



Appeal Decision

Site visit made on 25 February 2025

by **S J Warder BSc(Hons) MA DipUD(Dist) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7th March 2025

Appeal Ref: APP/A1530/W/24/3355800

Highlands, Kelvedon Road, Tiptree, Essex, CO5 0LY

- 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 Mr P Hiller against the decision of Colchester City Council.
 - The application Ref is 240086.
 - The development proposed is the redevelopment of site with 9 residential dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The National Planning Policy Framework (NPPF) has been updated since the appellant's statement was submitted. However, while the numbering of some of the paragraphs relevant to the appeal have changed, their substance has not. I have taken into account the updated NPPF and referred to its paragraph numbering in this decision.
3. The application was made in outline with all matters except access reserved for further approval. Nevertheless, indicative site layout and house types have been submitted showing nine detached dwellings ranging from three to five bedrooms on generously sized plots. The appellant and the Council have considered the proposal on the basis of that scheme, and I have taken it into account in the determination of the appeal.

Main Issues

4. The main issues in this case are:
 - whether the proposal makes efficient use of the site with particular regard to the proposed density of development and mix of house types;
 - the effect of the proposal on the biodiversity of the site;
 - the effect of the proposal on the Essex Coast European Sites;
 - whether the proposal makes adequate provision for sport and recreation and community facilities;
 - the effect of the proposal on public health and safety with particular regard to ground contamination.

Reasons

Efficient Use of the Site

5. The proposal is for nine houses on a site of 1.19 hectares. Although the resulting density would not be out of accord with the established sporadic development on the north side of Kelvedon Road, more broadly the area is developing at considerably higher densities. In particular, the Scarlett Mews development is currently under construction with a mix of generally smaller dwellings and more modestly sized plots. This is evident in the Kelvedon Road frontage which includes flats as well as detached houses. While both that scheme and the appeal proposal create development in depth, the Council advises that the density of Scarlett Mews is around 25 dwellings per hectare (dph), compared with 7dph in the appeal proposal. Scarlett Mews is located directly opposite the appeal site and is an important component of its setting.
6. Moreover, land immediately to the north of the appeal site is allocated for housing in the Tiptree Neighbourhood Plan 2022-2033 (NP) at an anticipated density of 18dph. I recognise that the allocated site is currently separated from the appeal site by substantial vegetation. Nevertheless, given their size and proximity, both it, and the Scarlett Mews development will provide the prevailing setting for the appeal site. Notwithstanding that there would be some visual separation between the appeal site and the higher density elements of the adjoining developments, the significantly lower density of the proposal would be at odds with the consistently more densely developed character of the emerging setting.
7. Furthermore, paragraphs 124 and 129 of the NPPF support the effective and efficient use of land, taking into account the identified need for different types of housing, the availability of infrastructure and the prevailing character and setting. Policy DM9 of the Colchester Borough Local Plan 2017-2033 (LP) has similar aims and Policy DM10 seeks a mix of housing types as identified in the latest Strategic Housing Market Assessment. That Assessment indicates a strong need for one and two bedroom properties in contrast to the larger house types indicated in the appeal proposal. The appellant contends that the mix of house types could be determined at the reserved matters stage. However, changing the house types to meet the need for smaller units would make even less efficient use of the site.
8. I deal with the question of financial contributions to infrastructure and services below. However, subject to potential contributions, there is no substantive evidence to demonstrate that developing the appeal site at a density consistent with its emerging setting would put undue pressure on local infrastructure or services. The site is also reasonably well located for access to existing day-to-day services and facilities and bus services.
9. I appreciate that the appellant has previously applied for up to 26 houses. That application was withdrawn as the density was considered too high. I have not been provided with the full details of the considerations which led to that outcome. Nevertheless, there are significant differences between schemes for nine and 26 units in terms of the character and appearance of the layout, and its relationship with its surroundings, and the mix of house types proposed. As such, I consider that the failure to progress the 26 unit scheme does not undermine the objective of achieving a more efficient use of the site than the nine units currently proposed.

10. A scheme for five units and a cemetery on the site was refused under reference 221268. Reasons for refusal one to three concern the specific characteristics of that proposal and, therefore, do not bear on this appeal. Reasons four and five mirror reasons given in the Council's determination of this appeal, and I deal with them below. Consent was also granted for two units on the site in 2014 and renewed in 2017. It is not clear from the appeal submissions whether the site area was the same as the current appeal. In any event, it was granted when the local and national policy context was different, and the permission has now expired. As such, I can give it very little weight in the determination of this appeal.
11. Consequently, I find that the proposal would not make efficient use of the site with regard to the proposed density and mix of house types. As such, it would conflict with LP Policy DM10 and NPPF paragraphs 124 and 129. It would also conflict with LP Policy SP7, NP Policy TIP02 and NPPF paragraph 135 which require proposals to respond positively to local character and context, among other things.
12. The first reason for refusal also cites LP Policy DM12. However, this deals with housing standards and the evidence does not show that the proposal could not meet the standards set out in the policy.

