



Appeal Decision

Site visit made on 15 October 2024

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2024

Appeal Ref: APP/A1530/W/24/3337633

Aboukir, Maypole Road, Tiptree, Essex CO5 0EJ

- 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 Mrs Belinda Bowen against the decision of Colchester City Council.
 - The application reference is 231572.
 - The development proposed is described as "*outline application for a new detached bungalow to land to the rear of Aboukir, Maypole Rd, Tiptree. All matters reserved*".
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Decision

1. The appeal is allowed and planning permission is granted for outline application for a new detached bungalow to land to the rear of Aboukir, Maypole Road, Tiptree with all matters reserved at Land to the rear of Aboukir, Tiptree, Essex, CO5 0EJ in accordance with the terms of the application, reference 231572, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application has been submitted in outline form with all matters reserved for subsequent consideration. Drawings which include details of layout, appearance and parking have been provided with the appeal. I have considered these plans solely on the basis of determining whether, in principle, it is possible to erect a bungalow on the site as set out in the description of development. However, as all matters are reserved for future consideration, I have treated them as illustrative only.
3. A planning obligation made by way of a Unilateral Undertaking (UU) under Section 106 of the Act was submitted during the course of the appeal. I consider this matter in full below.

Main Issues

4. The main issues are:
 - The effect of the development on the character and appearance of the area;
 - Whether the proposed development would provide adequate living conditions for future occupiers of the proposed development and the effect of the development on the living conditions of existing occupiers of neighbouring properties;
 - The effect of the development on the integrity of the Essex Coast European Protected Sites;

- The need for a legal agreement for the provision of open space, sport & play and recreation; and
- the effect on the public health of the future occupiers of the proposed dwellings with regard to land contamination.

Reasons

Character and Appearance

5. The appeal site consists of a parcel of land to the rear of a semi-detached dwelling known as Aboukir on Maypole Road close to its junction with Barbrook Lane. It is located within an established residential area within the village of Tiptree, backing on to a school site. Access would be taken via a strip of land to the side of Aboukir.
6. The character of the area around the appeal site is derived from the variety of buildings, set within the built-up area. The appeal site is enclosed by other residential development and the school site beyond, including an adjacent dwelling known as Hollywells which has been previously developed to the rear of the adjacent property at Wits End. I saw on my site visit the wide variety of building forms, styles, ages and building materials which surround the appeal site. Many properties have garages and outbuildings to their rears which creates a depth of built form.
7. Furthermore, the gap between Wits End and Aboukir would mean that the proposed dwelling would be visible from the road and would not appear cramped or incongruous adjacent to the bungalow at Hollywells. As the proposed dwelling would be viewed in this context of it would not be discordant with the character of the area and given the site's proximity to properties on Barbrook Lane it would be seen from various angles in the context of built development in both the foreground and background.
8. Although I note that Hollywells was granted planning permission prior to the adoption of the Council's Supplementary Planning Document on Infill and Backland Development (SPD), I cannot ignore its presence which alters the character of the area here. Furthermore, I have not been directed towards specific policies in the Local Development Plan which the proposal would conflict with. Whilst the SPD is a material consideration in the determination of the appeal it does not form part of the development plan.
9. Moreover, the SPD does not prohibit backland development rather it advises that it should respect and reflect the character of the area and the existing street scene which I have found to be the case here. Furthermore, the proposal before me would not result in the adverse impacts that the SPD seeks to avoid.
10. I therefore conclude that the proposed dwelling would not lead to a cramped and awkward appearance and therefore would not adversely affect the character and appearance of the appeal site or its surroundings. There would be no conflict with either the advice in the SPD or National Planning Policy Framework (the Framework) paragraphs 126 and 130 which promote high quality development which is sympathetic to local character.

