



Appeal Decision

Site visit made on 11 February 2025

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2025

Appeal Ref: APP/A1530/W/24/3350577

John Castle Way, Colchester CO2 7TU

- 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 Oakbourne Management Company Limited against the decision of Colchester City Council.
 - The application Ref is 232148.
 - The development proposed is fence to be erected in the alleyway adjoining John Castle Way and Bourne Court to prevent documented anti-social behaviour such as: drug dealing, trespassing and threatening behaviour.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At time of my site visit, the proposed fence was in situ at the location indicated on the submitted plans. The proposed development has therefore been implemented.

Main Issue

3. The main issue in this appeal is the effect of the development on accessibility, with particular regard to pedestrian and cycle movement.

Reasons

4. The appeal site comprises a footway/cycleway from John Castle Way and Bourne Court, which provides a contiguous route between King George Road, Dudley Close and Mersea Road.
5. The footway/cycleway is situated between the frontages of nos 18 and 20 John Castle Way and a vegetated bank. It has a brick weave surface and is enclosed on either side by walls and fences. It is of sufficient width for pedestrians and cyclists to pass one another without conflict.
6. The route is understood to have been well used. It provides residents of John Castle Way with foot and cycle access to St Georges Primary School, and wider connectivity linking the Bourne Road/Mersea Road area with the LCWIP route 5 Garrison route which serves residential areas and links to the city centre. It enables cyclists and pedestrians to access the LCWIP 5 Garrison route from The Hythe via Distillery Lane and Bourne Pond nature reserve, avoiding busy Mersea Road.
7. John Castle Way and the footway/cycleway do not form part of the adopted public highway, and a route did not exist in this location prior to the residential development. However, construction of the footway/cycleway was secured through

a planning condition attached to the outline planning permission for residential development at John Castle Way¹. The purpose of the condition was to make adequate provision for the additional pedestrian and cycling traffic generated as a result of the development.

8. Provision of the footway/cycleway was therefore deemed necessary to make the residential development acceptable in planning terms. The evidence before me indicates the footway/cycleway was originally constructed as per the approved plans and thus served occupants of the John Castle Way development.
9. The appeal proposal relates to the siting of a tall, close-boarded fence at a midpoint along the footway/cycleway. It severs no 18 John Castle Way from the rest of the development, and wholly obstructs pedestrian and cycle movement along the footway/cycleway. As a result, the footway/cycleway ceases to function for its intended purpose.
10. The fence reduces connectivity and forces pedestrians and cyclists to seek alternative routes, increasing travel times and distances. Comments from some local residents confirm their journey times/distances had increased, that they opted to use their car instead of walking and expressed concern that vulnerable groups would be disproportionately affected.
11. The appeal proposal obstructs pedestrian and cycle movement associated with the John Castle Way development and discourages walking and cycling as an alternative to use of a private vehicle. The proposal therefore has an adverse impact on accessibility.
12. The proposal conflicts with Policy DM20 of the Colchester Borough Local Plan Section 2 2022 (CBLP), which requires proposals increase modal shift towards sustainable modes by improving accessibility through the promotion of walking and cycling as an integral part of development, and safeguards existing and proposed routes for walking and cycling.
13. In addition, the proposal fails to comply with CBLP Policy DM15 which requires development provide attractive, well connected and legible streets and spaces which encourage walking and cycling.

Other Matters

14. I have been provided many anecdotal examples of crime and anti-social behaviour (ASB) that is attributed to users of the footway/cycleway, such as: drug use and drug dealing; littering, including alcohol containers and drug paraphernalia; vandalism; dog fouling; noise and disturbance from motorcycles and loitering; verbal abuse; and burglary. This has resulted in a financial burden for occupants of John Castle Way who pay to maintain the estate, and a fear and perception of crime adversely impacting upon the health and wellbeing of some residents.
15. The Essex Police Designing Out Crime Officer suggests police data does not reflect the asserted instances of crime and ASB in this location. Therefore, I am unable to quantify the scale and magnitude of crime and ASB associated with the footway/cycleway, nor the extent of benefit from erection of the fence.

¹ Condition no. 30 of outline planning permission ref: 132075

16. Whilst an alternative option of a lockable gate was explored by the parties, this was deemed to be impractical and unacceptable to the appellant. However, I have been provided no evidence that any other measure to prevent or deter crime and ASB were considered e.g. CCTV, neighbourhood watch scheme, police patrols, lighting, etc. Therefore, it has not been demonstrated that closure of the footpath/cycleway is the only available option to avoid crime and ASB in this location.
17. The evidence of the reduction in crime and ASB associated with the proposal therefore carries only moderate weight in the scheme's favour and does not outweigh the conflict with the development plan, as identified above.
18. The appellant suggests the footway/cycleway is unsafe for use by children and cyclists due to John Castle Way's surface material and visibility around corners. Whilst John Castle Way does not provide segregated paths for pedestrians or cyclists, it offers no through route for motor vehicles and therefore traffic speed and volume would normally be low. The development appears to have been designed as a shared surface street; its use of surface materials including block paving and shingle emphasise its difference from conventional streets. I have been provided no evidence of accidents occurring in the area and do not consider the highway to be inherently dangerous or likely to result in conflict between road users.
19. I note that prior to investigation by its Planning Enforcement team, the appellant was advised by the Council that the proposal would be permitted development. However, in my decision, I am not bound by the Council's informal advice.

Conclusion

20. The proposal would conflict with the development plan as a whole and there are no other considerations which outweigh this finding. Therefore, for the reasons given the appeal should be dismissed.

E Dade

INSPECTOR