
Appeal Decision

Site visit made on 9 January 2024

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th March 2024

Appeal Ref: APP/A1530/W/23/3319590

Land west of Turnpike Close, Colchester CO4 5ND

- 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 P Clarke against the decision of Colchester Borough Council.
 - The application Ref 222383, dated 12 September 2022, was refused by notice dated 16 November 2022.
 - The development proposed is described as “erection of two infill self-build bespoke designed dwellings”.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Outline planning permission is sought with all matters reserved. I have determined the appeal on this basis.

Main Issues

3. The main issues are whether the development is suitably located, the effect of the proposal on community facilities, and the effect of the proposal on ecology.

Reasons

Suitable location

4. The appeal site is a parcel of land set amongst a cluster of residential properties. The settlement of Langham sits to the north of the appeal site described as being approximately 1.6 miles away, with the settlement of Colchester to the south. I note there are also public rights of way in the area although none appear to directly link the appeal site with neighbouring settlements. Due to the distance of these nearby settlements to the appeal site it is unlikely that future occupiers of the properties on the site would walk to shops and services in these settlements.
5. The nearest bus stop, identified as *Langham Oak*, is located around 1.3 kilometres to the north of the appeal site which has a regular bus service¹. Whilst there is a footpath that runs from the appeal site to this bus stop, it is narrow in sections, it does not have any street lighting and in parts runs directly adjacent to the A12 dual carriageway. This footpath is not a desirable walking route.

¹ Appendix MRF3

6. Given the location of the site and surrounding transport links, future occupiers of the proposed development would be reliant on the use of private motor vehicles. It has been suggested that a planning condition could be imposed to secure a travel pack to encourage engagement with sustainable modes of transport. There is no compelling evidence before me, given the location of the site and existing facilities, that a travel pack could adequately secure methods to encourage sustainable modes of transport.
7. A number of appeal decisions² have been brought to my attention. There is no compelling evidence to suggest that the schemes subject of these decisions are directly comparable to the development in this appeal, particularly with regards to location and relevant development plan policies.
8. Allowed appeal decision Ref: APP/P1560/W/18/3217198 relates to a development near to the appeal site at Turnpike Close. The Inspector in this decision did find that there would be harm in locating dwellings in this area. However, at the time of this appeal the Council could not demonstrate a five year housing land supply and in the planning balance the Inspector concluded that the adverse impacts of the proposal would not significantly and demonstrably outweigh its benefits when assessed against the policies in the National Planning Policy Framework (the Framework) taken as a whole. There are significant differences between the scheme in the allowed appeal and the development subject of this appeal, as the Council can now demonstrate a five year housing land supply and therefore paragraph 11 of the Framework is not engaged. As with the Inspector in the allowed appeal, I also find that there would be harm through the location of the proposed development, and the proposal would be contrary to local development plan policies and the Framework which seeks to promote sustainable development in rural areas.
9. Accordingly, the proposed development would not be suitably located. The proposal would be contrary to Policies SP1 and SP3 of the Colchester Borough Local Plan Section 1 2021 (CBLP1), Policies DM20 and DM21 of the Colchester Borough Local Plan Section 2 2022 (CBLP2) and the Framework which seeks proposals to promote sustainable modes of transport and ensure development locations are accessible by a choice of means of travel.

Community facilities

10. The Council have indicated that financial contributions are required towards community facilities. Policy SP6 of the CBLP1 and DM2 of the CBLP2 seeks new development to contribute towards the provision of community facilities.
11. The Council have indicated that around £5745.66 should be made towards community facilities with appendix 6 of the Councils statement of case providing a breakdown of the contribution and also reference to Community Infrastructure Levy (CIL) and a Supplementary Planning Document (SPD). Copies of the Councils SPD and CIL documents have not been submitted and there is minimal evidence in the Councils delegated report or statement of case which defines the deficiencies in local community facilities and the effect that the proposal might have on them. I therefore cannot be certain that the contributions sought would be necessary to make the development acceptable or that they would be directly related to the development and fairly and reasonably related in scale and kind.

² Appendix MRF1, MRF2, MRF4 and MRF5

Ecology

12. The appeal site has hedgerow and mature trees along its boundary with the Council indicating that the site is within 500 metres of a waterbody as well as the site having scrub and tussocky grasses.
13. The appellant states that there are limited opportunities for protected species referencing Hedgelink and Schedule 4 of the Hedgerow Regulations and indicating that hedgerow suitable for bats require a diverse shrub layer and that bats can be disturbed by traffic noise. It is further indicated that the hedgerow is not considered as 'important' and removal could be done without the need for planning permission.
14. Due to the appeal site being in a rural location with the presence of mature trees, shrubbery and near to waterbodies, it would be expected that a formal ecology or habitat assessment would be undertaken to determine the presence or not of protected species on the site or in the immediate area. There is no convincing evidence before me which clarifies whether there are protected species present on the site or in the near vicinity and how the proposed development would affect them.
15. A planning condition requiring mitigation would not be reasonable in this instance as clarity would be required before consent is granted as to whether there are protected species and whether suitable mitigation could be provided.
16. Consequently, insufficient evidence has been provided and it has not been demonstrated that the proposal would not have a harmful effect on ecology in the area. The proposal would be contrary to Policy ENV1 of the CBLP2 which seeks development to not cause significant direct or indirect adverse harm to protected species.

Other Matters

17. I have had regard to the appellants statement of cases, noting that the appellant has registered interest with the Council with regards to self-build dwellings in line with the Framework requirements. No sites have been shown to be available to meet this requirement with only a limited number of schemes being approved. The site is not identified by the Council as being within any designated landscape area. No concerns have been raised in terms of character and appearance, highway safety, flooding, effects on living conditions and contamination. There have been no objections from the Parish Council. These matters would not outweigh the harm I have identified above with regards to the location of the development and effect on ecology.

Conclusion

18. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding.
19. For the reasons given above, I conclude that the appeal should be dismissed.

Chris Baxter

INSPECTOR