



Appeal Decision

Site visit made on 25 July 2024

by Mark Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2024

Appeal Ref: APP/A1530/W/24/3341116

The Willows, Foundry Lane, Copford, Essex CO6 1BH

- 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 Bocking Homes Limited against the decision of Colchester City Council.
 - The application Ref is 232365.
 - The development proposed is demolition of existing property and structures and erection of 3 no. new dwellings (2 nett additional) with parking and private amenity space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In an attempt to address some of the Council's concerns with the planning application, the appellant has provided an Interim Ecological Impact Assessment (IEcIA). The Council and interested parties have had an opportunity to comment on it. I am satisfied that prejudice does not arise in taking it into account in deciding this appeal, and so that is what I have done.
3. The application was supported by a Unilateral Undertaking (UU) that was left undated at the Council's request. I queried this and an updated UU dated 22 July 2024 was subsequently submitted. Both main parties are aware of its contents, so I have taken it into account too.
4. The National Planning Policy Framework (Framework) has been revised since the application was determined. However, the changes are not relevant to the key issues in dispute. Therefore, I have not sought further views regarding this matter.

Main Issues

5. The main issues are:
 - whether the site is an appropriate location for housing, with particular regard to the Council's spatial strategy and the effect of the proposal on the character and appearance of the site and the surrounding area; and
 - the effect of the proposal on ecology, with particular regard to protected species and biodiversity net gain.

Reasons

Location

6. The principal part of the site includes a single storey dwelling, a stationary caravan, containers and outbuildings of varying condition that are nestled in a wooded area which features a high proportion of trees and other vegetation. However, the site also includes a narrow strip of vegetated land which runs alongside a track that currently provides access. The track is at the end of Foundry Lane, which forms part of a residential estate. The settlement boundary of Copford includes the estate and the land next to the track, with the rest of the site in the countryside for development plan purposes.
7. Policy SP3 of the North Essex Authorities' Shared Strategy Section 1 Plan (LP1) sets out the Council's spatial strategy. Amongst other things, it makes clear that development will be accommodated within or adjoining settlements having regard to considerations including their scale, sustainability, accessibility, role, character and the potential for coalescence.
8. I have also been referred to policy SG1 of Colchester Borough Local Plan 2017-2033 Section 2 (LP2), which sets out that development should be located in the most accessible and sustainable locations in accordance with LP1 policy SP3. However, it also states that development in the countryside will only be acceptable where it accords with LP2 policy OV2, which requires the character and appearance of landscapes and the built environment to be respected and biodiversity to be preserved or enhanced. Policy SP7 of LP1, policies ENV1 and DM15 of LP2 and policy CE1 of the Copford and Easthorpe Neighbourhood Plan (NP) require assessments of similar considerations, but the latter also seeks to resist coalescence between settlements and parishes.
9. The site forms part of a larger wooded area located between the A12 and the estate, and the land on either side of that area is largely undeveloped. The site is therefore well-contained spatially. The nearest built-up areas are a considerable distance away and I consider the proposed net addition of 2 dwellings at the site to constitute small scale development. Accordingly, the development would not result in coalescence between settlements or parishes.
10. The principal part of the site is also well-contained visually as views towards it from Foundry Lane and elsewhere are limited by the extent of landscape coverage. It has a secluded, wooded and largely undeveloped character as a result of the landscaping. This is reinforced by the dwelling, caravan and most of the outbuildings being near to the A12 and set away from the estate. The part of the site next to the track contributes positively to these characteristics by acting as a vegetated buffer between the wooded part of the site and the estate that creates a sense of separation with the settlement.
11. The proposal includes the removal of the existing buildings and structures on site and the construction of 3 detached dwellings with associated parking facilities, hardstanding and gardens, and an access drive that would run through the site and beside the track to Foundry Lane. This would necessitate the loss of several trees and vegetation. While much of it is not visible from outside the site nor of significant individual quality, that which is in the vicinity of proposed plot 2 and next to the track contributes meaningfully to the site's landscape coverage. Views towards the site's centre and the land next to the track would be opened up as a result of the development, with at least the

access drive and upper parts of the dwelling at plot 2 evident from Foundry Lane. This would have an urbanising effect and the secluded, wooded and largely undeveloped character of the site would be harmed.

