



Appeal Decision

Site visit made on 30 October 2024

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th November 2024

Appeal Ref: APP/A1530/W/24/3341068

Former Old Heath Congregational Church, Fingringhoe Road, Colchester, Essex CO2 8EB

- 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 Kemal Dagdelen against the decision of Colchester City Council.
 - The application Ref is 232773.
 - The development proposed is demolition of former Old Heath Congregational Church and construction of a pair of 3 bedroomed semi-detached houses and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A unilateral undertaking (UU), made under section 106 of the Town and Country Planning Act 1990, has been submitted. The purposes of the UU are to secure financial contributions towards the provision of community facilities, the provision, maintenance or improvement of open space sport and recreational facilities, and for use in mitigating the potential impacts of the proposed development upon the integrity of Habitats Sites. As necessary, I comment on these matters later in my decision.
3. A screening direction was issued under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). In exercise of the powers conferred by Regulations 14(1) and 7(5) of the EIA Regulations, the Secretary of State directed that the development is not EIA development.

Main Issues

4. The main issues are:
 - Whether the proposed development complies with the relevant development plan policy which protects and provides for community facilities;
 - The effects of the proposed development upon the character and appearance of the area including the effects of the loss of the former Congregational Church building as a non-designated heritage asset; and
 - Whether the proposed development would satisfactorily address any risks posed by site contamination.

Reasons

Community facilities

5. The appeal site contains the former Old Heath Congregational Church, a building which previously served the community, which is now vacant.
6. Policy 2 of the Colchester Borough Council Section 2 Local Plan 2017-2033 (the Section 2 Plan) relates to community facilities. It seeks to protect community facilities and, in effect, it supports their loss only when certain tests are met. In summary, the first of these tests requires the availability of a satisfactory alternative community facility or it to be proven that the retention of the facility would not be viable. The relevant part of the second test sets out that it must be the case that the facility proposed for loss could not be provided or operated by either the current or other occupier with marketing exercises satisfactorily demonstrating this to be the case.
7. In relation to the church building proposed for demolition, I have a number of building survey submissions before me. Altogether, they set out a wide range of defects with the church building. This includes damp and rot, deficiencies in the building's scissor trusses load bearing capacity and that the roof structure would require complete replacement, and a likely requirement for some underpinning. Although none of the survey submissions include a full appraisal of the costs which would have to be borne to retain the building for a community use, the analysis within them gives a very strong impression to me that the building is beyond an economically viable repair.
8. My own visit also brought home to me the scale and scope of the building's condition problems. Furthermore, and I touch on this elsewhere in my decision, the nature of the construction methods utilised within the building would likely have some limiting effects upon its useful lifespan. Given all that is before me, I envisage that it is not economically viable to retain the building given its condition. Therefore, Policy 2's first test is passed.
9. The Congregational Federation, which once operated the church, have submitted that the church closed following a period of decline and that prior to its closure its use was rare. This indicates that the demand for the use of the building by the last operator was weak. I have been provided with evidence of marketing endeavours for the site. This has involved for sale boards and agent promotion of the site's availability dating from 2020 before it was sought for auction disposal a quite considerable period of time later in 2023. The evidence before me indicates to me a lack of interest for re-using the building for the community function it once provided. Therefore, I am satisfied that Policy 2's second test is passed.
10. The Council set out that alternative options to the complete redevelopment of the site, that would retain elements of the existing facility, have not been explored. However, this is not a requirement of Policy 2, nor would it ensure the site was used for community purposes.
11. As well as protecting community facilities, Policy 2 places a requirement upon new development proposals to provide, or contribute towards, the provision of community facilities secured by a section 106 legal agreement or infrastructure levy.

12. In this case a UU has been submitted and, amongst other matters, a financial contribution towards the provision of community facilities is proposed to be secured by it. Policy 2 provides the justification for the contribution, and I have no reason to conclude that the sum which would be provided is incorrect. Therefore, this measure within the UU is necessary, related directly to the development and fairly related in scale and kind. As such it would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the National Planning Policy Framework (the Framework).
13. However, the UU is not dated. This creates considerable uncertainty in my mind that the UU is sound and could be relied upon to effectively secure the contribution. In such circumstances the amount of weight I attribute to the UU is very limited and, as a result, I find that the proposal would fail to provide community facility provision improvements required by the Section 2 Plan Policy 2.
14. For the above reasons, although I have identified that the loss of the former church building as a community facility would be justified, the proposal fails to adequately contribute towards the provision of community facilities. The proposal therefore conflicts with Section 2 Plan Policy 2 taken as a whole.

