
Appeal Decision

Site visit made on 17 December 2024

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4th July 2025

Appeal Ref: APP/A1530/W/24/3343788

Land to the rear of Dorothy Curtice Court & East of Queensberry Avenue, London Road, Copford CO6 1DX

- 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 Anchor Ltd against the decision of Colchester City Council.
 - The application Ref is 230033.
 - The development proposed is the erection of one assisted living block (for the over 55s) of 72 units comprising 32no. one bedroom flats and 40 no. two bedroom flats and associated communal facilities; erection of sheltered housing accommodation of 18 units (as an extension to the existing scheme at Dorothy Curtice Court for over 55s), comprising 13no. one bedroom flats and 5no. two bedroom flats; together with associated access, amenity space, vehicle and bicycle parking, EVC points, hard and soft landscaping, sub-station, drainage ponds, boundary treatments and other associated works.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2024. The views of both main parties have been sought on the implications of the revised Framework on their respective cases which, along with changes to paragraph numbering and paragraph structure between the current and previous version of the Framework I have taken into account in my determination of this appeal.
3. A draft planning obligation by way of Unilateral Undertaking¹ (UU) was submitted with the appeal and sought to deal with matters relating to affordable housing and archaeology, healthcare, parks and recreation, libraries and transport contributions, a residential travel plan and provision of a travel information pack. The Council advised in its Statement of Case that a UU would not be appropriate given to the need to include Essex County Council as a party to any agreement, as well as providing further comment on the content and detail of any subsequent agreement.
4. In response to these comments, the appellant submitted a signed and dated planning obligation made under section 106 (s106) of the Town and Country Planning Act 1990 (as amended) (the Act). The completed document includes Essex County Council and Colchester City Council, in addition to the appellant, as signatories to the s106. The s106 makes provision for affordable housing, archaeology, healthcare, parks and recreation, transport, community and library contributions, residential travel plan and residential travel information packs. I will return to this matter separately, below.

¹ Under section 106 of the Town and Country Planning Act 1990 (as amended)

Main Issue

5. The main issue is the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

6. The appeal site is comprised of pleasant, gently undulating grazing land interspersed by groups and belts of mature trees and woodland. As a consequence, the site has a relatively tranquil, rural 'parkland' character despite its proximity to the A12 dual-carriageway a short distance to the north of the site and existing residential developments to the south and west of it.
7. Nevertheless, the site² is identified in Policy SS4 of the Colchester Borough Local Plan³ (CBLP2) as being a suitable location for residential expansion for up to 70 dwellings of a mix and type to be compatible with surrounding development. The supporting text to CBLP2 Policy SS4, at paragraph 6.148, goes on to explain that this residential expansion may take the form of residential use, but that extra care facilities would also be supported. Indeed, that supporting text goes on to describe the plan allocation, and thus much of the appeal site, as 'a sensible and logical extension' to the existing built-up area of Copford, albeit that both the policy wording and the supporting text recognise the importance of good design on the site that is compatible with, and complementary to, the existing built character of surrounding development.
8. The assisted living block would be positioned across the widest part of the site and would have a substantial ground floor footprint. Nevertheless, the articulation of the building along its elevations would be moderately successful in partly mitigating its substantial dimensions, whilst its layout, effectively being split into 3 'wings,' further assists in this respect. Moreover, it also allows the building to respond to prevailing ground levels within the site by splitting the building's levels between the 'wings'
9. The building is, though, of a scale, bulk and massing that is inconsistent with the prevailing pattern or form of development in the surrounding area. Three storey buildings are not common in the surrounding area, and whilst some of the buildings within Dorothy Curtice Court are of considerable height, they essentially provide accommodation over two storeys but with large pitched roof structures and employ design features found in locally vernacular barns. The appellant has also cited a nearby scheme⁴ which references three storey development. However, it seems to me that there is little in the way of meaningful comparison between them, the cited example being smaller in footprint, traditional in its design, appearance and proportions and with its third storey being housed within the roof via small and traditionally proportioned dormer windows.
10. The assisted living block is therefore simply a large building with little in the way of local context, immediate or otherwise, to support its scale, bulk and massing. Indeed, with the undulations within the site, there are elements of the building that would appear larger still, particularly upon entrance to the site and approach to the assisted living block. The end of the building facing the access road (labelled on drawings as 'left block – northwest elevation') would rise above the road, as would