On-site Biodiversity

13. The appellant considers that the Council should have taken into account a Preliminary Ecological Appraisal and Preliminary Roost Assessment (PEA) submitted in support of the earlier 26 unit and five unit schemes. Regardless of whether it was incumbent on the Council to link that information to the current proposal, the PEA and its field survey date from July 2022. It is evident from the Essex County Council Place Services consultation response to the application that there were concerns regarding protected and priority species including bats, great crested newts, badger and birds. Given that those concerns relate to potentially mobile species whose reliance or otherwise on the appeal is subject to change over relatively short periods of time, I consider that it would be unsafe in this case to rely on survey information and assessments which are more than two years old.
14. As such, it has not been adequately demonstrated that the proposal would safeguard the biodiversity of the site. Therefore, it would not comply with LP Policy ENV1 which requires proposals to be supported by appropriate ecological surveys and to conserve or enhance biodiversity. Nor would it accord with NPPF paragraph 187 to the extent that it has similar aims.
15. Policy ENV1 also requires proposals to incorporate features to achieve a measurable biodiversity net gain of at least 10% in line with Natural England's Biodiversity Metric. Policy TIP12 of the NP has a similar aim. The indicative site layout includes a wildlife area and the PEA sets out biodiversity enhancement opportunities. However, there is insufficient information to demonstrate how the enhancements would apply to the current proposal or whether they would achieve the 10% net gain sought under LP Policy ENV1 and NP Policy TIP12.
16. Policy CC1 of the LP requires all major proposals (including those with a site area of 0.5ha or more) to include a Canopy Cover Assessment and, where appropriate, increase tree canopy cover by at least 10%. No such Assessment has been submitted and therefore the proposal does not accord with LP Policy CC1.

Essex Coast European Sites

17. The appeal site is within the zone of influence for the Essex Coast European Sites where the Council's Habitat Regulations Assessment has found that residential development is likely to have a significant effect on the interest features of the Sites. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) seeks financial contributions in mitigation of this effect. The appellant does not dispute the assessment, or the need for a contribution, and has expressed an intention to submit a legal agreement.
18. It was open to the appellant to submit a unilateral undertaking at the appeal stage. However, no form of planning obligation to secure the contribution has been submitted. In the absence of the mitigation secured through an obligation, the proposal would be likely to have a significant effect on the Essex Coast European Sites and would be contrary to LP Policies SP2 and ENV1 and NP Policies TIP11 and TIP14, each of which require contributions in accordance with the RAMS.

Sport and Recreation and Community Facilities

19. Policies SP6, SG7 and PP1 of the LP and Policy TIP10 of the NP require development to be supported by the infrastructure, services and facilities that are identified to serve its needs. Additional infrastructure should be secured through financial contributions and details are set out in the Council's Provision of Community Facilities (July 2013) and Provision of Open Space, Sport and Recreation (July 2006) Supplementary Planning Documents. Suitable projects to receive funding have been identified by the Council.
20. The appellant does not dispute the need for a contribution and has expressed an intention to submit a legal agreement. However, a planning obligation to secure the contribution has not been submitted. In the absence of an obligation, the proposal would not make adequate provision for sport and recreation and community facilities and, therefore, is contrary to LP Policies SP6, SG7 and PP1 and NP Policy TIP10.

Contamination

21. A Phase 1 Geo-Environmental Desk Study and Preliminary Risk Assessment dated July 2020 was submitted with the application. The assessment identified potential contaminating former uses, including a coal yard on part of the site. No intrusive investigations were undertaken for the assessment and its recommendations are framed accordingly. As such, they do not specifically confirm whether or not the site is suitable for residential development. Moreover, the Council considers that the assessment is out of date and the appellant's statement of case appears to accept this as it refers to an updated report. A letter from Sue Slaven dated 27 March 2023 and an environmental report from Groundsure dated September 2022 were submitted with the appeal. The Council's statement of case states that it has not seen the 2023 letter.
22. In any event, the letter relates to a proposal for a cemetery, rather than housing, and provides a brief factual review of trial pitting results and controlled waters. It does not include analysis of the results and makes no recommendations relevant to residential development of the site. The section of the Groundsure report on contaminated land is caveated that further investigations should be made to the satisfaction of the local planning authority and is therefore of limited assistance.

23. As such, I consider that the additional information submitted with the appeal does not provide a satisfactory update of the information necessary to assess the risk of contamination at the site. I have considered whether the necessary further information could be secured by condition. However, since, collectively, the available evidence does not demonstrate that the site is suitable in principle for residential use, such a condition would not pass the test of reasonableness in NPPF paragraph 57.
24. Consequently, it has not been adequately shown that the proposal would not pose a risk to public health and safety with particular regard to ground contamination. Therefore, it would not comply with LP Policy ENV5 which requires proposals on land where contamination is suspected to include an assessment of the extent of contamination and any possible risks. Nor would it accord with NPPF paragraph 196 which has similar aims.

Other Matters

25. The Council's statement of case refers to the absence of a planning obligation to secure a contribution to affordable housing. However, this was not a reason for refusal and I consider that it would be unreasonable to introduce this new matter at the appeal stage.
26. The appellant has sought permission for various amounts of residential development on the site. However, this seemingly unsystematic approach is at odds with the NPPF which encourages pre-application engagement and the front-loading of information to support proposals (paragraphs 40, 42 and 44).

Planning Balance and Conclusion

27. There is no dispute that the site is, in purely land use terms, suitable for residential development. The appeal proposal would provide nine houses on sustainably located and previously developed land. I have no reason to doubt that the houses could be delivered quickly. As such, the policy principle of residential development is supported by the NPPF.
28. Nevertheless, the NPPF also supports the efficient use of land and, alongside relevant development plan policies, seeks to ensure that proposals meet identified housing needs, as well as responding positively to their surroundings. I have found that the appeal proposal performs poorly in these regards. Moreover, the appeal submissions fail to mitigate the effects of the proposal on European protected sites or to provide for adequate community infrastructure. Nor has it been adequately demonstrated that the proposal would safeguard and enhance on-site biodiversity or public health. Together, these considerations outweigh the land use policy support for residential development at the site.
29. For the reasons given above the appeal should be dismissed.

S J Warder

INSPECTOR