



Appeal Decision

Site visit made on 2 February 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal Ref: APP/A1530/W/23/3322548

76 Belle View, Rowhedge Road, Colchester CO2 8EJ

- 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 Philip Boyland against the decision of Colchester Borough Council.
 - The application Ref 222833, dated 11 November 2022, was refused by notice dated 6 January 2023.
 - The development proposed is the demolition of store building and erection of single dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application sought outline planning permission with the appearance, landscaping, layout and scale of the proposed development being reserved ("the reserved matters") for consideration at a later date. As such, I have treated the submitted drawings as being for illustrative purposes only insofar as they show the reserved matters.
3. The appeal site lies within the zone of influence for several European designated sites¹ scoped into the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy, which are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 as amended ("the regulations"). The appellant has paid the requisite financial contribution to mitigate the potential adverse effects of the appeal development on these sites. Consequently, the Council has withdrawn its second reason for refusal. I will return to this matter later in my decision.
4. The Colchester Borough Local Plan 2013-2033 comprises the North Essex Authorities' Shared Strategic Section 1 Plan (Adopted February 2021) and the Section 2 Plan (Adopted July 2022). For the purposes of this decision, I have referred to them as the S1LP and S2LP respectively.
5. The Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023. There are no material changes relevant to the substance of this appeal and therefore I am satisfied that no one would be prejudiced by the changes to the national policy context. All references to the Framework in this decision relate to the revised document.

¹ Colne Estuary Special Protection Area (SPA) and Ramsar site, Blackwater Estuary SPA and Ramsar site, Dengie SPA and Ramsar site, Stour and Orwell Estuaries SPA and Ramsar site (south shore), and the Essex Estuaries Special Area of Conservation.

Main Issues

6. The main issues are:

- The effect of the proposed development on the character and appearance of the area.
- Whether the proposed development would be in an appropriate location for new housing with particular regard to the Council's settlement strategy and the accessibility of services and facilities.

Reasons

Character and appearance

7. The appeal property is one of three detached dwellings set within relatively generous and well landscaped plots fronting on to the southwest side of Rowhedge Road. Those dwellings are separated by wide gaps giving a very loose pattern to the development on this side of the road. Development on the opposite side of the road consists of several buildings, mostly residential dwellings, set in a comparatively denser but still relatively loose-knit pattern.
8. Together, these dwellings form a cluster that occupy plots mostly containing trees and dense planting, and often bordered by hedgerows. Lining the roadside frontage on the same side as the appeal site is a relatively tall hedgerow. Fronting the layby opposite is a dense row of trees. These attributes combine to give the cluster of buildings, including the appeal property, an attractively mature and verdant character and appearance.
9. The buildings in the cluster are separated from the settlements of Rowhedge and Colchester, and the suburban character of the development within them, by a rural landscape of open fields, woodlands and an absence of built development. As such, the cluster is embedded within and experienced as part of the rural landscape between those settlements.
10. Due to the shape of the appeal site, the proposed dwelling would likely be sited further from the road than the existing dwelling at Number 76, with a narrow road frontage and a vehicular access that would be widened and shared with the host property. In this position, the proposed dwelling would be set back into the plot and depending upon its scale, would likely to be visually well contained within the framework of tall boundary hedgerows and trees within the plot.
11. However, the removal of a short section of hedgerow and potentially a large tree from the site frontage to facilitate the widening of the existing access would result in the loss of landscaping. Together with the presence of a proposed dwelling that would, at the very least, be visible from the road in close distance views along the widened access and driveway, the proposal would have an urbanising effect. It would lead to the erosion of the loose-knit, verdant and mature character and appearance of the cluster, resulting in a moderate adverse effect on the character of the wider rural landscape between Colchester and Rowhedge.
12. The location of the proposal amongst the existing cluster of buildings would not lead to any perceptible coalescence of settlements given the separation

distances and relatively open land between them. However, it would nonetheless cause visual harm for the reasons given above.