12. The cohesive and sensitive design and muted materials of the proposed dwellings would be compatible with the wooded setting, and new landscaping would offset the impacts identified to an extent. The removal of the existing tired and dilapidated buildings and structures would also be somewhat beneficial despite them being inconspicuous from outside the site. Despite this, there would be residual harm to the character and appearance of the site and the surrounding area. In addition, while I note the findings of the appellant's arboricultural evidence, there would likely be pressure for trees near plots 1 and 2 to be pruned or felled so satisfactory levels of daylight, sunlight and outlook would be maintained for the occupiers of the dwellings, which could further open up views and lead to additional harm.
13. The development would not be harmful in terms of character and appearance considerations in other respects as it would be sufficiently screened from view. In addition, the Council has not raised concerns about the accessibility of the development and, having regard to the site's proximity to Copford and the presence of footpaths in the estate, its location is satisfactory in that respect. Moreover, the development plan identifies Copford as a sustainable settlement and allocates sites for housing elsewhere at its margins. The proposal would also align with paragraph 83 of the Framework insofar as it would enhance and maintain the vitality of the rural communities in and around Copford through the occupiers of the dwellings engaging with the local economy and community. I also see no reason to conclude that this development would set a precedent for other schemes. Nevertheless, the proposal would harm the character and appearance of the site and the surrounding area, and so conflict with the spatial strategy for the reasons identified.
14. The proposal conflicts with LP1 policies SP3 and SP7, LP2 policies SG1, OV2, ENV1 and DM15 and NP policy CE1, the purposes of which are set out above. The Council also refers to LP1 policies SP1 and SP4 and LP2 policy SG2 in relation to this matter. However, I find no direct conflict with these policies, as the first merely echoes the Framework's presumption in favour of sustainable development and its economic, social and environmental objectives, and the other two principally detail the housing requirement and the spatial strategy.

Ecology

15. The site includes lowland mixed deciduous woodland habitat and ponds are nearby. The Preliminary Ecological Appraisal (PEA) and IEcIA indicate that impacts on protected or important species would be largely negligible, subject to mitigation measures. However, the IEcIA recognises that trees within and near the site are suitable for roosting bats and should be subject to further surveying to determine the type and extent of any mitigation, and that a mitigation licence may need to be issued by Natural England. It also confirms that environmental DNA surveys revealed the presence of great crested newts in a nearby pond. Hence a mitigation licence may also be needed in respect of great crested newts, following further surveying.

16. Circular 06/2005¹ states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development, is established before permission is granted. On that basis, it would be inappropriate to condition the undertaking of further surveys relating to bats or great crested newts. The use of conditions to require mitigation or compensation measures would also be inappropriate in the absence of further surveying because there can be no certainty that such measures would satisfactorily address any harm that might occur to the protected species. Furthermore, Natural England have not indicated that licences would be issued, and there is nothing before me to suggest that the legal tests² for issuing licences would likely be satisfied. Therefore, it has not been demonstrated that the proposal would not cause unacceptable harm to protected species.
17. Additionally, LP2 policy ENV1 states that development will only be supported where it delivers a net gain in biodiversity of at least 10 percent. While legal requirements relating to the provision of 10 percent biodiversity net gain do not apply to this proposal as the application was made before 2 April 2024³, this does not mean that the policy should be discounted. The PEA and IEcIA suggest that demonstrable biodiversity net gain is achievable through a combination of on and offsite habitat creation and enhancement. However, substantive evidence such as calculations of values prior to and post-development have not been provided to support these claims or secure delivery of net gains. Given the lack of certainty, it would not be appropriate to require the provision of biodiversity net gain by condition.
18. I acknowledge that the appellant has gone to considerable lengths and expense to prepare ecological evidence. However, I must still conclude that the proposal conflicts with LP2 policies ENV1 and OV2 which seek to conserve or enhance the natural environment, and is inconsistent with the duty to conserve and enhance biodiversity as set out by Section 40 of the Natural Environment and Rural Communities Act 2006.

Other Matters

19. The site is reportedly within the zones of influence of habitats sites as defined by Annex 2 of the Framework. If I were minded to grant permission, I would need to consider whether the development would adversely affect the integrity of the habitats sites. In doing so, I would need to consider associated mitigation which is intended to be secured by the UU. However, even if there would be no adverse effects on habitats sites, this would constitute a neutral consideration rather than a benefit weighing in favour of the scheme.
20. The UU also intends to secure separate financial contributions towards community facilities and open space, sport and recreational facilities. These are also neutral considerations as the contributions would be used to offset the increased demand for such facilities generated by the occupiers of the development.

¹ ODPM Circular 06/2005: Biodiversity and Geological Conservation - Statutory Obligations and their Impact within the Planning System

² Article 16(1)(c) of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

³ Schedule 7A of the Town and Country Planning Act 1990 and Regulation 3 of The Biodiversity Gain Requirements (Exemptions) Regulations 2024

21. Notwithstanding this, there would be benefits from an additional two dwellings in this accessible location. In this respect, I note that the housing requirement is expressed as a minimum and the development could be delivered in a short timescale due to its size. I also have no reason to doubt that the dwellings would be sustainably constructed and energy efficient. Further, I have already found that the occupiers would bring about economic and social benefits. There would also be economic benefits arising from the construction process. Additionally, setting aside the ecological issues detailed earlier, there would be benefits from wildlife enhancements as set out in the PEA and IEcIA. However, due to the small amount of housing proposed, the overall benefits arising from the scheme would be limited and insufficient to outweigh the conflict with the development plan.

Conclusion

22. The proposal is contrary to the development plan taken as a whole for the reasons provided above. Material considerations do not indicate that a decision should be taken other than in accordance with the development plan.

23. Accordingly, the appeal should be dismissed.

Mark Philpott

INSPECTOR