² East of Queensberry Avenue

³ Colchester Borough Local Plan 2017 – 2033 Section 2

⁴ Appendix 5 to Appellant Statement of Case - referred to as 'New Copford Place' (LPA Ref No: 200968)

the return flank of this wing adjacent to the building's main entrance, where it would effectively sit above a car park retaining wall. There may be landscaped areas proposed between the retaining wall and the car park and building entrance area, but the scale of the gable elements rising above it would be akin to four storeys, not three. As the first experience of the building entering the site from the predominantly two storey and domestically scaled context of Queensbury Avenue, the contrast is stark and jarring, notwithstanding the woodland belts and landscaped areas proposed for retention, and for further strengthening.

11. The pleasantly and gently rolling land, interspersed with, and ringed by, mature trees and groups of trees, shrubs and hedges is, I agree, capable of absorbing development of scale. These same landscape features may well also be more compatible with the broad form and type of development proposed in this instance than for commercial market housing in terms of their retention and active incorporating into the development scheme.
12. There is however a limit to the extent to which this can effectively mitigate elements of the development's scale, particularly that of elements of the assisted living building. There is little immediate context for a building of this scale, and particularly the jarring nature of particular elements of that scale in more prominent locations and parts of that building. As CBLP2 Policy SS4 and its supporting text refer, and as CBLP1 Policy SS7 and CBLP2 Policy DM15 also state, a key element of good design is the ability for a scheme to respond positively to, to complement and to be compatible with, its context. Whilst this element of the appeal scheme succeeds in certain elements, particularly the incorporation of the existing landform, landscape and vegetation and tree blocks into the site's layout and informing the design of the assisted living block, this block nevertheless presents a jarring and stark contrast to the altogether more limited scale of the residential development through and from which it would be approached.
13. Whilst I accept that the immediate context in which the proposed assisted living building would be experienced is limited due to the somewhat restricted external views of the appeal site's interior, it would nevertheless be visible from both the end of Queensbury Avenue and glimpsed through trees from the public footpath to the west of the appeal site. These would be partly, but not wholly, intercepted and mitigated by this vegetation, but I am not persuaded that the scale of the building on its approach would be successfully mitigated. Indeed, having transitioned from the two-storey residential estate development of Queensbury Avenue, the approach to the assisted living building, and particularly its prominent three storey, would be an uncharacteristic step-change in scale. This would be particularly incongruous given the otherwise spacious and open nature of the land elsewhere around the building and adjoining the site and proposed landscaped grounds to the north.
14. Policy SP7 of the Colchester Borough Local Plan 2013-2033 Section 1⁵ (CBLP1) sets out the Council's approach to place shaping principles and how new development will be expected to meet high standards of urban and architectural design, whilst Policy DM15 of the Colchester Borough Local Plan 2017-2033 Section 2⁶ (CBLP2). Of the place-shaping principles set out in the former to be reflected in new development, schemes should respond positively to local

⁵ Colchester Borough Local Plan 2013 – 2033 Section 1: North Essex Authorities' Shared Strategic Section 1 Plan (Adopted February 2021)

⁶ Local Plan Colchester Borough 2017 – 2033 Section 2 (Adopted July 2022)

character and context to preserve and enhance the quality of existing places and their environs. The latter seeks that proposals should respect and, where possible, enhance the character of the site and its context and surrounding through, amongst other things, its scale, form, massing and proportions and positively integrate with existing built environment and landscape surroundings.

