



Appeal Decision

Site visit made on 6 November 2025

by Ms Beloe MSc DIC BSc (Hons) CSci CEnv C.WEM MCIWEM

an Inspector appointed by the Secretary of State

Decision date: 25 November 2025

Appeal Ref: APP/A1530/W/25/3372612

Land south of Colchester Road, West Bergholt CO6 3TJ

- 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 S Laver (WB Nightingale Ltd) against the decision of Colchester City Council.
 - The application Ref is 251312.
 - The development proposed is the erection of three new dwellings and associated infrastructure.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant Mr S Laver (WB Nightingale Ltd) against Colchester City Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - the effect of the proposed development on the living conditions of the occupants of existing neighbouring properties, with respect to privacy and noise;
 - the effect of the proposed development on the living conditions of the future occupants of the proposed dwellings, with respect to privacy;
 - whether the appeal site would be in a suitable location for housing development, having regard to policies relating to the coalescence of West Bergholt and Braiswick; and
 - whether contamination risk can be adequately managed and whether the necessary mitigation in respect of community, sport and recreation would be adequately secured.

Reasons

Character and appearance

4. The appeal site is located to the south of Colchester Road towards the eastern edge of West Bergholt. It is mainly grassed with some vegetation. There is one two-storey property immediately to the east of the appeal site along Colchester Road. To the north-west of the appeal site there is a row of single storey terraced properties facing Colchester Road with accommodation in the roof space and linear gardens to the rear. These properties are of red brick at the front with grey slate tiled roofs with dormer windows in the roof space. There is a hedge fronting Colchester Road. The appeal site and immediate neighbouring properties back on to a field.
5. Further along Colchester Road to the north-west, the dwellings become two-storey of mixed styles, some detached and some semi-detached, facing the road. The majority are set back from the road with car parking spaces to the front or side. Properties along the south of Colchester Road have linear gardens stretching back from the dwellings. There is verdant vegetation in the form of hedges interspersed with trees along the length of Colchester Road in both directions, in the vicinity of the site of the proposed development.
6. The proposed development is for three dwellings on the appeal site orientated perpendicular to Colchester Road. The orientation of the proposed dwellings on the appeal site would be significantly different to the orientation of existing dwellings along the south of Colchester Road which predominantly face the road. I note part of the proposed dwelling on plot 1 would be set at an angle, although I do not consider this sufficient to be considered as facing Colchester Road in line with existing dwellings. Therefore, the orientation of the proposed dwellings would be contrary to the prevailing street scene and out of character with the general appearance of the area. It would therefore be contrary to some requirements of the Colchester Borough Council's Backland and Infill Development Supplementary Planning Document (SPD), particularly section 6.5 which requires that the layout should create a sense of place and integrate well with existing development.
7. With regards to the widths of the gables proposed for plots 2 and 3, whilst they would be marginally wider than common in the immediate area, in isolation and in this particular case, they would not be unduly dominant. However, this does not mitigate the other harmful design elements of the scheme that I have identified above.
8. I therefore conclude that the design of the proposed development in terms of orientation would be contrary to Policy SP7 of the Colchester Borough Local Plan (CBLP) 2017 to 2033 Section 1, which states all new development should respond positively to local character and context. It would also be contrary to Policy DM15 of the CBLP Section 2, which states amongst other criteria, that all development must enhance the character of the site and surrounds in terms of layout, architectural approach, form, massing, density and proportions. In addition, the proposed development would be contrary to Policy SG1 and Policy OV2 of the CBLP Section 2, which state that residential development proposals will need to demonstrate that they respect the character and appearance of landscapes and the built environment. Furthermore, the proposed development would be contrary to the National Planning Policy Framework (the Framework), which requires in paragraph 135(c), developments to be sympathetic to local character, including the surrounding built environment.

