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## 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: 28 February 2025

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**Appeal Ref: APP/A1530/W/24/3348392**

**Wakes Colne Lodge, Lower Green, Wakes Colne, Essex CO6 2AZ**

- 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 Ms Merion O'Brien against the decision of Colchester City Council.
  - The application Ref is 232074.
  - The development proposed is new three bedroom two-storey residential dwelling with garden.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in this appeal are:
  - Whether the proposed development would be in a suitable location, having regard to the local development strategy;
  - The effect of the proposed development on the character and appearance of the area;
  - The effect of the proposed development on highway safety;
  - The effect of the proposed development on protected species and biodiversity; and
  - The effect of the proposed development on local infrastructure, with particular regard to sport and recreation, and community facilities.

### Reasons

*Whether in a suitable location*

3. The appeal site comprises garden land to the side of Wakes Colne Lodge, a two-storey, detached house. The site adjoins Lower Green and is within a ribbon of residential development.
4. Policy SP3 of the North Essex Authorities' Shared Strategic Section 1 Plan 2021 (SSP) focusses growth principally in or adjoining existing settlements according to their scale, sustainability and role. Reflecting SP3's spatial strategy, Policy SG1 of the Colchester Borough Local Plan 2022 Section 2 (CBLP) requires growth be located at the most accessible and sustainable locations in accordance with the spatial hierarchy. However, the site is outside the settlement limit of any settlement defined by the spatial hierarchy and is deemed to be in the countryside.

5. Policy SG1 focusses development on accessible locations to reduce the need to travel, supporting development where a real travel choice is provided and sustainable travel for different purposes is promoted throughout the day.
6. Community facilities such as the primary school, village hall, public house, convenience store, and rail station would not be within an acceptable walking distance. Moreover, Lower Green and surrounding routes are not served by pedestrian footways and lighting and therefore would not provide safe, suitable access to local services on foot.
7. Whilst the bus stop at Lower Green offers services to local schools, I have not been provided details of services to other locations. The frequency and duration of services in this location is not known and it is therefore unclear if the day-to-day needs of future occupants would be met through bus travel.
8. The site does not benefit from suitable pedestrian access and opportunities for bus travel would likely be limited. Therefore, it is not demonstrated that the site offers real travel choice or promotes sustainable travel throughout the day.
9. As set out above, the proposed development would be outside the settlement limit and would offer poor accessibility. Therefore, the proposed development would not be in a location prioritised for growth by Policies SP3 and SG1.
10. In addition, Policy SG1 permits development in the countryside where it safeguards rural character in accordance with LP Policy OV2. However, I have considered the effects of the proposal on character and appearance below and have identified conflict with the development plan in this regard. Therefore, the proposed development would not be in a suitable location.

#### *Character and appearance*

11. The appeal site is between the host property and neighbouring dwelling "Tregrehan House". Both are substantial, detached dwellings with wide front elevations. Opposite the site are detached bungalows, with wide frontages and a shallow plan form. The proposed dwelling would have a narrow front elevation and deep plan form, which would be out of keeping with surrounding dwellings.
12. This northern side of Lower Green comprises a row of detached and semi-detached dwellings which are regularly spaced in generous plots of broadly equal width. Dwellings are arranged in a linear pattern and the area has a spacious, green and rural character.
13. The appeal site would appear narrow within the context of surrounding plots. The proposed dwelling would occupy most the width of the site and would be close to both side boundaries. The proposed dwelling would have a cramped appearance, that is out of keeping with the layout of surrounding dwellings. In addition, the front of the plot would be dominated by hardstanding. The proposal would therefore have a harmful urbanising effect on the site.
14. There are existing trees and shrubs along the side and rear boundaries. The appellant asserts that trees would not be disturbed or removed. However, the proposed dwelling would be sited close to the vegetated side boundary and would therefore be likely to impact upon trees, such as through tree removal, pruning, and/or root loss.