Character and appearance

15. The former Old Heath Congregational Church provides an example of a type of church building, constructed predominantly within the Victorian period, utilising inexpensive and quick-to-construct materials including galvanised iron. Such construction often reflective quite rapid changes in local demographics and was a response to the need to erect a church building as soon as practicable. More colloquially, such churches are referred to as tin tabernacles. The condition of the church in this case has greatly deteriorated. Nevertheless, even in its poor state, it still has a distinctive appearance, and its ecclesiastical origin remains clear. The church building is a non-designated heritage asset, and its significance stems from its architectural and artistic interest as a tin tabernacle type church together with the historic interest that it provides of congregationalism in the Colchester area. Overall, and because of its significance, the former church building still makes a positive contribution to the character and appearance of the area despite its condition.
16. The local area contains many residential properties but there are other building uses near to the appeal site too including a car garage, a fish and chip shop, a convenience store and a school. The design of buildings in the local area varies. Some buildings are quite unremarkable, but there are also examples of buildings which are more distinctive and have a positive effect upon the character and appearance of the area. This includes, just along from the fish and chip shop, a terraced row of properties which share distinctive brick detailing and render finishes and, in the opposite direction, a traditionally designed school, some large and also traditionally designed detached houses, and some other residential properties which exhibit symmetry and design unity. Next to the appeal site, the property Heathcroft incorporates some distinctive pitched gables with finial detailing which are quite reflective of the former church building. This adds a sense of design cohesion to this particular part of the village.

17. Owing principally to one incorporating a car port and the other not, and a disparity between the width and depth of their two storey elements with stepped-down roof ridges, the pair of semi-detached houses proposed would have an asymmetrical appearance. This would contrast with the symmetry and design cohesion exhibited by a number of other properties within the area and which contribute positively to the site's surroundings. Furthermore, the appearance of the houses proposed would not exude any particular design facets or use of materials which would make them distinctive.
18. Upon completion of the proposal the non-designated heritage asset would be replaced with a development of insufficient design quality, which would fail to be a befitting replacement of the church and which would unacceptably fail to preserve or enhance the quality of the area.
19. Therefore, overall, and inclusive of the loss of the non-designated heritage asset, the proposed development would have unacceptably harmful effects upon the character and appearance of the area. Consequently, the proposal conflicts with Policy SP7 of the Colchester City Local Plan 2013-2033: North Essex Authorities' Shared Strategic Section 1 Plan (the Section 1 Plan) and Policy DM15 of the Section 2 Plan which both seek high standards of design and for development to respect local character. The proposal conflicts with policies ENV1 and DM16 of the Section 2 Plan which seek to ensure that the historic environment and existing areas with local importance or character are protected and enhanced. There is further conflict with policies within the Framework. This includes those policies which set out a desire for new development to be sympathetic to, and make a positive contribution to, local character and distinctiveness, which seek the creation of high quality, beautiful and sustainable buildings and places, and which require the adoption of a balanced judgement where the loss of a non-designated heritage asset would result.
20. The Council's reasons for refusal also cite Policy DM13 of the Section 2 Plan. However, this policy relates to residential alterations, extensions and outbuildings, annexes, replacement dwellings in the countryside, and flat conversions. As such, I find that it is not relevant to the development proposed.

Contamination risk

21. Amongst other matters, Policy ENV5 of the Section 2 Plan sets out that development proposals on contaminated land, or where there is reason to suspect contamination, must include an assessment of the extent of contamination and any possible risks associated with it. The policy further sets out that the onus is on the applicant to demonstrate that there would not be risks posed due to contamination and that conditions may be imposed requiring the execution of remedial works.
22. I am particularly mindful of the consultee comments of the Council's contaminated land officer. These set out that the appeal site is situated adjacent to a historically contaminated site. Given this, I find the prospect of the appeal site having some contamination to be a realistic one. No assessment of the risks posed by contamination, even one of a more desk-top and preliminary nature, is before me. As there is reason to suspect contamination in this particular case, the absence of such an assessment means that there is

much uncertainty in my mind about the risks which would be posed by the proposed development of the site.

23. I note that a contaminated land condition was imposed upon the planning permission at 43 Fingringhoe Road (No 43). However, it is not clear whether the site at No 43 would be as likely to be affected by contaminants from the nearby historically contaminated site, or any other contamination, as the appeal site would. As a result, I cannot be certain that the risks posed by contamination to the appeal site and the site of the cited planning permission are very comparable. Consequently, the approach adopted in the No 43 case is of limited weight in my determination, and it does not demonstrate to me that a contaminated land condition would be an appropriate course of action in the appeal scheme.
24. As there is reason to suspect contamination, and no assessment of this has taken place, the proposal has failed to satisfactorily address any risks posed by site contamination. As a result, the proposal conflicts with Policy ENV5 of the Section 2 Plan. The proposal also conflicts with those policies within the Framework which seek to ensure that sites are suitable for their proposed use, taking account of the risks posed by contamination, and which require adequate investigation in such regard to be undertaken.

Other Matters

25. The development would make a contribution to housing supply and would increase the choice of housing in the area. However, in providing only 2 houses this contribution would be modest, and it would not be sufficient to outweigh the harm which I have identified in my main issues.
26. In combination with other development in the area, the proposal could result in recreational activities and pressures which could affect the interest features of Habitats Sites in the area. If I were minded to allow the appeal, I would need to be satisfied that the proposal would have no adverse effects upon the integrity of these sites. However, I am dismissing the appeal because of my findings on the main issues. Therefore, there is no requirement for me to undertake this assessment.

Conclusion

27. The proposed development conflicts with the development plan taken as a whole. There are no material considerations of sufficient weight to indicate a decision other than one in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

H Jones

INSPECTOR