Living conditions of occupants of existing neighbouring properties

9. To the north-west of the appeal site there is a row of single storey terraced properties facing Colchester Road. These properties have accommodation in the roof space and linear gardens stretching back from the dwellings, backing onto a field. A fence boards the existing rear garden of the adjacent terraced property with the appeal site.
10. The proposed dwellings on the appeal site would be orientated perpendicular to Colchester Road, facing north-west and facing the proposed access road. From the first floor front windows of the proposed dwellings on plots 2 and 3, there would be direct views across the rear gardens of the existing neighbouring terraced properties, particularly Nos. 129 and 127 Colchester Road, and views at an angle towards the back windows of these existing properties.
11. I observed on site that the occupiers of No. 129 Colchester Road currently enjoy significant privacy to the rear of their property. Whilst a degree of overlooking is common in the general area from neighbouring properties with views down the gardens, away from the properties, the proposed development would introduce a different type of overlooking from a different aspect not generally experienced in the area. Whilst some screening to the view of the immediate rear area of No. 129 Colchester Road would be provided by its outbuilding, the orientation of the proposed properties would allow views from the first floor windows of the proposed dwellings on plots 2 and 3 that would cause an unacceptable loss of privacy to the rear outside space of the existing neighbouring properties, nearest the back of the dwellings, to an extent that would cause significant harm.
12. It has been suggested that a boundary treatment condition could be introduced. The detail of where vegetation or other boundary treatment might be positioned within the appeal site, that would not compromise the space allowed for the access road, has not been put to me. As such, I do not have sufficient information before me to be satisfied that such a condition could achieve the necessary level of screening and that it would meet the test of enforceability.
13. Although the proposed development may comply with some aspects of the Essex Design Guide and the Colchester Borough Council's Backland and Infill Development SPD, when considered in the round, for the reasons given above, it would result in unacceptable living conditions for occupiers of existing neighbouring properties.
14. There would be some additional noise generated from the use of the access road for the occupants of the existing neighbouring properties. However, any effect would be limited due to the small scale of the development.
15. Overall, I conclude that the proposed development would cause significant harm in respect of privacy to the occupiers of existing neighbouring dwellings. On this basis, I conclude the proposal conflicts with Policy SP7 of the CBLP Section 1 and Policy DM15(v) of the CBLP Section 2. Together these policies seek to protect the amenity of existing residents and users with regard to privacy, amongst other considerations. There would also be conflict with the Framework, which requires developments to be of a high standard of amenity for existing users.

Living conditions of future occupants of the proposed dwellings

16. Immediately adjacent to the appeal site to the east, is an existing property, No. 131 Colchester Road, sited close to the boundary fence, with first floor rear windows overlooking the appeal site.
17. The rear area of all three of the proposed dwellings close to the back of the properties would be overlooked by at least one of the first floor windows of No. 131 Colchester Road. In addition, the rear gardens of proposed dwellings on plots 2 and 3 would be overlooked by the rear first floor windows of the proposed dwelling on plot 1. The angle of overlooking would be less intrusive than that from No. 131 Colchester Road.
18. Although the proposed development may comply with some aspects of the Essex Design Guide, when considered in the round, overlooking would result in unacceptable living conditions for future occupiers of the proposed dwellings.
19. I conclude that the proposed development would cause significant harm in respect of privacy for the future occupiers of the proposed dwellings. On this basis, I conclude the proposal conflicts with Policy SP7 of the CBLP Section 1 and Policy DM15(v) of the CBLP Section 2, which require that all new development seeks to protect the amenity of future residents and users with regard to privacy, amongst other considerations. There would also be conflict with the Framework, which requires developments to be of a high standard of amenity for future users.

Coalescence

20. The appeal site is situated between existing dwellings outside but adjoining the settlement limits boundary of West Bergholt, as defined in the CBLP and the West Bergholt Neighbourhood Plan (WBNP) 2024.
21. The WBNP Policy PP12, states that development will not be supported in the area shown on Map PP12 if individually or cumulatively it would result in increasing the coalescence between West Bergholt village and Braiswick, reducing their separate identity by reducing the separation between these two settlements.
22. Section 2 of the CBLP concerning West Bergholt, states that development to the south of the village towards Colchester on Colchester Road, is not considered suitable due to the high potential of visual coalescence.
23. As the appeal site is located between existing properties along Colchester Road, I consider that its development would not reduce the physical separation or cause coalescence between West Bergholt and Braiswick. Nor would the development result in isolated homes in the countryside which is resisted under the Framework.
24. Therefore, as the appeal site is located between existing dwellings along Colchester Road, it is in principle, a suitable location for housing with regard to avoiding the coalescence of West Bergholt and Braiswick. In regard to coalescence, there would not be conflict with Policy PP12 of the WBNP or Policy SS15 of the CBLP Section 2, which requires that development within West Bergholt complies with the relevant Neighbourhood Plan and Local Plan policies which seek to prevent coalescence between West Bergholt village and Braiswick. In addition, the proposed development would not be in conflict with Policy SP3 of the CBLP Section 1, which asserts future growth will be planned to ensure existing

settlements maintain their distinctive character and role, to avoid coalescence between them and to conserve their setting.

