



Appeal Decision

Site visit made on 8 August 2025

by Jonathan Price BA(Hons) DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2025

Appeal Ref: APP/A1530/W/25/3365037

Land adjacent 6 Marlowe Way, Colchester CO3 4JP

- 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 Mr and Mrs Lin against the decision of Colchester City Council.
 - The application Ref is 242380.
 - The development proposed is change of use of highway land to amenity land and repositioned public footway.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs Lin against Colchester City Council and this is the subject of a separate Decision.

Main Issue

3. The effect on the character and appearance of the area, and the overall amenity value of the site.

Reasons

4. The proposal relates to a parcel of greenspace on Marlow Way at the junction to The Mount, a cul-de-sac serving three dwellings. It contains a group of five quite mature trees, subject to a Tree Preservation Order. Since the Tree Report¹ supporting an earlier proposal for a detached dwelling on this site was carried out, the still standing sycamore tree appears to me to have died. This had been one of the two trees assessed in the Tree Report as Category C (low value), with the other three classed as Category A (high value).
5. Although the site is owned by the appellant, it is part of the adopted highway, forming one side of a road junction and accommodating the associated hard surfaced footways. One footway runs along the adjacent section of Marlow Way, terminating part way around the junction radius. The second crosses through the site to link Marlow Road directly to the footway around the cul-de-sac head. The

¹ Arboricultural Impact Assessment and Method Statement for land adjacent to 6 Marlow Way, Colchester, Essex by Mr James Choat BSc, M Arbor A of Tree Planning Solutions – reference TPSarbQU0068 dated 4 June 2023.

scheme is to extend the existing footway around the junction radius to link up with the cul-de-sac head, replacing that crossing the appeal site and allowing the change of use of the site from highway to amenity land. Planning permission is required for this as a precursor to applying to have the footway stopped up under the Highway Act.

6. The appeal site and the footway running across it are shown on the original layout of the Lexden Grove housing estate. It is one of a number of small areas coloured green on the plan falling outside the private house plots. These areas comprise green infrastructure in current planning parlance, providing for a combination of open space, tree planting, access and other public utilities. With the footway cutting through the area of green space, these original plans appear to me to recognise the desire line for pedestrians leaving The Mount and taking the most direct route to walk west. Those travelling east along Marlowe Way are provided a footway connection alongside the Mount. These original plans indicate the now quite mature trees in the corner of the site, which fall between the footway and the road junction. A single tree is indicated on the other side of the footway, with evidence of one having been in place and at some later stage removed.
7. Notwithstanding the demise of the category C sycamore, the tree group continues to provide the high visual amenity value recognised in the Tree Report. In this context, the bisecting footway comprises a level feature, partially screened from the road by the existing trees. Its removal would provide little material benefit in terms of improved visual amenity. Beyond repositioning the footway around the site, there is no further plan to fence it in or alter its appearance. It would remain as open space providing some visual relief to a street scene otherwise dominated by dwellings in contained private curtilages.
8. Re-routing the footway around the site would detract slightly from the currently more natural appearance of the area, by adding to the extent of hardstanding in front of the trees as viewed from the road. Providing this new footway link would encroach into the root protection areas of some of these protected trees and avoiding this would clearly be in their best interests. The Tree Report outlines the construction methods that could avoid long-term harm to the trees by damage to their roots. However, there would still be a greater need to trim back branches to permit safe and convenient passage for pedestrians and other non-motorised users. Linking the sections of original footway, now the surviving trees are very well established, would inevitably detract from the verdant appearance of the street scene. The magnitude of harm would be relatively small and localised but nonetheless weighs against the proposal.
9. Beyond street scene appearance, the site's character includes further experiential aspects of this green space. Not only does the existing footway reflect the desire line for pedestrians, but it also allows safe and convenient passage through the site, from where the trees can be seen from different perspectives and the open space can be more fully enjoyed by users. The surfaced footway has avoided the creation of an unsightly trodden path through the site, offering the less able and those in wheelchairs, mobility scooters or pushing prams the same more direct access across the area, in a safe and convenient way. The removal of this footway would detract from the character of

the site as accessible green space, depriving users of the amenity this provides. The magnitude of harm would be significant, as evidently this long-standing footway is well used and highly valued by local residents.

10. The development plan policies relevant to this proposal comprise those of the Section 1 and 2 Local Plans 2017-2033, adopted in February 2021 and July 2022 respectively (LP1 and LP2). The proposal would divert users to a less convenient route around the site, depriving them of direct experience of this green space, conflicting with two place shaping principles of LP1 Policy SP7. One is the requirement that developments respond positively to local character and context to preserve and enhance the quality of existing places and their environs. The other is for these to create well-connected places that prioritise the needs of pedestrians. For the reasons explained, the loss of the direct footway across the site would conflict with both of these principles. The proposal to divert a made up footway around rather than through the site would diminish its green infrastructure role by reducing its accessibility and enjoyment, in conflict with LP2 Policy ENV3. The proposal would be contrary to LP2 Policy DM15 which seeks good standards of amenity, enhancing character, integrating the built environment and landscape and arboricultural assets and providing attractive, well connected and legible streets and spaces.
11. Although the site would be retained as an undeveloped area, the appellant advises it is privately owned, not part of any public open space and benefits only from highway rights across it. However, the footpath through the site is part of its perceived character, overall amenity value and connecting role within a green infrastructure network. Removing the footway through this site would diminish its value in these respects, in conflict with LP2 Policy DM17 which specifically seeks to protect and enhance the existing network of green links. The footway across the site provides a safe, secure, convenient and attractive layout that links the surrounding walking network. What is proposed would be a retrograde measure, providing a less convenient and less attractive pedestrian layout in conflict with LP2 Policy DM21 which promotes sustainable access to development.

Balance and Conclusion

12. In November 2023 planning permission was refused for the erection of a house on the land². Although the Council's reasons for refusal did not include reference to the loss of highway rights across the site, this decision nonetheless served to preserve the status quo and is not construed as support for removing the existing footpath. I note that the Council's concerns relate to the lack of certainty over providing alternative footway facilities. Subject to the construction methods set out in the Tree Report, I accept that an alternative footway might be provided and secured through a planning condition, negating these specific concerns. However, as I have explained, this would be a far less satisfactory arrangement than that existing.
13. I accept the proposal does not warrant an objection from a highway and transportation perspective. However, this does not reduce the other harms identified. The Local Plan does not allocate the site for any purpose. However, the same applies to other smaller green spaces within this housing development

² Reference 232629

and so the lack of allocation provides no support for the harmful implications identified. Whilst other open land in the vicinity is specifically safeguarded against development, something not proposed in this case, the lack of any such protective designation for this site has little bearing on the harm found from this proposal, which would be significant.

14. This proposal would detract from the character and appearance of the area, and the overall level of amenity value provided, in conflict with the aforementioned policies and the development plan as a whole. With no tangible benefit or purpose to what is proposed, there is nothing to weigh against the harm caused and consequently I conclude the appeal fails.

Jonathan Price

INSPECTOR