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# Appeal Decision

Site visit made on 9 May 2024

**by C Shearing BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30<sup>th</sup> May 2024**

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**Appeal Ref: APP/A1530/W/23/3325955**

**Land adj 19 Bradbrook Cottages, Armoury Road, West Bergholt, Colchester, Essex CO6 3JW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Oxley-Crisp against the decision of Colchester City Council.
  - The application Ref is 223071.
  - The development proposed is erection of a 3 storey, 2 bedroom detached family home.
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## Decision

1. The appeal is allowed and planning permission is granted for erection of a 3 storey, 2 bedroom detached family home at Land adj 19 Bradbrook Cottages, Armoury Road, West Bergholt, Colchester, Essex CO6 3JW in accordance with the terms of the application, Ref 223071, subject to the conditions set out in the schedule below.

## Preliminary Matter

2. The Council refer to policies of an emerging local plan. Based on the evidence it is not clear how far away these policies are from adoption or what form they may take post examination. As such they attract very limited weight. In any event the appeal is determined having regard to the adopted development plan at this time.

## Main Issues

3. The main issues are: the effects of the proposal on the character and appearance of the area, and whether the proposal would make an appropriate contribution to community facilities.

## Reasons

### *Character and Appearance*

4. This part of Armoury Road adjoins woodland and open grassland to its western side, while the eastern side is distinctly residential in character and comprises a mix of single storey and two storey properties. There is variation in the design and appearance of those properties and several have been extended or altered over time. There is some variation in the front building lines, which are typically set behind areas of off-street parking and soft landscaping. Development on the adjoining site to the south is currently underway, where planning permission has been granted for a detached house of a similar scale to the appeal scheme<sup>1</sup>.

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<sup>1</sup> Land subject to planning permission ref 210280

5. The proposed house would be taller than the adjoining bungalow to the north, however this is not an unusual relationship in a residential area, and the combination of single storey and two storey building heights would conform to the character of the street. The proposed gap between the two buildings would also provide some visual relief and distinction between the buildings. Despite having second floor accommodation, this would be contained within the roof slopes and would be apparent only via modest sized rooflights which would not be visually prominent. The front building line, eaves height and ridge height of the proposed house would also respect those of the other properties nearby. As such the proposal would sit comfortably within its context and would respect those attributes which contribute to the local character.
6. For these reasons the proposal would not cause harm to the character or appearance of the area, and would comply with Policy SP7 of the Colchester Borough Local Plan 2013- 2033 Section 1 2021 (the LPS1), Policy DM15 of the Colchester Borough Local Plan 2017 – 2033 Section 2 2022 (the LPS2), and Policy PP10 of the West Bergholt Neighbourhood Plan, insofar as they require development to reinforce local distinctiveness and respect local character.

### *Community Facilities*

7. Policy DM2 of the LPS2 requires new development to provide, or contribute towards the provision of community facilities to meet the needs of new and expanded communities and mitigate impacts on existing communities. The Council's Officer Report requests a total of £1641.62 in order to mitigate the effects of additional residents of the development on community facilities and the appellant asserts that contributions have been paid in connection with the more recent grant of planning permission on the site.
8. While there is some detail of an estimated project cost, there is otherwise little evidence as to how the contribution sought has been calculated in order to be fairly and reasonably related in scale and kind to the proposed development. The 'Provision of Community Facilities' Supplementary Planning Document 2013 details a tariff approach, but the tariff would appear to be different to the amount sought. As such it has not been demonstrated that the contribution is necessary nor meets the relevant tests for a planning obligation as set out in the National Planning Policy Framework. While the proposal would be in breach of Policy DM2, given the absence of evidence to show the obligation meets the relevant tests I afford the conflict with that policy little weight and the proposal is acceptable in this regard.

## **Other Matters**

### *Habitat Sites*

9. The appeal site is in the zone of influence of the Essex Coast of which a large proportion is covered by international, European and national wildlife designations, and which are afforded protection under the Habitat Regulations. Based on information set out in the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document 2020 (the RAMS), the purpose of these designations is to protect breeding and non-breeding birds and coastal habitats. Recreational disturbance has been identified as an issue for all of the designated habitat coastal sites and research has shown that residents from Colchester Borough are likely to travel to the coast for recreational use. As such, there is a pathway for the proposal to have

effects on the designated sites and a likely significant effect cannot be ruled out. In combination with other plans or projects, the proposal could lead to an adverse effect on the integrity of those sites.

10. The RAMS identifies a strategic approach to mitigation capable of resulting in no adverse effect on the integrity of the sites, which is endorsed by Natural England. It details measures that would be secured, including education and communication, as well as habitat based measures. I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the habitat sites.
11. The main parties agree that a RAMS payment has already been made by the appellant in relation to development on this site. The amount received by the Council would appear to slightly exceed the tariff stated in the RAMS, for which there is no reason given. However, the evidence before me indicates that the payment has been made for that purpose and I am satisfied that the mitigation measures have been secured and the contribution can be used for its intended purpose. I note that the Council no longer raise objection on the basis of the RAMS for this reason and the proposal would comply with Policy SP2 of the LPS1 which relates to the need for mitigation against recreational disturbance.

### **Conditions**

1. The Council has provided a list of suggested conditions that it considers would be appropriate. I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
2. In addition to the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. For visual reasons, details of external materials are required. For reasons of highway safety, delivery of the parking spaces is necessary. As vehicle charging points now fall under building regulations I have not included this provision. To enhance biodiversity in accordance with the development plan, details of an enhancement scheme are also necessary. To protect living conditions of nearby occupants, a restriction on demolition and construction hours is also imposed.
3. As the site contains adequate space to accommodate safe and convenient cycle storage it is not necessary to secure details for approval. Similarly, I do not consider that submission of boundary treatments is necessary, nor are restrictions beyond those given under permitted development.

### **Conclusion**

4. Although the proposal would conflict with part of the development plan, for the reasons given I afford those conflicts limited weight, and the proposal should be regarded as being compliant with the development plan when read as a whole. The appeal is therefore allowed.

*C Shearing*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 201 R1, 202 R1, 203 R2, 204 R2, 205 R3, 206 R4, 207 R4, 208 R3, 209 R3, 210, 211 R1, 212.
- 3) No demolition or construction work shall take place outside the following times: Weekdays: 0800 – 1800, Saturdays: 0800 – 1300, Sundays and Bank Holidays: No working.
- 4) Prior to the installation of any facing or roofing materials, details of those materials shall first be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved details.
- 5) Prior to the first occupation of the development, the two off street parking spaces shown on drawing 209 R2 shall be completed and available for use. They shall remain available for use at all times.
- 6) Prior to the first occupation of the development, a scheme for biodiversity enhancements to the site shall be submitted to and approved in writing by the local planning authority. This shall include measures showing a 10% net biodiversity gain and a timetable for their implementation. The development shall be carried out in accordance with the approved details and timetable and maintained thereafter.

### **End of Schedule**