13. For these reasons, I conclude on this issue that the proposal would harm the character and appearance of the rural landscape, and the intrinsic character and beauty of the countryside. As such, it would be contrary to S1LP Policy SP7 and S2LP Policies OV2 and ENV1, insofar as they require development to respond positively to local character and context, respect the character and appearance of landscapes, and the intrinsic character and beauty of the countryside.

Whether an appropriate location for housing

14. S1LP Policy SP3 operates as a strategic level policy to direct where future growth should be accommodated across the North Essex Authorities' areas. It states that existing settlements will be the principal focus for growth, and development will be accommodated within or adjoining settlements according to their scale, sustainability and role within each district.
15. In considering whether the appeal proposal would adjoin a settlement, I am referred to the Court of Appeal judgment in *Corbett v Cornwall Council* and another [2022] EWCA Civ 1069, which was also taken into account in an appeal decision² in the Council's area at Swallowfields ("the Swallowfields appeal").
16. In *Corbett*, the dispute concerned the interpretation of whether a development was "*immediately adjoining*" a settlement for the purposes of a specific policy. The Judgement stated that: "*The words 'immediately adjoining'....should not be given an unduly prescriptive meaning. There is a degree of flexibility in them. They do not necessarily mean 'contiguous' or 'coterminous' or 'next to' or 'very near'. They allow the decision-maker to judge, on the facts, whether the site and proposed development can be regarded as sufficiently close to the settlement in question to be 'immediately adjoining' it.....*"
17. The appeal site is located outside of the defined development boundaries of either Colchester or Rowhedge. However, there is no dispute between the main parties that the appeal proposal would not involve an isolated dwelling. Given my assessment of the appeal site and its surroundings, I have no basis to consider differently. However, it is nonetheless experienced as part of a relatively small and loose-knit cluster of residential buildings that are separated from the built-up areas of Rowhedge and Colchester mostly by open fields and woodlands.
18. The buildings within the defined boundaries of Colchester or Rowhedge were not readily visible from within the appeal site or along much of the road in front of it. Only when travelling past the appeal site towards Colchester and rounding the left-hand bend close to the last dwelling in the row on this side, does the built development within the defined boundary of Colchester become visible in the distance and across the predominantly open fields that separate it from the cluster. The sense of physical and visual separation between the cluster of buildings of which the appeal site forms part, and Colchester is emphasised by the openness of the land between them and the absence of built development. Consequently, in having regard to the physical and visual relationship between the appeal site and the defined boundary of Colchester, I find that it does not

² APP/A1530/W/22/3295728

adjoin the settlement of Colchester, or Rowhedge for that matter, for the purposes of S1LP Policy SP3.

19. The proposed dwelling in the Swallowfields appeal was also separated from a defined settlement boundary by intervening fields. However, the distance of separation was much shorter at some 129m, and houses within the settlement boundary could be seen from the appeal site. As such, the locational characteristics and context in the Swallowfields appeal were materially different to those in the appeal before me, and they do not lead me to reach a different conclusion on this issue.
20. Notwithstanding the main focus of the interpretation of 'adjoining' in *Corbett* being on the physical and visual relationship between the site and development and the settlement, it was held that the functional relationship between them also has a bearing on the necessary exercise of planning judgment.
21. Walking and cycling to Colchester or Rowhedge would be possible. There is a continuous footway which passes the appeal site and runs alongside the carriageway to those settlements. The services and facilities within Rowhedge are not specified in the evidence, although Colchester is a substantial settlement with a range of services and facilities, including a convenience store some 800m from the appeal site, a takeaway and other neighbourhood facilities.
22. Trips to purchase items from the closest convenience store in Colchester would likely necessitate a near immediate return journey to the appeal site. In turn, the walking distance is likely to deter some walkers from making this trip and generate a short vehicle trip instead. For cyclists, the relatively regular traffic flows that I observed, together with the absence of a dedicated cycle lane, would be likely to discourage less experienced and proficient cyclists from travelling to the closest settlements, even taking account of the street lighting closer to Colchester. Therefore, cycling would not be suitable for all potential future occupiers of the appeal dwelling.
23. The evidence suggests that the appeal site is well served by an hourly bus service to Colchester and Rowhedge from the nearby bus stops. Together with the possibility of walking and cycling for some journeys, future occupiers of the proposed dwelling would be provided with a choice of travel modes. Although there would likely be a need to use the private car for some journeys, thus resulting in carbon emissions, the number of car journeys from a single dwelling would be relatively low.
24. The proposal would not reduce the need to travel as required by one of the several place shaping principles in S1LP Policy SP7. However, for the reasons give above, there would be consistency with the part of S1LP Policy SP3, which seeks to ensure that development is accessible by a choice of means of travel. Furthermore, the appeal site is in a rural location where the Framework in Paragraph 109 acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.
25. In having regard to *Corbett*, given the travel distances between the appeal site and the facilities and services with the closest settlements, I find that the functional relationship between them would not be sufficiently strong to justify the appeal site as 'adjoining' Colchester under S1LP Policy SP3.

