



Appeal Decision

Site visit made on 20 January 2026

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th January 2026

Appeal Ref: APP/A1530/W/25/3375872

Land south of, Kelvedon Road, Kelvedon Road, Essex, CO6 3PT

- 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 The Paw Patch against the decision of Colchester City Council.
 - The application Ref is 251033.
 - The development proposed is described as '*change of use of agricultural field to dog walking field*'.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issues

2. An application for an award of costs was made by The Paw Patch against Colchester City Council. This application is the subject of a separate Decision.
3. The main issues in this appeal are the effect of the proposed development on: 1) Biodiversity, with particular reference to protected species; 2) Highway safety, with particular reference to visibility; and 3) The character and appearance of the area.

Reasons

The effect on biodiversity

4. Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving and enhancing biodiversity. To this end, Paragraph 192 of the National Planning Policy Framework (the Framework) through Circular 06/2005 explains that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. Accordingly, surveys should be undertaken when protected species are likely to be present and affected by a proposal.
5. The appeal site encompasses part of an arable field and a section of hedgerow around the proposed site access. The eastern, western and northern boundaries of the appeal site directly adjoin mature hedgerows with some integral trees. Immediately to the west of the site is a stream with dense riparian vegetation.
6. The Planning Practice Guide¹ includes a link to standing advice prepared by Natural England. The standing advice includes a table outlining which protected species are likely to be present in which type of habitat. Under *woodland, scrub*

¹ Paragraph: 016 Reference ID: 8-016-20190721, which links through to guidance titled 'When you need a survey'

and hedgerows on or next to the development site the likely protected species are listed as bats, wild birds, badgers, hazel dormice, invertebrates, great crested newts, reptiles and protected plants, fungi and lichens. In addition, *ponds or slow-flowing water bodies (like ditches) within 500m and linked by semi-natural habitat* could be habitat for great crested newts amongst other species. It is also of note that correspondence from the North East Essex Badger Group submitted to the Council during its assessment indicates there is an active badger sett in the locality.

7. Given the foregoing, it is likely that protected species could be present around the appeal site. Constructing the access, erecting fencing and the regular presence of dogs off lead could disturb wildlife. Accordingly, a robust Preliminary Ecological Assessment (PEA) is necessary to consider matters further, including avoidance and mitigation measures and whether any additional surveys are required.
8. A PEA was not submitted with the application but was with the appeal. The Council has reviewed the document, although it is unclear whether it was considered by an Ecologist. Nevertheless, in this instance it is not necessary as the flaws in the document are stark. In particular, there is acknowledgement that bats may be present in the hedgerow trees and that there is 'certainly scope' for such species to forage over the site. The report goes on to explain that the survey area has potential to support bat species but does not 'appear' to hold much value. This is an ambiguous conclusion. It is unclear why further surveys have not been recommended given the scope for bats to be present and affected by the scheme.
9. Moreover, when considering other species such as amphibians and reptiles, the legal protections are discussed but there is no substantive analysis as to whether these species are likely to be present, how they might be affected and whether further surveys are required. The same applies to badgers despite the comments from the local Badger Group. The PEA does not make any clear recommendations or set out mitigation. Nor does it include details of who undertook the survey and their professional credentials. The PEA was also undertaken in October, which may be suboptimal for some species. I therefore share the view of the Council that the report is of limited assistance in establishing the scheme's likely potential effects on protected species.
10. In conclusion, the failure to provide a robust PEA means the appellant has failed to demonstrate the scheme would not harm protected species. This places the proposal at odds with Policy ENV1 of the Colchester Borough Local Plan 2017 - 2033 Section 2 ('Section 2 Plan'), which seeks to secure development that conserves the natural environment including biodiversity. The potential for the site to achieve a general biodiversity net gain² through habitat creation and enhancement, as required by Paragraph 187 of the Framework, does not outweigh the potential impacts on protected species which may already be in situ.

The effect on highway safety

11. The appeal documentation suggests the proposed access would be in the position of an existing highway access into the field. However, the access is not gated and nor does it include any hardstanding. Instead, it is overgrown and incorporates a ditch which would need to be traversed by a vehicle. If it is used as a vehicular access into the field, then the indicators are that such use is very infrequent.

