions in respect of contamination are appropriate in the interests of public and environmental safety. Conditions in respect of the design of highways, surfacing, removal of redundant highway features, turning areas and garages are appropriate in the interests of highway safety. Details in respect of cycle parking should be submitted in the interests of sustainable transport.
28. The submission of a construction management plan, including hours of operations, is required in the interests of the living conditions of nearby residents and highway safety. The submission of an acoustic assessment is required in the interests of the living conditions of future residents in respect of noise. A condition in respect of the implementation and timing of ecological measures is required in the interests of biodiversity. Conditions in respect of surface water drainage are required in the interests of highway safety, sustainable drainage and flood risk.
29. Conditions in respect of materials and boundary treatments are not required as these should be addressed as part of the reserved matters.
30. Planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Although the Council refers to matters including visual and residential amenity, it has not set out why the circumstances of the appeal site are any different from existing residential properties in the area. I am not persuaded that the removal of permitted development rights is reasonable or necessary in this case.
31. I have not included a condition requiring details of electric vehicle charge points. This matter is addressed by the Building Regulations, and the Planning Practice Guidance sets out that conditions requiring compliance with other regulatory requirements, such as Building Regulations, will not meet the test of necessity and may not be relevant to planning.

Conclusion

32. For the reasons given above, I conclude that the appeal should be allowed.

David Cross

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
 - i) Site Location & Existing Block Plan, Ref: J1877-PL-01 Rev P01
 - ii) Integrated Planning, Affordable Housing, Basic Heritage and Design & Access Statement, January 2023
 - iii) Flood Risk Assessment, 25.07.2022 Version 01
 - iv) Bat Emergence and Re-entry Surveys, 22/08/2022
 - v) Biodiversity Net Gain Assessment – Baseline Biodiversity Unit Value, 24/08/2022
 - vi) STAGE I/ TIER I Geo-Environmental Desk Study Report, Report: IE22/042/SITI, 01/07/2022, Rev. 00
 - vii) Preliminary Ecological Appraisal and Preliminary Roost Assessment, 22/08/2022
- 5) No works shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval, in writing, of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced.

The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;
- (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and
 - service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,

archaeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with all relevant, current, best practice guidance, including the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

- 6) No works shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared and then submitted to and agreed, in writing, by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 7) No works shall take place other than that required to carry out remediation, the approved remediation scheme must be carried out in accordance with the details approved. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.
- 8) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 5, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 6, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 7.
- 9) Prior to the first occupation of the development, the developer shall submit to the Local Planning Authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in condition 8.
- 10) Prior to the first occupation of the development, the proposed estate road, at its bellmouth junction with Old Heath Road shall be provided with 10m radius kerbs returned to an access road carriageway width of 5.5m and flanking footways 2m in width returned around the radius kerbs which shall connect to the existing footways. The new road junction shall be constructed at least to binder course prior to the commencement of any other development including the delivery of materials.

- 11) Prior to the proposed access being brought into use, a 1.5m x 1.5m pedestrian visibility splay, relative to the highway boundary, shall be provided on both sides of that access and shall be retained and maintained free from obstruction clear to ground thereafter. These splays must not form part of the vehicular surface of the access.
- 12) No unbound materials shall be used in the surface treatment of the proposed vehicular access within 6m of the highway boundary.
- 13) The existing access or any part of an access (dropped kerb) rendered redundant or unnecessary by this development shall be suitably and permanently closed to the satisfaction of the Local Planning Authority, incorporating the re-instatement to full height of the highway verge/footway/kerbing to the specifications of the Highway Authority, immediately the proposed new accesses are brought into use.
- 14) Prior to occupation of the proposed development, details showing the proposed means of preventing the discharge of surface water from the development onto the highway shall be submitted to and approved in writing by the Local Planning Authority and retained thereafter.
- 15) Prior to the commencement of development, details of the estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) shall be submitted to and approved in writing by the Local Planning Authority.
- 16) All carriageways should be provided at 5.5m between kerbed footways or 6.0m where vehicular access is taken but without kerbing.
- 17) All footways should be provided at no less than 2.0m in width.
- 18) All off-street car parking shall be provided in precise accord with the details contained within the current Parking Standards both dimensionally and numerically being provided within the site which shall be maintained free from obstruction and retained thereafter.
- 19) Prior to commencement of the proposed development, vehicular turning facilities for service and delivery vehicles of at least size 3 dimensions and of a design which shall be approved in writing by the Local Planning Authority, shall be provided within the site which shall be retained and maintained free from obstruction thereafter.
- 20) Any garage provided with its vehicular door facing the carriageway shall be sited a minimum of 6m from the highway boundary.
- 21) Prior to the occupation of the proposed development, details of the provision for the storage of bicycles sufficient for all occupants and visitors to that development, of a design that shall be approved in writing with the Local Planning Authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted within the site which shall be maintained free from obstruction and retained thereafter.
- 22) No development shall take place, including any site clearance, ground works or works of demolition, until a Construction Management Plan (CMP) has been submitted as a scaled drawing to and approved in writing by, the local planning authority. The approved CMP shall be adhered to throughout the construction period. The CMP shall provide for:

- i. the parking of vehicles of site operatives and visitors;
 - ii. loading and unloading of plant and materials;
 - iii. storage of plant and materials used in constructing the development;
 - iv. wheel and under body washing facilities;
 - v. hours of deliveries and hours of work, including site clearance, ground works, works of demolition and construction;
 - vi. measures to control noise and vibration;
 - vii. measures to control the emission of dust and dirt during construction; and
 - viii. a scheme for recycling/disposing of waste resulting from demolition and construction works. No waste materials should be burnt on the site, instead being removed by licensed waste contractors.
- 23) The reserved matters application(s) relating to appearance, layout and landscaping shall include a detailed acoustic assessment and mitigation report, produced by a competent person, which provides details of the noise exposure at the facade of residential dwellings, internal noise levels in habitable rooms and noise levels in all associated amenity spaces. The design and layout should avoid exposure of habitable rooms to noise levels that exceed the following criteria:
- 60dBLAeq 16 hours (daytime, 07:00-23:00, outside)
- 55dBLAeq 8 hours (night, 23:00-07:00, outside)
- As required to meet the above, acoustic barriers and site design, including building orientation and internal layout of dwellings, shall be used to minimise noise exposure to habitable rooms and reduce the need to rely on closed windows. Where the facade noise levels outside of habitable rooms do not exceed those stated above, but the internal noise levels stated in the current version of BS8233 are exceeded with windows open, enhanced passive ventilation with appropriate sound insulating properties shall be provided to ensure compliance with the current version of BS8233 with windows closed and that maximum internal noise levels at night do not exceed 45dBA on more than 10 occasions a night.
- If exposure exceeds the noise levels stated above, significantly enhanced ventilation will be required, and will need to be proposed, with any reliance upon building envelope insulation with closed windows to be justified in supporting documents that cross reference the mitigation measures used and the evaluation of different designs, layouts and sound reduction methods (including barriers) considered during the design process. In addition, noise levels in external amenity spaces shall not exceed 55dBLAeq 16 hours, daytime. The development shall thereafter be carried out in accordance with any details approved, and shall be retained in accordance with these details thereafter.
- 24) All ecological recommendations, enhancement measures and/or works (including recommendations and implementation timing), shall be carried out in full accordance with the details contained in the Preliminary Ecological Appraisal throughout the lifetime of the development works and precise details of wildlife enhancement opportunities shall be submitted to and agreed in writing by the Local Planning Authority within

two months of commencement of development. The agreed wildlife enhancement opportunities shall be provided prior to first occupation of the dwelling and thereafter retained as such.

- 25) No works shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and certified as technically acceptable in writing by the SUDs approval body or other suitably qualified person(s). The certificate shall thereafter be submitted by the developer to the Local Planning Authority as part of the developers application to discharge the condition. No development shall commence until the detailed scheme has been approved in writing by the Local Planning Authority. The approved scheme shall subsequently be implemented prior to occupation and should include but not be limited to: Run-off from the site restricted to a maximum of 24.5l/s for all events up to the 1 in 100 inclusive of climate change (40%) storm event. Infiltration testing across the site area, in accordance with BRE 365, to support the SuDS hierarchy. Control of all surface water runoff generated within the development for all events up to and including the 1 in 100 year event inclusive climate change (40%). An appropriate amount of treatment in line with the CIRIA SuDS Manual C753. Final detailed modelling of the whole drainage network on site. A drainage plan highlighting final conveyance and exceedance routes, location and sizing of storage features, discharge/infiltration rates and outfall/s from the site.
- 26) Prior to occupation a Maintenance Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority. Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided. The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

End of Schedule