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# Appeal Decision

Site visit made on 20 August 2024

**by Jennifer Wallace BA(Hons) MRTPI**

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

**Decision date: 19 September 2024**

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**Appeal Ref: APP/P1560/W/24/3340633**

**Hedgerows, Rectory Road, Frating, Colchester, Essex CO7 7HQ**

- 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 and Mrs Masters against the decision of Tendring District Council.
  - The application Ref is 23/01587/FUL.
  - The development proposed is change of use from former orchard to garden land, incorporating tennis court.
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## Decision

1. The appeal is allowed and planning permission is granted for change of use from former orchard to garden land, incorporating tennis court at Hedgerows, Rectory Road, Frating, Colchester, Essex CO7 7HQ in accordance with the terms of the application, Ref 23/01587/FUL, subject to the following 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: drawing number HRF/23/1.
  - 3) The existing trees and hedgerows located to the northern boundary of the site shall be retained at a minimum height of 4 metres. Should any of the trees or hedgerow be removed, they shall be replaced with plant/s of appropriate size and species during the first planting season following removal.
  - 4) Prior to its installation, details of the height, position and appearance of the chain link fence shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
  - 5) Prior to the installation of any floodlighting, full details of its height, position, luminance and cowling shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
  - 6) Before the tennis court hereby approved is first brought into use, details of a landscaping scheme for the eastern boundary of the site shall be submitted to and approved in writing by the local planning authority. The approved landscaping scheme shall be carried out in the first planting season following approval.

## **Main Issue**

2. The main issue is the effect of the proposal on the character and appearance of the area.

## **Reasons**

3. The appeal site forms part of what appears to be a field. The boundary of the site consists of landscaping to three sides, with further landscaping around the rest of the land within the appellant's ownership. It lies within a small cluster of development consisting of residential properties set in spacious gardens. There are also commercial glasshouses to the rear of the appeal site. Notwithstanding, the site is clearly within the countryside and has a rural character and appearance.
4. The proposal would result in a change to the character of the appeal site from appearing as part of a field to being part of a domestic garden. A tennis court and enclosure is proposed, however there would be the potential for further paraphernalia typical of a garden to be sited within it. However, the effects of this would be limited given the generally open nature of a tennis court, and the more lightweight appearance of a chain link fence.
5. Furthermore, the site is well enclosed by the existing landscaped hedging. Although it may become more visible during the winter months, the site is clearly in proximity to not only residential properties but to the expansive commercial glasshouses. The effect of the proposal would be purely localised to a glimpsed view through the existing field access or during the winter months when the boundaries may lose some leaf cover. This harm would be very limited and would not cause overriding harm to the character and appearance of the area.
6. Although the proposed tennis court would be a short distance from the dwelling, this would not be incongruous with the pattern of substantial plots in proximity to the appeal site. While no gaps are shown in the hedging between the existing dwelling and the site on the plans, at my site visit there were clear low points in this hedging. There would be no planning reason to require the retention of that boundary hedging were the appeal allowed. It would be open to the appellant to create suitable connectivity between the existing dwelling and the tennis court. There is no requirement for the appellant to justify why they wish to carry out the proposed development.
7. The proposal would therefore not cause unacceptable harm to the character and appearance of the area. It would therefore accord with Tendring District Local Plan 2013-2033 and Beyond Section 2 (January 2022) Policy PPL 3 which seeks to prevent development which would cause overriding harm to the character and appearance of the rural landscape and Tendring District Local Plan 2013-2033 and Beyond Section 1 (January 2021) Policy SP 7 which requires development to preserve the quality of existing places and their environs.

## **Conditions**

8. The Council has suggested conditions should I be minded to allow the appeal. Additionally, the potential for other conditions was set out in the Council's officer report. I have had regard to these in light of the tests set out in paragraph 56 of the National Planning Policy Framework and I have made

amendments to some of them for consistency and clarity purposes. In the interests of certainty, I have imposed conditions stipulating the timescale for the commencement of works and the approved plans.

9. The boundary hedging is important in integrating the proposed development into the surrounding area, and a condition requiring its retention at a height of 4m is considered reasonable and necessary.
10. The Council's officer report highlights that the plans do not specify the height of the chain link fence, but that this could be controlled by condition. Although the Council has not suggested such a condition, I consider one to be reasonable and necessary. Similarly, the report also refers to the need to prevent floodlighting from being installed. While I do not think it would be reasonable to prevent any floodlighting from being installed, in the interests of maintaining the character and appearance of the area, details of any floodlighting could be subject to a condition.
11. No landscaping is proposed for the eastern boundary of the appeal site. The Council's officer report refers to the need for planting along this boundary, and I concur in the interests of maintaining the rural character and appearance of the area.
12. The Planning Practice Guidance<sup>1</sup> is clear that conditions restricting permitted development rights may not pass the tests of reasonableness or necessity. The appellant already has a substantial domestic garden and I have no reason to think permitted development rights have been restricted. As there will be a requirement to retain the boundary hedging, and the presence of the glasshouses was important in establishing the acceptability of the proposal, I consider it would not be reasonable or necessary to remove domestic permitted development rights to preserve the character and appearance of the area.

### **Conclusion**

13. For the reasons set out above the appeal is allowed.

*Jennifer Wallace*

INSPECTOR

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<sup>1</sup> Use of Planning Conditions Paragraph: 017 Reference ID: 21a-017-20190723 Revision date: 23 07 2019