² Subject to addressing the Council's concerns that some of the BNG may be ineffective if the area is also used to walk dogs

12. The proposed change of use would allow customers to book exclusive hour-long slots to use one of the two fields to walk their own dog(s). There would be no ability to speculatively turn up. Therefore, the Transport Statement (TS) submitted with the appeal suggests there would be up to four movements an hour. It is unclear how the facility would work if two friends (or a small group) wished to jointly book the field and walk their dogs together. As such, the suggestion of only four vehicle movements by customers an hour may be conservative. Nevertheless, I am content to adopt it for the purposes of my assessment. Added to this, there are likely to be regular visits to the site from the operators to check the facility, remove dog waste and carry out landscaping works. The proposal would therefore result in an intensification in the comings and goings of vehicles.
13. The road is subject to the national speed limit, but I share the view of all the parties that it is unlikely that vehicles travel at 60mph given its characteristics as a narrow rural lane. The curvature of the road would also slow vehicles in both directions. The Local Highway Authority have confirmed that the visibility splays could be based on the 85th percentile speed of traffic using the road. Identifying the 85th percentile speed can be achieved by undertaking speed surveys.
14. The appellant's final comments suggest an Automatic Traffic Count has confirmed the 85th percentile speed to be 35mph in both directions. However, no details of this have been submitted and new evidence should not be submitted at the final comments stage in any event. Instead, the authors of the TS state an ATC survey is unnecessary because the appeal scheme would be upgrading an existing highway access used by agricultural vehicles. However, I have already explained that the existing access is probably used very infrequently whereas the proposal would result in around four movements an hour. In these circumstances it would be prudent to establish the 85th percentile speed to ensure visibility splays of a sufficient distance can be provided. The splays also need to be plotted on an accurate site survey plan to demonstrate whether any existing trees or hedges would need to be removed.
15. In addition, there are further complications with the splay suggested to the west (left on exiting). The splay as presented in the TS cuts across a high planted bank. The land also dips around the bend so that vehicles approaching the proposed access from the west disappear as they negotiate the bend before reappearing. This is not adequately addressed in the TS. As such, it has not been demonstrated that either a 57m or a 43m splay is achievable. The Parish Council understandably suggest that the splay would be less than this. In the absence of an ATC confirming the 85th percentile speed, it is unclear whether such a splay would be safe.
16. Although vehicles would be able to leave the site in a forward gear, there may still be a high risk of collisions occurring if the length of the splay is inadequate for the speed of traffic. The Parish Council have also made the point that vehicles negotiating the bend may be harder to see in dappled or low light. They may also be accelerating out of the bend. Given the consequences of a collision and the regular activity at the access, a precautionary approach to assessing highway safety in this instance would be reasonable.
17. In conclusion, for the reasons given above the appellant has failed to demonstrate that the proposed access would be safe and suitable when considering visibility. The proposal would therefore be at odds with Policy DM21 of the Section 2 Plan,

which seeks to secure development that is safe for all highway users. This policy is consistent with Paragraphs 115 and 116³ of the Framework.

The effect on character and appearance

18. The appeal site encompasses part of an arable field positioned within Area F1 - Messing Wooded Farmland – defined in the Colchester Borough Landscape Character Assessment (LCA). The appeal site sits in a local landscape that is typical of the key characteristics of Area F1, in that it is crossed by a stream, includes patches of woodland, dissected by hedges, predominantly arable and undulating. There is an elevated public footpath to the south of the appeal site which provides extensive views over the landscape, especially to the northeast. The appeal site is in the foreground of views from this receptor.
19. The LCA sets out the landscape strategy objective of conserving and enhancing the landscape character of Area F1. The landscape planning and management guidelines seek to conserve the mostly rural character of the area, secure development that would be well integrated with the surrounding landscape, protect panoramic views and conserve and restore the existing hedgerow network where gappy and depleted.
20. The appeal scheme would involve a change of use of the site which would be facilitated by the erection of a fence around the perimeter of the site and between the two dog walking fields. The appellant submits that the fencing would be permitted development and therefore does not need to be considered. However, the fencing is an integral part of the change of use and is unlikely to be erected if the appeal is dismissed. As such, the fall-back position is no more than theoretical. The impact of the fence is therefore highly material to my assessment, as is the construction of a hardened vehicle access and small car park and the siting of two small shelters. The activity generated by the use also needs careful consideration. Ultimately, the appeal site would lose its rural arable character in lieu of something that is potentially more manicured and semi-rural.
21. The hedge along Kelvedon Road is described in the PEA as being in poor condition on account of the extent of dead and dying Elm. This has resulted in a gappy appearance which means users of Kelvedon Road would be able to see the new activity and infrastructure within the appeal site. That said, the users of Kelvedon Road are likely to be motorists travelling at speed given the absence of any pavement. Their experience of the proposal would therefore be fleeting and peripheral. As such, they would be receptors of low sensitivity.
22. As recommended in the submissions, the ability to experience the change in character from Kelvedon Road could be mitigated by an extensive landscaping scheme where gaps in the roadside hedge are filled and the area between the proposed fence and the hedge line left to scrub up and/or filled with additional planting. This could be secured through a condition which requires a landscaping scheme. Some of this planting would be outside the appeal site, but there is nothing before me to suggest there is no prospect that permission would be given by the landowner for the new planting or that ongoing management would be required by the appellant⁴. Consequently, a Grampian type of condition could be

³ The 'severe' test in this paragraph relates to residual cumulative impacts on the road network. The test for highway safety is whether the impact would be 'unacceptable', which is what I have found.