Living Conditions

11. The second reason for refusal does not explicitly set out what the effect on the living conditions of both future and existing occupiers would be. However, from the Council's officer report, it seems to me that it is concerned with whether proposal would provide future occupiers of the proposed dwelling with adequate living conditions with regard to noise and disturbance and the effect of the proposed development on existing occupiers of properties on Barbrook Lane with respect to privacy and overlooking.
12. The proposed dwelling would be single storey in height. The rears of two storey properties on Barbrook Lane face directly towards the appeal site. Although the application is made in outline with no details of siting or appearance included the distance between the appeal site and the rears of the properties on Barbrook Lane and the intervening gardens of properties on Maypole Road would mean that acceptable privacy distances could be achieved as set out in the Essex Design Guide. There would therefore be no adverse effect on the living conditions of existing occupiers of properties on Barbrook Lane with regard to privacy and overlooking.
13. The Council's concerns for the living conditions of future occupiers of the proposed dwelling seem to be concerned with their exposure to noise and disturbance for example, from vehicular movements. The proposal would be accessed from a private driveway off Maypole Road which would be for the sole use of the proposed development. A driveway serving the Hollywells is situated adjacent to the appeal site. I have not been provided with any substantive evidence to suggest that the occupiers of the proposed dwelling would be subjected to noise and disturbance which would result in adverse noise and disturbance from comings and goings from this property. Neither have I had my attention drawn to excessive noise and disturbance which would arise from the neighbouring school site.
14. I therefore conclude that the proposal would not cause undue harm to living conditions of the occupiers of neighbouring properties. The proposal would therefore not conflict with Colchester Borough Local Plan Section 1 (CLP1) Policy SP7 and Colchester Borough Local Plan Section 2 (CLP2) Policies DM12 and DM15 which seek to protect the amenity of existing and future residents with regard to noise and disturbance and acceptable levels of privacy for rear facing habitable rooms and sitting out areas.

Integrity of European Protected Sites

15. The appeal site lies within the Zone of Influence (ZOI) of European Protected Sites on the Essex coast, which are recognised for their value as coastal habitats and support internationally important populations of breeding and non-breeding bird species. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (SPD) establishes mitigation for pressures created by recreational disturbance on this area.
16. A tariff-based system has been established for housing developments, which would contribute towards a range of measures set out in the SPD. The appeal proposal would result in an increase of one dwelling, with a consequent small increase in the number of people living close to the protected sites. The evidence is that this would likely increase recreational disturbance, either on its

own or in combination with other projects, particularly through dog walking, fishing and water sports, to the detriment of the integrity of the protected areas. I therefore find that the proposal would likely lead to significant effects on the protected sites.

17. The Council has adopted a Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) in collaboration with other boroughs within the ZOI of the protected sites. This aims to avoid adverse effects by securing financial contributions towards a detailed programme of strategic avoidance and mitigation measures. CLP1 Policy SP2 confirms this approach. A signed and completed UU dated 26 April 2024 has been submitted which secures the requisite payments.
18. As the competent authority, it falls to me to undertake an appropriate assessment. In this case I find that the financial contribution to the RAMS would secure acceptable mitigation and hence ensure that the proposal would not cause harm to the integrity of the protected sites.
19. I am therefore satisfied that the development therefore accords with the biodiversity requirements of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations) and paragraph 186 of the Framework.

Legal Agreement

20. A UU in respect of community facilities; open space, sport and recreational facilities has been submitted in support of the proposal. have considered the obligation in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (the Regulations). It seems to me that this obligation is directly related to the development and is fairly and reasonably related in scale and kind to the development and therefore also meets the tests set out in paragraph 57 of the Framework.
21. Consequently, I am satisfied that the contributions and requirements contained within the UU are necessary to make the development acceptable in planning terms. Furthermore, on the evidence before me, they would be directly, and fairly and reasonably related in scale and kind, to the development proposed. The proposal therefore complies with CLP1 Policy SP6 and CLP2 Policy DM2 in this regard.

Land Contamination

22. Representations made on the appeal indicate that the site may have been subject to historic land contamination following a fuel leak. I have little information to the exact nature of the contamination or how it was dealt with at the time with regard to the appeal site. However, the appellant accepts that appropriate investigation and mitigation is necessary for the proposed development to take place.
23. From the evidence before me I see no overriding reason why any contamination could not be remediated should it be identified that it remains on the land, and this would not appear to be a situation where land contamination would rule out the development. I am satisfied therefore a suitably worded condition would be proportionate to the risk in this instance.