15. For the reasons I have set out, and despite some positive design elements associated with the assisted living building, the scale, bulk and massing of that element of the appeal scheme fails to adequately and positively respond to the local character and context of the site. The limited wider public views from, for example, London Road or Queensberry Avenue should not diminish the building's scale, bulk and massing or its relationship with the character or context of the appeal site or its location bordering pleasant grazing pasture and open land. A three storey building of the nature proposed, and particularly certain elements of it, would present a harsh transition in terms of scale between that open countryside setting and the predominantly two storey scale of the surrounding area that the existing vegetation and proposed landscaping would not be capable of mitigating.
16. The proposal therefore fails to accord with CBLP1 Policy SP7 and CBLP2 Policy DM15 and would not secure the high quality design sought collectively by these policies and, in turn, Copford with Easthorpe Neighbourhood Development Plan Policy CE4, or as advocated by the Framework, particularly paragraph 135. In turn, and although not determinative in its own right, nor would it be consistent with the aims of the supporting text to CBLP2 Policy SS4 in relation to land east of Queensberry Avenue, where development of good design should complement existing built character.
17. The existing complex of buildings at Dorothy Curtice Court is comprised of a mix of single storey and two storey buildings, loosely set around a landscaped courtyard and within landscaped grounds. Those towards the northern end of the site look out over semi-private garden areas and a low hedge across the appeal site.
18. The smaller, sheltered accommodation building, broadly L-shaped to reflect the site's southern boundary, would follow this approach. A landscaped courtyard would be formed within the interior angle of the building, separating the building from the boundary with Dorothy Curtice Court and the closest building block within that site.
19. Although a much larger footprint than the buildings within the neighbouring site, the proposed sheltered accommodation building would be two storeys in height, and its substantial long elevations and bulk would be broken up and enlivened throughout. Whilst the presence of the proposed building would be a significant feature in the outlook from the existing buildings within Dorothy Curtice Court, I am satisfied that there would be sufficient distance separating the two so as to avoid an unduly or harmfully overbearing impact. Moreover, the landscaped garden between the two would reflect the existing layout within Dorothy Curtice Court and would also, in a similar vein to the CBLP's description of the appeal site, form a logical extension of the existing pattern of development, built form and landscaped grounds.
20. Whilst noting these positive elements of the sheltered accommodation building, it also confirms my conclusions in respect of the assisted living block, with particular regard to its scale, bulk and massing. Whereas the sheltered accommodation

more closely reflects the compact and more intimate nature and scale of Dorothy Curtice Court, the assisted living building deviates materially and harmfully from the more limited scale of much of the prevailing built form, to the detriment of the scheme's ability in overall terms to successfully respond to the local context, character or appearance of the surrounding area. That the sheltered accommodation building would be broadly consistent with the aims and provisions of CBLP1 Policy SP7 and CBLP2 Policy DM15 does not overcome the harm that I have identified that would arise from the larger assisted living building.

Planning obligation

21. The appellant has submitted a signed and dated planning obligation (s106) pursuant to section 106 of the Town and Country Planning Act 1990 (as amended). The s106 relates to the provision for affordable housing, contributions towards archaeology, healthcare, parks and recreation, transport, community and library facilities and residential travel plan and residential travel information packs.
22. The approach to, and tests in relation to the use of, planning obligations are set out in the Framework⁷ and Regulation 122(2) of the Community Infrastructure Regulations 2010 (as amended) (the Regulations). Obligations should meet all of the tests set out therein.
23. The content and requirements of the s106 have been agreed between the two main parties and the three signatories to the document. The amounts of each contribution are clearly set out in the Council's committee reports and in the Council's Statement of Case. However, whilst that may be so, neither explain nor provide development plan policy justification for the basis upon which the contributions would be made or how or why the contributions would satisfy these tests. I cannot therefore be certain that the obligation and its provisions meet the tests set out in the Regulations and repeated in the Framework.
24. As I have found harm in respect of the main issue, with particular regard to the assisted living block's scale, bulk and massing, the absence of justification for the content and requirements of the s106 is such that it is not a matter to which I give any weight. Thus, the various elements of, and contributions set out within, the s106, and the s106 and its content has not been determinative in this instance.
25. Furthermore, the report to committee sets out the approach to be taken in respect of the Habitats and Species Regulations 2017 (as amended) and notes the appellant's agreement to make the necessary mitigation payment under the terms of the Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS), for which the site lies within its 'zone of influence'. The report to committee also states that any such contribution would need to be secured by way of a legal agreement.
26. The submitted (signed) s106 makes no provision for RAMS mitigation payment. Nor have the main parties made any further reference to this matter in their appeal submissions and I have any evidence before me as to the whether the required payment has been made through other channels. Had I been minded to allow the appeal, it would have been necessary for me to seek additional information from the parties and consult Natural England in order to undertake an Appropriate Assessment (AA). The AA is required on a case-by-case basis to determine

⁷ Paragraphs 56 and 58

whether the project would adversely affect the integrity of the European Site. However, as I am dismissing the appeal for other reasons, I do not need to consider this matter further as it would not change the outcome of this appeal.