15. No details of the value of existing trees, or and measures to prevent disturbance during construction have been provided. Whilst such details could potentially be secured through a planning condition, I have been provided no such suggested condition. Moreover, the appellant asserts an Arboricultural Impact Assessment would not be required. Therefore, the proposal fails to demonstrate the effects of the proposed development on existing trees, and the impacts of any potential tree loss on the visual quality of the landscape are uncertain.
16. The design of the proposed dwelling is the same as that approved by the Council in 2007, which subsequently lapsed<sup>1</sup>. It is not likely that the surrounding street scene has changed significantly since the former grant of planning permission.
17. However, since the former grant of planning permission, the development has been updated and I must determine the proposal against policies in effect at time of my decision, and I do not have full details of the former decision before me. It is my understanding the 2007 scheme related to a wider plot, and therefore the visual impacts of the proposal would differ. I therefore afford only limited weight to the former grant of planning permission.
18. For the reasons set out above, the proposal would harm the character and appearance of the area.
19. The proposal would therefore conflict with SSP Policy SP7 and CBLP Policy DM15 which together require proposals respond positively to local character, context, and surroundings in terms of its layout and architectural approach. In addition, the proposal would fail to comply with Policy DM15's requirement that development integrate positively with Arboricultural assets.

#### *Highway safety*

20. At time of my site visit, access to/from the highway was via a timber five-bar field gate with a close-boarded fence attached. The appellant states the access has existed for more than four years. However, there is dispute regarding the length of time the access has existed and whether the access was created lawfully.
21. The appellant asserts the existing access was constructed under rights afforded by Schedule 2, Part 2, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015. I have no evidence from the Council or local highway authority (LHA) to positively confirm the access would benefit from permitted development rights.
22. Visibility from the access is constrained by the curvature of the road. The proposal has not provided details of visibility splay distances from the access, and the appellant does not own or control sufficient land to ensure adequate visibility.
23. Therefore, even if I were to accept the access as lawful, in the absence of visibility splay data the proposal does not demonstrate that the access is of a suitable standard to serve the proposed development.
24. The appellant has provided photos of a vehicle manoeuvring within the site, and the submitted plans indicate a turning area would be provided to the front of the dwelling. However, the plan does not provide the layout and arrangement of the turning area or any parking spaces within it. Therefore, it is not demonstrated that

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<sup>1</sup> LPA ref: 071085

vehicles would be able to exit the site in a forward gear. Within the context of constrained visibility, vehicles reversing into the highway would have a significant adverse impact on highway safety.

25. At present, the existing access serves as a secondary access to the host dwelling's garden. Since it would form the sole vehicular access for the proposed dwelling, the development would significantly intensify use of the access which, in the absence of evidence to the contrary, is deemed to be substandard.
26. The proposal does not contain sufficient evidence to address the LHA's concerns and fails to demonstrate that there would not be a significant adverse impact on highway safety.
27. The proposal would therefore conflict with CBLP Policy DM21 which requires development proposals create safe, secure, convenient and attractive layouts which minimise conflicts between road users.

#### *Protected species and biodiversity*

28. Most of the site area comprises mown grassland, and the side and rear boundary including established trees and shrubs. Whilst within a linear row of residential development, the site is in a rural location and the wider landscape is predominantly agricultural land bounded by trees and hedgerows. The site therefore contains assets of ecological value and has the potential to support species and biodiversity.
29. The application pre-dates the introduction of the national mandatory biodiversity net gain<sup>2</sup> and therefore would be exempt from its requirements. Nonetheless, paragraph 187 of the National Planning Policy Framework (the Framework) requires proposals minimise impacts on and provide net gains for biodiversity. Furthermore, section 40 of the Natural Environment and Rural Communities Act 2006 which places a duty on public authorities to have regard to the purpose of conserving biodiversity in the exercise of their functions.
30. No details of the site's biodiversity value or potential to support protected species has been provided, and therefore contains insufficient information to assess the effects of the proposed development on protected species and biodiversity. Whilst I note the appellant was informally advised that a biodiversity report would not be required, in my decision I am not bound by advice issued by the Council.
31. The proposal fails to demonstrate that there would not be an adverse impact on protected species and biodiversity.
32. The proposed development would therefore conflict with CBLP Policy ENV1 which seeks to conserve and enhance the area's natural environment, protect habitats and species and conserve and enhance biodiversity.

#### *Local infrastructure*

33. SSP Policy SP6 requires all development be supported by the provision of the infrastructure, services and facilities that are identified to serve the needs arising from the development. In addition, CBLP Policy SG7 indicates permission will be

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<sup>2</sup> At Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021)

granted only if it can be demonstrated there is sufficient infrastructure capacity to support the development.

34. The Council identifies a requirement for financial contributions of £6,560.79 toward sport and recreation facilities managed by Wakes Colne Parish Council, and £2,872.83 toward community facilities, namely the introduction of blinds throughout the Wakes Colne and Chappel Village Hall.
35. Regulation 122 of the Community Infrastructure Levy Regulations 2010 makes it unlawful for any planning obligation to be taken into account as a reason to grant a planning permission if it does not meet the three statutory tests, that it is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. The tests are reflected in paragraph 57 of the Framework.
36. The Provision of Open Space, Sport and Recreational Facilities Supplementary Planning Document 2006 (POSSRFSPD) considers that all new residential developments of one or more dwellings will impact on sport and recreation provision. However, details of the location, type, and cost of projects to be funded by the contribution have not been provided. Therefore, it is unclear if the sport and recreation facilities would be necessary, directly related, or fair and reasonably related in scale to the development.
37. The Provision of Community Facilities Supplementary Planning Document 2013 (PCFSPD) identifies the importance of community facilities to the well-being of residents and as a mechanism for building community cohesion. The PCFSPD indicates the community facility contribution is calculated from various assumptions, including the average build costs of new community centres. The PCFSPD states build costs are reviewed annually and therefore would be expected to change from its worked examples.
38. However, the assumptions from which the community facilities contribution was calculated have not been provided. Furthermore, I have no details of the condition of the village hall blinds, the extent of work, or cost details to justify the contributions sought. Therefore, I cannot be certain the contribution would be necessary to make the development acceptable and would be fairly and reasonably related in scale to the development.
39. As set out above, there is insufficient information to confirm the requested contributions would satisfy the statutory tests. Moreover, it is not demonstrated that there would be inadequate infrastructure capacity to support the proposed development. Therefore, having particular regard to sport, recreation, and community facilities, the proposal would not have an adverse effect on local infrastructure capacity. In this regard, the proposal would comply with CBLP Policy SG7 and SSP Policy SP6.

### **Other Matters**

40. The appeal site is within the zone of influence of one or more European sites, including the Colne Estuary Special Protection Area (SPA), the Blackwater Estuary SPA, Abberton Reservoir Estuary SPA, Essex Estuaries Special Area of Conservation (SAC), and the Stour and Orwell Estuaries SPA. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (Essex Coast RAMS) indicates that residential development in this location is likely to have significant

effects on European Sites through increased recreational disturbance. The Council confirm the appellant has provided mitigation through a financial contribution toward the Essex Coast RAMS.

41. Where a proposal is likely to have a significant effect on European sites, Regulation 63 of the Conservation of Habitats and Species Regulations 2017 requires the competent authority to carry out an Appropriate Assessment (AA). However, AA is only necessary where the competent authority is minded to give consent for the proposal. Since I am dismissing the appeal for other substantive grounds which result in conflict with the development plan, it is not necessary to address the proposed development's effects on European sites in further detail.

### **Conclusion**

42. As set out above, I have identified no adverse effect in respect of the provision of sport, recreation, and community facilities.
43. However, 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