⁴ If management of land outside the control of the appellant is required, then a planning obligation may have been necessary as a management condition cannot be imposed on a third party

used to secure off site planting. Therefore, the low sensitivity of the receptors, and the ability to include extensive mitigation, means the general change in character of the appeal site would not be harmful when experienced from Kelvedon Road.

23. The proposed fencing would be 1.6m high and therefore taller than a conventional stock proof fence. It is unclear why the fencing needs to be this tall. Despite the ambiguity on the drawings, which seems to show a mesh fence, the appellant has confirmed that the fencing would be timber post and wire. It would therefore be visually permeable, and the posts would soften in time. Thus, the fence would be subtle when viewed behind existing mature hedges. However, there is no existing hedge along the majority of the southern boundary of the appeal site, which is exposed to views from the public footpath. The tall fence would appear quite stark in views from this direction. However, a thick hedge, which also incorporates standard trees, could be planted on the outer face of the fence along the southern boundary and between the dog walking fields. Over time this would provide a softening screen and a sense of verdancy. This approach would also respond to the landscape management guidelines to conserve and restore hedgerows and offset some of the adverse impacts of the scheme caused by the general activity. Accordingly, the fence would not appear harmful in the medium term.
24. In respect of the car park, the plans show marked bays which would impart a formal suburban character, do not detail the materials and propose three spaces which would be directly visible through the gap created by the access. The entrance gate would also be an oversized 1.6m high. As such, the parking area as proposed would not be sufficiently sensitive to the rural setting of the area. However, a condition could be imposed to secure details of the surface treatment so that a rural aesthetic is achieved. Indeed, there would be no need for tarmac to be used, even to the crossover provided it is bound. Furthermore, there would be no need to mark out the parking spaces. There is even scope to reconfigure the scheme through conditions, whereby the parking spaces are positioned in a row behind the existing hedging and the entrance gate substituted for a more conventional 1.2m high field gate. New planting could also be provided around the car park. These measures would soften the impact of the hardstanding and parked vehicles. Again, with conditions imposed the car park, like the fencing, need not appear stark or harmfully out of place.
25. Furthermore, to limit the effect on tranquillity and landscape character, conditions could be imposed to prevent the installation of lighting, the provision of dog agility and exercise equipment and control the number of dogs on site at any one time. This would limit the activity and ensure the scheme is less intrusive in the rural setting. Moreover, it would be necessary to secure a landscaping scheme within the fenced area so that the dog walking fields are a mosaic of habitats rather than a mown field which could otherwise have the bland and discordant appearance of a lawn. The position of the shelters could also be controlled to ensure they are subtly tucked in against the existing hedge boundaries and finished in a dark material to ensure they blend in.
26. In conclusion, when the scheme is considered in the round the impacts on the character and appearance of the area are capable of being mitigated or offset. The residual impacts of the proposal would therefore conserve the landscape of Area F1. On this basis, there would be no conflict with Policy SP7 of the Section 1 Local Plan and Policies DM15, ENV1, DM6, DM7 and OV2 of the Section 2 Plan, which collectively seek to secure high quality design that avoids adverse impacts on, and

harmonises with, the local landscape. These policies are consistent with Paragraph 135 of the Framework.

Other Matters

27. The Government is currently in the process of consulting on proposed amendments to the Framework. The draft revised Framework could be subject to significant amendments following the conclusion of the consultation and therefore it has little weight in my assessment of the current appeal. Instead, the extant version of the Framework has been the focus of my considerations.
28. The Council's first reason for refusal alleges the proposed development would be in an unsustainable location. It is unclear what is meant by this. There is nothing in the Officer's report to indicate the Council are suggesting the proposal is unacceptable because customers would be reliant on using a car to travel to the site. On the contrary, the Council indicate that the proposal would be acceptable in principle as a rural diversification subject to the impacts. Accordingly, I have not considered this matter further as the outcome of the appeal would remain unaltered regardless of my findings.

Planning Balance

29. The appeal scheme could secure a biodiversity net gain of a high order given the extent of planting that would be required. It would also facilitate a farm diversification, although there is little to indicate the extent of this benefit. Indeed, the benefiting farm is scarcely mentioned and the extent of the benefit unquantified. The scheme would also provide a local facility for dog owners to exercise and visit the countryside without having to travel far, although the need for this is unlikely to be of a high order given the presence of public footpaths in the area. Alternatively, the appellant has failed to demonstrate that the proposal would not harm protected species and highway safety. Overall, the potential for significant harm would outweigh the moderate benefits.

Conclusion

30. The appeal scheme need not harm the character and appearance of the area. The absence of harm is a neutral matter. On the other hand, the appellant has failed to demonstrate there would be no harm to highway safety or protected species. The proposal would therefore be at odds with the development plan taken as a whole. The benefits of the scheme, as a material consideration, do not outweigh the harm. Accordingly, the proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. For this reason, and the reasons given above, the appeal is dismissed.

Graham Chamberlain
INSPECTOR