24. Consequently, I conclude that the proposal would not have an unacceptable effect on the public health of the future occupiers of the proposed dwelling with regard to land contamination. As a result, it would comply with CLP2 Policy ENV5 where it concerns land that is affected by contamination and matters in relation to identifying the risk and remediation.

Other Matters

25. I note that an interested party states that that a tree was felled at the appeal site shortly after planning permission was refused which may have provided habitat for protected species. However, I have no further knowledge of this matter or the reasons for the felling of the tree. The loss of a tree at the site is not a reason in itself to withhold planning permission in this instance. I have placed little weight on this matter and it does not lead me to an alternative conclusion on the main issues.

Conditions

26. I have carefully considered the conditions suggested by the Council in the light of the Framework and Planning Practice Guidance. I have undertaken some minor editing in the interests of precision and clarity. Those included in the schedule are found to be reasonable and necessary in the circumstances of the case.
27. I have imposed the standard outline conditions, time limits and approved plans conditions. Some conditions require matters to be approved before development commences. This is necessary in the case of the Construction Management Plan and land contamination investigation because these either seek to address issues arising during the construction of the development or require incorporation into the final design. The appellant has indicated their willingness to accept these pre-commencement conditions. I have also imposed a condition relating to unexpected contamination which is necessary in the interests of the health and safety of future occupiers of the site.
28. I am satisfied that it would not be unreasonable to expect the construction phase of the development to be carried out at hours compatible with the residential location of the site. I have therefore imposed a condition relating to hours of operations during the demolition and construction phase of the development.
29. Conditions relating to surface water drainage, and biodiversity enhancements are necessary in the interests of sustainability and conditions relating to parking provision, refuse storage, cycle storage and the use of unbound materials are necessary in the interests of highway safety and the appearance of the site.
30. I have not imposed the suggested condition relating to the provision of vehicular accesses as this does appear to be relevant to the appeal site and means of access remains a reserved matter to be determined at a later date in any event.

Conclusion

31. For the reasons set out above and having had regard to the development plan and all other matters raised, I conclude that the appeal should succeed, subject to the conditions set out in the attached schedule.

KL Robbie

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following plans: Location Plan dated 30 June 2023; Land to Rear of Aboukir Drawing Number: Outline 01 dated June 23.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing and under body washing facilities;
 - v) measures to control the emission of dust and dirt during construction;
 - vi) a scheme for recycling/disposing of waste resulting from demolition and construction works;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 6) No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until:
 - i) i. a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority;
 - ii) ii. the site has been remediated in accordance with the approved measures and timescale; and
 - iii) iii. a verification report has been submitted to and approved in writing by the local planning authority.
- 7) If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended until:

- i) i. additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority; and
 - ii) ii. a verification report for all the remediation works has been submitted to and approved in writing by the local planning authority.
- 8) Demolition or construction works shall take place only between 0800 and 1800 Monday to Friday and 0800 and 1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 9) No works above foundation level shall take place until details of surface water drainage shall have been submitted to and approved, in writing, by the Local Planning Authority. No part of the development shall be first occupied or brought into use until the agreed method of surface water drainage has been fully installed and is available for use.
- 10) The development shall not be occupied until such time as car parking has been provided in accord with current Parking Standards together with a workable, convenient and efficient turning areas for both the donor and proposed dwelling which has been submitted as a scaled drawing to and approved in writing by, the Local Planning Authority. These facilities shall be retained in this form at all times and shall not be used for any purpose other than the parking and turning of vehicles related to the use of the development thereafter.
- 11) Prior to the first occupation of the development, details of refuse and recycling storage facilities have been provided and made available in accordance with details that have been submitted to and agreed in writing b the Local Planning Authority to serve the development. Such facilities shall thereafter be retained to the satisfaction of the Local Planning Authority at all times.
- 12) Prior to the occupation of the proposed development, details of the provision for the storage of bicycles sufficient for all occupants of that development, of a design that shall be approved in writing with the Local Planning Authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted within the site which shall be maintained free from obstruction and retained thereafter.
- 13) Prior to first occupation of the development, Biodiversity Enhancements shall be provided in accordance with the details provided in the ecology report dated 11.4.23.
- 14) No unbound materials shall be used in the surface treatment of the proposed vehicular accesses within 6m of the carriageway.

****End of Schedule****