Other Matters

27. Subject to the planning obligation, which I have considered above, the appeal scheme would have provided a form of specialist housing accommodation on a 100% affordable basis. The latest version of the Framework maintains the Government's objective of boosting significantly the supply of homes and that the needs of groups with specific housing requirements, including older people, are addressed. Local nomination rights in this instance would also assist in contributing towards an appropriate housing mix for the local community. These are matters that weigh in support of the proposal and to which I attach considerable weight.
28. The Council's position regarding a 5-year supply of housing has not been questioned by the appellant and no other case has been advanced that the development plan is not otherwise up to date. The scheme would nevertheless provide 90 additional residential units which would contribute towards provision of a mix of housing within the local community, and also to supplement the existing Dorothy Curtice Court community. There is also some, limited, weight to the argument that the provision of such residential development may encourage the freeing up of existing housing.
29. It has also been suggested that as future occupants would be likely to be already resident within the borough, the proposal would be unlikely to lead to additional pressure on the National Health Service from new out-of-borough residents moving in. I am not, however, persuaded that any such benefits arising would be sufficient to carry much more than limited weight in support of the appeal scheme.
30. It is noted that matters relating to residential amenity, highways and parking, flood risk and drainage, ecology and biodiversity net-gain, trees, archaeology, contaminated land and environmental and carbon implications did not form part of the reason for refusal. As I have found harm in respect of character and appearance for the reasons set out above, however, the absence of harm in these respects are neutral matters and are not therefore sufficient to outweigh the harm to character and appearance that I have identified. The appellant may consider the provision of market housing to be more disruptive in terms of construction and traffic flow but, I am mindful that that is one of the uses to which the site has been identified as being suitable for in CBLP2 Policy SS4.
31. I am also mindful of the level of interest in the proposed development and the representations of interested parties during the course of the Council's consideration of the planning application, and in relation to the subsequent appeal. The Council's case is set out within its decision notice and the appeal statement of case. However, other matters were fully considered in the Council's planning officer's committee report and, whilst the committee deviated from the officer recommendation detailed consideration was given to that range of matters going beyond those set out in the reason for refusal. As I have found harm in respect of character and appearance it is not necessary for me to consider these matters raised any further at this juncture.

Planning Balance and Conclusion

32. There are elements of the appeal scheme to be commended. The sheltered accommodation block would be of an appropriate scale and relationship with the nearby Dorothy Curtice Court buildings, whilst the materials proposed would reflect those used there. Furthermore, with the landscaping plan proposed, the scheme would create a pleasant, landscaped extension of that area and allow this element of the scheme to fit the description of the appeal site as being a logical extension to the settlement's existing built form.
33. The landscaping provisions and proposals for the remainder of the site would also be broadly reflective of the character and nature of the open, grazing land that currently extends beyond the appeal site's boundaries to the surrounding open countryside. Whilst a positive factor in its own right, it would not for reasons that I have set out above, overcome the harm to character and appearance that would arise from the scale, bulk and massing of the three storey assisted living building and the abrupt transition from, variously, open countryside and two storey dwellings, that it presents with, particular regard to, but not limited to, the approach to the building from Queensberry Avenue and its north facing elevation.
34. The Council's reason for refusal relates solely to the matter of character and appearance, and it is noted that the Council make no further submissions in respect of residential amenity, highways and parking, flood risk and drainage, ecology and biodiversity net-gain, trees, archaeology, contaminated land and environmental and carbon implications did not form part of the reason for refusal. These matters were fully considered by the Council at the time of the application and were not cited as reasons for refusal. The lack of harm in these respects are neutral factors and weigh neither in support of nor against the appeal scheme.
35. However, these matters are not sufficient to overcome the harm that I have identified in respect of the appeal scheme's harmful effect on the character and appearance of the surrounding area by virtue of its scale, bulk and massing. Although the scheme's stated intent of providing 100% affordable housing with local nominations is noted, and is set out within the submitted s106, neither party has set out the development plan justification for such an approach. Indeed, the s106 is wide ranging in its provisions and contributions, but in the absence of development plan policy justification it is not clear that it passes the tests set out in the Framework or the Regulations. Furthermore, despite an indication within the Council's officer report to committee regarding appropriate mitigation under Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS), for which the site lies within the zone of influence, that appropriate mitigation would be secured by way of a planning obligation, no such provision is made within the submitted s106.
36. Thus, for the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR