



Appeal Decision

Hearing held on 10 July and 14 August 2024

Site visit made on 10 July 2024

by Sarah Housden BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 SEPTEMBER 2024

Appeal Ref: APP/A1530/W/24/3339756

**Land West of Stanway Western Bypass and South of Church Lane,
Stanway, Colchester, Essex, CO3 8WD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Stour Valley Construction, Groundworks Limited, Strawboat Limited and JF Ashton Limited against the decision of Colchester City Council.
 - The application Ref is 231671.
 - The development proposed is Outline Planning Application with all Matters Reserved except Access, for the erection of a 72 Bed Care Home for the Elderly (C2 Use), along with 2.8 ha (7 acres) of New Public Open Space and the diversion of a Public Footpath.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal seeks outline planning permission with all matters reserved for later approval apart from the means of access. The indicative plan (Drawing No 939/01 Revision A) shows the location of the access road into the site, the general layout of the proposed care home, car parking, open space, the proposed diversion of the public right of way and areas of landscaping. I have treated that plan as a guide to how the site might be developed, were the appeal to succeed.
3. A revised National Planning Policy Framework (the Framework) was published on 5 December 2023, following the refusal of planning permission. At the hearing, the main parties had an opportunity to comment on whether or not this had any implications for the appeal. It was agreed that the main point of relevance is at paragraph 63, where the reference to meeting the housing needs of older people has been expanded to include retirement housing, housing-with-care and care homes. I have taken that change into account in my determination of the appeal.
4. An updated Needs Assessment (UNA) was submitted with the appeal. This does not change the nature of the development, and the Council has had an opportunity to respond to the update in its statement of case and at the hearing. I have therefore taken it into account in my determination of the appeal.

5. The third reason for refusal relates to the absence of a contribution to the draft Essex Coast Recreational Disturbance Avoidance Mitigation Strategy, to mitigate the impact of increased recreation activity from the development. The appellant confirmed that the relevant sum had been paid on 21 May 2024, and at the hearing, the Council confirmed that this addresses the reason for refusal. As such, I have not considered this matter further in my decision.
6. The second reason for refusal relates to the absence of a Section 106 (s106) planning obligation to mitigate the impact of the development in relation to affordable housing, archaeology, community facilities, sport and recreation, highways improvements, transport and sustainability and health services.
7. The officer report indicates that during the processing of the planning application, the Council did not make any request to the appellant for the relevant contributions to mitigate the impact of the development. However, neither was any offer made by the appellant to agree and secure these. The Council's statement of case does not clarify the contributions that would be required. The Council's Community Infrastructure Levy (CIL) Compliance Statement was submitted on 8 July 2024, two days before the hearing. By the opening of the hearing, no draft s106 obligation had been submitted.
8. Following discussion on this issue at the hearing, and in the interests of fairness, I adjourned the hearing to enable the submission of a draft s106 agreement. That was submitted on 9 August 2024 in accordance with the agreed timetable, and the hearing was resumed via Microsoft Teams on 14 August 2024. The draft s106 agreement does not include the full range of contributions sought by the Council and at the resumed hearing, contributions to community facilities, highway works, and transport and sustainability remained a matter of dispute between the parties. I address that matter in more detail later in this decision.
9. The completed s106 agreement was submitted on 30 August 2024 and I deal with its provisions later in my decision. The hearing was closed in writing on 4 September 2024.

Main Issues

10. The main issues in this case are:

- Whether or not the appeal site would be a suitable location for the proposal having regard to the development plan policies for the location of new development and the effect on the character and appearance of the area;
- Whether or not there is a quantitative and/or qualitative need for C2 accommodation;
- The effect of the proposed development on the provision of open space in the area; and
- Whether or not it would be necessary and reasonable to secure the provision of affordable housing, archaeological investigation, community facilities, sport and recreation, highways improvements, transport and sustainability and health services by means of a planning obligation.