26. Taking all the above into account, the appeal site would not be located within or adjoining a settlement. It would be contrary to the spatial strategy for North Essex in S1LP Policy SP3, and the plan-led approach to growth and managing development, thus resulting in harm. Furthermore, as I found above, the proposal would harm the character and appearance of the rural landscape, and the intrinsic character and beauty of the countryside, contrary to S1LP Policy SP7, and S2LP Policies ENV1 and OV2. Development that conflicts with Policy OV2 also conflicts with the settlement strategy in S2LP Policy SG1.
27. For these reasons, I conclude on this issue that the appeal site would not be a suitable location for new housing and would be contrary to the aforementioned policies, the requirements of which are set out above.

Other Matters

28. The main parties agree that the proposal would avoid likely significant adverse effects to the nature conservation interests of the designated European nature conservation sites referred to above. However, in light of my findings on the main issues above, it is not necessary to look at the potential effects on those sites in detail as it would not change the outcome of the appeal.
29. The appeal proposal would make a small but positive contribution to the supply of housing in the area. It would use land efficiently and could be developed relatively quickly. Construction works would generate short term employment opportunities and economic activity. The proposed dwelling could be occupied as a multi-generational home and would deliver long-term economic and social benefits through residents supporting local facilities and services. It could be designed to achieve exemplary environmental sustainability performance and levels of energy efficiency. However, taken together, the economic, social and environmental benefits of the appeal proposal would be small given its scale and they attract modest weight in its favour.
30. The appeal proposal would cause no harm to the safety of highway users, or to ecology or biodiversity interests. It would not affect heritage assets or place future occupiers at an unacceptably high risk of flooding, nor increase flood risk to nearby land. The detailed design of the dwelling could provide adequate living conditions for future occupiers whilst safeguarding those of nearby occupiers, and it could be designed to be in-keeping with the styles of houses in the area. However, an absence of harm in these respects is neutral and does not weigh for or against the development.

Planning Balance

31. In the context of the development plan, the appeal proposal would conflict with the Council's spatial strategy and its plan-led approach to growth and managing development, and it would harm the character and appearance of the rural landscape, and the intrinsic character and beauty of the countryside. As such, these harms would bring the development into conflict with S1LP Policies SP1, SP7 and SP3, and S2LP Policies ENV1 and OV2, and the development plan as a whole. The development plan is recently adopted, and I give substantial weight to the appeal proposal's conflict with it.
32. The evidence indicates that the Council can demonstrate 5.25 years supply of deliverable housing land and is therefore achieving the boost in the supply of housing that the Framework expects. This might change and is not a ceiling on

housing delivery. However, I have necessarily determined the appeal on the evidence before me and in accordance with the development plan and found harm. The appeal proposal's collective benefits weigh modestly in its favour. However, they would be insufficient to outweigh its conflict with the development plan when considered as a whole.

Conclusion

33. For the reasons given above and having considered all matters raised, I conclude that the proposed development would conflict with the development plan as a whole. The material considerations, including the benefits of the proposal, do not carry sufficient weight to outweigh the conflict, nor do they indicate that the appeal should be determined other than in accordance with the development plan. The appeal should be dismissed.

G Sylvester

INSPECTOR