25. I note reference to the emerging Local Plan, which has recently been approved by the Council for public consultation. It has been brought to my attention that within this plan, the appeal site has been identified as part of a potential allocation. As this plan has not yet been examined and is at an early stage, I cannot give it any significant weight. In any event, I conclude that the appeal site is, in principle, a suitable location for housing with regard to avoiding the coalescence of West Bergholt and Braiswick, as stated above.
26. However, the lack of conflict with the development plan on this particular matter of coalescence is neutral in the planning balance and does not mitigate the harm that would generally arise to the character and appearance of the area, as stated above.

Contamination risk

27. As part of its reasons for refusal the Council stated that the proposed residential use would introduce vulnerable new receptors to the appeal site, and an appropriate contamination risk assessment was therefore required for the site. This had not been provided prior to determination. Given the previous and current agricultural use of the land, which could have involved for example the use or storage of chemicals, I agree with the Council that a contamination risk assessment should have been provided at the application stage.
28. However, I note the Council state that it has received an initial risk assessment for another proposal on this site and that it now considers that the residual risk can be investigated and managed through conditions. If I were to allow the appeal, I would consider this matter could be adequately dealt with through a condition. The proposal would therefore be in line with Policy DM15 of the CBLP Section 2, which states that development proposals must demonstrate that they create a safe environment, and Policy DM1 of the CBLP Section 2, which states that all development should avoid causing adverse impacts on public health.

Mitigation for community, sport and recreation

29. A reason for refusal by the Council was the lack of a finalised unilateral undertaking (UU) for community and sport or recreation projects to mitigate the impact arising from small scale housing development. I note that a finalised UU has been submitted as part of the appeal, signed and dated by the appellant on 28 August 2025. If I were to allow the appeal, I would consider this matter adequately dealt with and in line with Policy SG7 of the CBLP Section 2 and Policy SP6 of the CBLP Section 1.

Other Matters

30. It has been brought to my attention by the appellant that the Council's five-year supply of deliverable housing sites may be in question. The Council has submitted a document entitled 'Five-Year Housing Land Supply Statement 2025', which provides details as of 1 April 2025, demonstrating that the Council has a sufficient supply of deliverable housing to meet the five-year requirement. The appellant has submitted examples of sites where housing delivery may be regarded as optimistic

and contends that an update on the Council's housing land supply is due in January 2026.

31. I do not consider that I have sufficient information from either party to come to a firm conclusion on this matter. If I were to accept that the Council could not demonstrate a five-year supply of deliverable housing sites, then paragraph 11(d) of the Framework would be invoked. However, if it were invoked, the Framework does not change the statutory status of the development plan as the starting point for decision making.
32. The proposal is not in accordance with the aforementioned policies of the CBLP, with the associated conflict reflecting harm to character and appearance of the area and significant harm to the living conditions of occupants of adjacent properties and future occupiers of the proposed dwellings. For these reasons, the development conflicts with the development plan as a whole and should be refused unless other material considerations indicate otherwise.
33. Paragraph 11(d) of the Framework explains that, where a local planning authority is unable to demonstrate a five-year supply of deliverable housing sites, then planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
34. The dwellings would be in a location well served by public transport and close to services. The proposal would also make efficient use of land and provide modestly sized family homes. The scale of the proposed development means the contribution of three additional dwellings to meet the housing need would be limited and would not outweigh the significant harm identified above. The effect on the character and appearance of the area and to the living conditions of occupants of adjacent properties and future occupiers of the proposed dwellings, would conflict with policies of the Framework and would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.

Conclusion

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

Ms Beloe

INSPECTOR