Reasons

Location

11. The appeal site covers approximately 4.8 hectares and is located to the west of the Stanway Western bypass. The new housing development at Lakelands is directly opposite to the east, and to the south the Lakelands Centre and playground is accessed via a spur off the bypass which would also be used to access the proposed care home. The northern boundary is demarcated by an embankment rising to Church Lane, which is elevated above the bypass and carried over it by a road bridge. The appeal site was formerly part of a large sand and gravel quarry and is designated as a Local Wildlife Site, known as 'Stanway Pits'.
12. The Country Park to the south and west of the Lakelands Centre is served by a Public Right of Way (PROW) Stanway 11, which crosses the appeal site, and then runs parallel to the bypass before it meets Church Lane at the top of the embankment.
13. The spatial strategy in the Colchester Borough Local Plan Section 1 (2021) (LPS1) Policy SP3, seeks to accommodate development within or adjoining settlements, according to their scale, sustainability and their existing role within each District, and, where relevant, across the wider strategic area.
14. The more detailed strategy for Colchester in Policy SG1 of the Local Plan Section 2 (2022) (LPS2) directs development to the most sustainable and accessible locations, by defining different tiers for growth. The Urban Area of Colchester is at the top of the spatial hierarchy reflecting its role as the main location for jobs, housing, services and the choice of transport modes. Stanway is within the Urban Area.
15. The appeal site is outside of, but adjacent to, the Stanway settlement boundary in LPS2. The appellant refers to the words 'adjoining settlements' within LPS1 Policy SP3 in support of the point that relevant development plan policies do not preclude development outside settlement boundaries where it would adjoin existing settlements. On a plain reading of the LPS2 policies, there are none which specifically restrict development outside settlement boundaries, and the site is located immediately adjacent to the built-up area of Colchester which is a focus for growth in the spatial hierarchy in LPS2 Policy SG1.
16. However, LPS2 Policy DM10 (Housing Diversity), seeks to locate residential development for specialist groups, including those with care needs, where there is a proven need, where they are located within settlements and are accessible by public transport. That is a logical approach given the need for vulnerable groups to be located within their community and within locations offering a choice of transport modes. Due to its position outside the Stanway settlement boundary, the appeal proposal would therefore not accord with the preferred location for specialist housing set out in LPS2 Policy DM10.
17. In relation to public transport, whilst there are no bus services running on the Stanway bypass, there are bus stops with services to Colchester and further afield approximately 0.5 kilometres from the site, and they can be accessed via dedicated footways. The requirement of Policy DM10 to demonstrate a need for specialist housing is dealt with in the second main issue in this case.

18. Turning to the effect on form and character, when approaching along the Stanway bypass from the south, the site appears as an open area against the backdrop of the vegetation on the Church Lane embankment. At closer distances from this direction, the proposed building would be seen in conjunction with the Lakelands Centre and its surrounding car park, and it would not appear isolated or unduly prominent in this semi-developed context.
19. When approaching from the opposite direction, the Church Lane overbridge screens longer distance views, and the appeal site only becomes visible after passing under the Church Lane bridge. From this direction, the area will also have a more built-up appearance following the development of the site allocation for 250 houses to the north of Church Lane. The building would be viewed in the context of more built-up surroundings in the future, and would not appear isolated or out of place.
20. The previous quarry use has resulted in changes to landform, with the embankments to the north and west of the site creating a degree of enclosure and visual separation from the wider open countryside to the west of Stanway. The Country Park to the south also has a more managed and manicured appearance. Overall, I conclude that the development would not have a wider harmful impact on the character and appearance of the area or on the rural character of the Borough. At the reserved matters stage, a scheme with satisfactory scale and detailing which is sympathetic to the character and appearance of the area could be achieved.
21. To summarise on the first main issue, due to its location outside the settlement boundary, the proposal would lead to a degree of conflict with the provisions of LPS2 Policy DM10 in relation to specialist housing. However, it would not fundamentally undermine the spatial strategy for Colchester set out in LPS1 Policy SG3 and LPS2 Policy SG1 in so far as they seek to locate growth at the most sustainable locations.
22. Subject to satisfactory detailing at the reserved matters stage, there would be no conflict with the aims of LPS2 Policy SG1 where it requires new development in the countryside to respect the character and appearance of landscapes and to safeguard the rural character of the Borough. There would also be compliance with LPS2 Policies ENV1 and OV2 in so far as they seek to ensure that development in the countryside does not have an adverse impact on the different roles, the relationship between and separate identities of settlements, valued landscapes, the intrinsic character and beauty of the countryside and visual amenity and respects the character and appearance of landscapes.

Quantitative and/or qualitative need

23. The Planning Practice Guidance (PPG) states that the need to provide housing for older people is critical¹, as people are living longer and the proportion of older people in the population is increasing. Essex County Council (ECC) is the relevant local authority for the commissioning of adult social care, including care home provision, and was represented at the hearing.
24. The appellant's UNA is set within the context of the increasing numbers of people over 65 in Essex, which is predicted to rise from 21% at present, to 25% by 2040. The UNA is based on a 5 mile catchment area from the appeal

¹ Paragraph: 001 Reference ID: 63-001-20190626

- site, and on the Colchester Borough administrative area. To 2027, there is an excess of 304 market standard care home beds in the catchment area and 81 in the local authority area, but in relation to dementia care beds, a shortfall of 8 in the catchment and 103 in the local authority areas respectively.
25. When assessed against the benchmark of full market standard bedrooms which incorporate ensuite wetrooms, levels of need rise to 413 for the catchment and 691 for the local authority area to 2027, the earliest date on which the scheme could be operational.
26. ECC's Market Shaping Strategy (MSS) places greater emphasis on supporting people at home and increasing extra care housing for older people, with fewer residential care placements. Whilst not disputing the levels of need set out in the UNA, the Council's position is that there is an oversupply of C2 residential care in Colchester. In support of that view, the Council points to the fact that average occupancy in Colchester stands at 88%, whereas for long term viability, occupancy needs to be around 95%. The Council also takes issue with the use of market standard bedrooms as a factor in assessing levels of need.
27. ECC's latest Market Position Statement does, however, acknowledge that there is a need to increase the number of nursing care homes across Essex to ensure that there is capacity for short periods of intervention for those with complex needs, within the overall context of keeping people in their community for as long as possible. The immediate short term need is for dementia care beds, and whilst no breakdown of the appeal proposal between general care and dementia care has been given, that will be informed at the reserved matters stage by the operator's commercial decision and any updated evidence of need.
28. The Council's position is that care homes are expected to be delivered on the sites allocated in the development plan and that a Local Plan review is underway through which sites may also be identified for such provision. A site at Wivenhoe came forward through the Neighbourhood Plan for supported living accommodation, and other accommodation may come forward on sites identified through the Plan review. In the interim, there is nothing in the evidence to indicate that the appeal proposal would result in a significant excess in the provision of care home and dementia beds in the area, or that it would undermine the 'home first' approach in the MSS.
29. The Framework and the PPG recognise that a diverse range of housing is needed to meet the needs of older people. There is clearly a level of uncertainty about future levels of need post pandemic, and as older people's needs become more complex. The proposal would contribute to the choice of accommodation in the catchment and the local authority area, and there is nothing to suggest that it would undermine the development of allocated sites that may be identified for C2 use in the future through a Plan led approach.
30. Overall, a quantitative need for dementia beds in the short term and a need for care beds in the longer term is identified in the appellant's evidence. A qualitative need has also been demonstrated. The provision of LPS2 Policy DM10 to demonstrate a proven need for specialist housing is satisfied.

Effect on Open Space

31. The appeal site falls within a larger area designated as public open space on the LPS2 Policies Map, which also includes the Country Park. Although the

- appeal site is within private ownership, PROW Stanway 11 provides a publicly accessible route through it, connecting Church Lane to the north of the site with the Country Park to the south.
32. The appeal proposes the diversion of PROW Stanway 11, so that it would run to the south of the proposed care home building and within the hardened footway along the Stanway bypass. The precise route could, however, be subject to variation should there be a more suitable route at the reserved matters stage.
33. The public open space designation on the Policies Map has been examined through the Local Plan Examination and is supported by LPS2 Policy DM17. Notwithstanding that the appeal site itself is not within the Country Park, does not have planning permission to be used as public open space, and is not allocated for any specific use in LPS2 Policy WC2 (Stanway), it is designated as public open space in the development plan and there is nothing in the evidence that would justify a contrary view.
34. The existence of a previous masterplan showing the appeal site as 'leisure land' pre-dates the designation of the site as public open space in LPS2 and is not a matter to which I give any weight. The appeal decision² referred to by the appellant lends weight to the point that the LPS2 Policies Map public open space designation covers a broad spectrum of open space types. That approach is in line with the Framework's definition which includes all open space of public value which offers important opportunities for sport and recreation and can act as a visual amenity.
35. LPS2 Policy DM17 requires that where development proposals result in a loss of open space, they must demonstrate that there is an identified excess provision within the catchment of the facility and that no likely shortfall is expected within the Plan period. The proposal would result in the loss of 2 hectares of designated public open space to development. No assessment of the provision of open space in the area has been submitted by the appellant.
36. Policy DM17 also states that the development of existing or proposed public or private open space will not be supported unless alternative and improved provision is created in a location well related to the functional requirements of the relocated use and its existing and future users. The delivery of 2.8 hectares of the appeal site as public open space, to the north and west of the proposed care home building would be secured through the s106 agreement, along with formal arrangements for its future maintenance and management. A contribution of £173,504.80 would be made in the event that the open space is transferred to the Council.
37. However, this does not represent alternative or improved provision under the terms of Policy DM17. The appeal scheme would result in the loss of 2 hectares of public open space which is valued for its amenity and for its contribution to the green infrastructure network including the Country Park, a point which is borne out in the representations from local residents.
38. For these reasons, there would be conflict with LPS2 Policy DM17 which seeks to protect and enhance the existing network of green links and open spaces. There would also be conflict with the Framework which states that existing open space should not be built on unless an assessment has been undertaken

² Appeal Ref APP/A1530/W/21/3277732

which shows the space to be surplus to requirements, or that the loss resulting from the development would be replaced by equivalent or better provision.

Planning obligations

39. The Council's CIL Compliance Statement seeks contributions towards community facilities, transport and sustainability, parks and recreation, highway works, primary health care services, archaeology and affordable housing.
40. The Affordable Housing Supplementary Planning Document (2023) (SPD) states that provision is not required for care homes, and at the hearing the Council confirmed that a contribution would not be required.
41. Further information submitted by the appellant shows that there are unlikely to be any archaeological assets on the site, due to its previous quarry use and infilling. The Council is satisfied that no contributions or planning conditions are required in relation to archaeology.
42. The s106 agreement secures contributions to parks and recreation, primary health care and Travel Plan monitoring. The items that remain in dispute between the parties are therefore community facilities, transport and sustainability and highway works.
43. A community facilities contribution of £24,624.30 is sought by the Council to meet the requirements of LPS2 Policies PP1 and DM2. Specific projects are identified at the Lakelands Centre and Stanway Community Centre (Tollgate Hall and Victory Hall) and Copford Village Hall.
44. Policy PP1 requires contributions from all proposals, but the method of calculating contributions that is hosted on the Council's website relates to bedroom numbers in residential development. The Community Facilities SPD (2013) pre-dates the adoption of LPS2 Policy PP1 and refers to residential development as the basis for the calculation of any contribution to community facilities, which is different from the Class C2 use proposed in the appeal. As such, the SPD has very limited weight in the determination of the appeal.
45. My conclusion is that a contribution to community facilities from C2 development is not supported by adopted policies and guidance and would not meet the tests for obligations set out in the Framework, the PPG and the CIL Regulations 2010. That conclusion is based on the specific evidence and circumstances in this case.
46. The transport and sustainability contribution of £60,000 sought by the Council would be directed to a walking and cycling route between the city centre and Stanway which is a scheme within the Local Walking and Cycling Infrastructure Plan, and a Car Club. This would be necessary to meet the requirements of LPS1 Policy SP6 to secure segregated walking and cycling routes linking key centres and the promotion of car clubs, and LPS2 Policy PP1 which requires contributions to the cost of infrastructure. Walking and cycling facilities between Stanway and the city centre could be used by staff, residents and visitors, and the car club by staff, and would support sustainable modes of transport. A contribution is therefore necessary to deliver policy objectives but has not been provided.

47. The highway works relate to the provision of a 'toucan' crossing on the Stanway bypass. As this has been secured through other development, it should be delivered through the relevant legal or other mechanism. It is not reasonable to expect the appeal proposal to 'pick up' the cost of the works if not implemented by another developer.
48. In summary, and based on the evidence before me, contributions to community facilities and highway works are not justified. The absence of a contribution towards transport and sustainability measures is contrary to LPS1 Policy SP6 and LPS2 Policy PP1.

S106 agreement

49. I have assessed the obligations in the s106 agreement against the tests set out in the Framework, the PPG and the CIL Regulations 2010 (as amended).
50. Arrangements for the management and maintenance in perpetuity of the 2.8 hectare area of open space to be provided as part of the development, and a contribution in the event of the area being transferred to the Council, are necessary to meet the requirements of LPS2 Policies PP1 and SG7 for developer contributions and to ensure adequate infrastructure provision in conjunction with new development.
51. The contribution to primary healthcare services would be distributed equally between three General Practices in the surrounding area and is necessary to meet the requirements of LPS2 Policy PP1. The Travel Plan Monitoring Fee is necessary to support the implementation of sustainable modes of travel in accordance with LPS1 Policy SP6 and LPS2 Policy PP1.
52. Schedule 4 of the s106 agreement limits the use of the building to accommodation for the elderly and residents with dementia. It is necessary to restrict the use in this way to meet the specific need identified, and to ensure that changes of use within Use Class C2 that would otherwise be permitted by the General Permitted Development Order 2015 would not occur.
53. I am satisfied that the s106 obligations would meet the tests set out in Paragraph 56 of the Framework and Regulation 122(2) of the CIL Regulations 2010 (as amended). I find that they are all be necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind. However, to the extent that they are required to mitigate the impact of the development, they attract neutral weight in the overall planning balance.

Other Matters

54. The development would provide car parking in accordance with the Council's maximum standards and there is nothing to suggest that parking on the shared access road would not be managed to avoid indiscriminate parking. The management of parking at the Lakelands Centre is a separate matter from the appeal development and not a matter on which I can comment further.
55. The nearest residential dwellings would be separated from the care home building by the Stanway bypass, and a satisfactory layout and design that avoids harm to the living conditions of the nearest occupiers can be secured at the reserved matters stage.

56. The site is designated as a LWS because it contains open mosaic habitat on previously developed land. The most significant loss of habitat consists of 1.29 hectares of other acid grassland, but the loss would be compensated for by the habitats of High and Very High distinctiveness proposed for creation. A minimum of 10% biodiversity net gain can be achieved for both habitat and hedgerow units as set out in the appellant's Biodiversity Net Gain Feasibility Report, and had the appeal been allowed a condition could have been imposed to require further details of ecological measures at the reserved matters stage.

Planning Balance and Conclusion

57. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations, which include the Framework, indicate otherwise.

58. The appeal site would not undermine the spatial strategy for Colchester in the development plan and would help to meet the housing needs of older people and people with dementia, in accordance with the Framework and the PPG. The economic benefits of construction, increased spending in the local area and approximately 200 jobs also weigh in favour of the scheme. The contributions and provision secured through the s106 agreement are neutral in the overall balance.

59. However, the loss of 2 hectares of designated public open space and the absence of a contribution to transport and sustainability improvements would conflict with the development plan and this attracts significant weight against the proposal. This conflict is of sufficient importance that the proposal would be contrary to the development plan, read as a whole. In the circumstances of this appeal, the material considerations do not justify making a decision other than one in accordance with the development plan.

60. For the reasons outlined above and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Sarah Housden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Robert Pomery, Pomery Planning Consultants

Jessamy Venables, Carterwood

FOR THE LOCAL PLANNING AUTHORITY:

Nadine Calder, Principal Planning Officer, Colchester City Council

Sandra Scott, Place Strategy Manager, Colchester City Council

Daniel Baker, Housing Strategy Manager, Essex County Council

INTERESTED PARTIES:

Mr P Dutch, Lakelands Centre

DOCUMENTS SUBMITTED AT HEARING

- 1 Appeal Decision Ref APP/A1530/W/21/3288712
2. Extract from Planning Obligations Supplementary Planning Guidance relating to the standard for and cost of the provision of open space and sports and recreation
3. Extract from Council's website with guidance on calculating developer contributions towards community facilities.
4. Email dated 26 July 2024 from agent to Council with attached Google Earth images in relation to ground conditions.
5. Emails dated 26 July, 30 July, and 7 August 2024 between the agent and Council in relation to ground conditions and the implications for archaeology.
6. Draft s106 Agreement submitted on 9 August 2024
7. Amended draft s106 Agreement submitted on 16 August 2024

DOCUMENTS SUBMITTED AFTER HEARING

1. Certified s106 Agreement dated 30 August 2024