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## Appeal Decisions

Site visit made on 3 June 2019

by **Nicola Davies DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

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### **Appeal A Ref: APP/A1530/W/18/3209603**

#### **Land at Colchester Road, West Bergholt, Colchester, CO6 3JS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by NEEB Holdings Ltd against the decision of Colchester Borough Council.
  - The application Ref 180732, dated 16 March 2018, was refused by notice dated 15 June 2018.
  - The development proposed is 18 dwellings including affordable housing, 36 retirement living/sheltered accommodation units, 60 bed care home, vehicular and pedestrian access from Colchester Road, public open space and structural landscaping.
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### **Appeal B Ref: APP/A1530/W/18/3211685**

#### **Land at Armoury Road, West Bergholt, Colchester CO6 3JW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by NEEB Holdings Ltd against the decision of Colchester Borough Council.
  - The application Ref 180733, dated 16 March 2018, was refused by notice dated 7 August 2018.
  - The development proposed is 26 dwellings 30% affordable housing, vehicular and pedestrian access from Armoury Road and Coopers Crescent, public open space and structural landscaping.
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## Decision

1. Appeals A and B are dismissed.

## Preliminary Matters

2. As set out above there are two appeals and this decision letter deals with both appeals. The proposals relate to two different sites at West Bergholt. There is considerable overlap in the evidence, and it is thus convenient to discuss both these appeals together. The main issues are the same in respect of both appeal cases. I have dealt with both proposed developments in this single decision letter, nonetheless, they are still individual decisions. I have considered each proposal on its individual merits and restricted myself only to the matters of dispute in each case. To avoid duplication, I have dealt with the two schemes together, except where otherwise indicated.
3. The applications have been made in outline with approval being sought for access and landscaping in both cases. Matters relating to appearance, layout and scale have been reserved. I have dealt with the appeals on this basis,

treating those plans that illustrate a site layout plan and street elevations as illustrative only.

4. A revised version of the National Planning Policy Framework ('the Framework') has been published since the planning application was determined by the Council. I have had regard to the revised Framework in reaching my decision.

### **Main Issues**

5. The main issues in this case are: -

- (a) The effect of the proposed development upon the character and appearance of the area (Appeal A);
- (b) The effect of the proposed development upon the character and appearance of the area (Appeal B);
- (c) Whether the proposal makes adequate provision for any additional need for affordable housing, open space, sport and recreation, community facilities, primary education (Appeals A and B), National Health Service (Appeal A only) and broadband (Appeal B only) arising from the developments; and
- (d) Whether the Council is able to identify a five-year supply of deliverable housing sites against the housing requirement and whether any harm in relation to the above issues and conflict with the development plan is outweighed by other material considerations (Appeals A and B).

### **Reasons**

6. Both appeal sites lie outside the development boundary of a settlement and are not allocated under Policy SD1 of the Colchester Borough Core Strategy (the Core Strategy) for housing development. The sites are, therefore, in the countryside for the purpose of the Council's planning policies. Policy SD1 also seeks to promote sustainability by minimising pressure on the natural environment and ensure development is sustainable and compatible with local character. Policy ENV1 of the Core Strategy seeks to protect and preferably enhance unallocated greenfield land outside of settlement boundaries. This accords with the objectives of the Framework that seek to conserve and enhance the natural environment. Within such areas Policy ENV1 states that development will be strictly controlled to conserve the environmental assets and open character of the Borough. Policy H1 of the Core Strategy sets out the delivery and distribution of new homes in the Borough by settlement hierarchy.
7. There is dispute about whether or not the Council is able to demonstrate a five-year supply of housing land. Footnote 7 of paragraph 11 of the Framework states that where a local planning authority cannot demonstrate a five-year supply of deliverable housing sites policies for the supply of housing should not be considered up-to-date. The presumption in favour of sustainable development at paragraph 11 requires that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. I will deal with the housing land supply position later.

### *Character and appearance – Appeal A*

8. The appeal site abuts the eastern side of West Bergholt settlement. To the north, east and south the character of the landscape is open and undeveloped countryside, although there are some sporadic residential developments within this wider area. This open countryside land, which includes the appeal site, separates the settlements of West Bergholt and Colchester.
9. The Council highlights that the site lies within Colchester Borough Landscape Character Assessment Character Area B6 (Great Horkesley Landscape Plateau) that identifies a key planning issue as 'potential pressure from expansion of ... West Bergholt'. It sets a landscape strategy objective to 'conserve and enhance' the landscape character of the area with a landscape planning guideline to 'conserve the landscape setting of ... West Bergholt, ensuring where appropriate that infill development does not cause linkage with the main Colchester settlement'.
10. The Council explains that its concern relates to the effect of the proposal's encroachment on the countryside and considers this would cause harm to its character and appearance in respect of its intrinsic countryside beauty. Its concern is that the proposal would erode the open countryside between the settlements of West Bergholt and Colchester and create an urbanising development at the edge of West Bergholt.
11. I observed at my visit that the site comprises some areas of bare ground but most of the site is rough grassland with some dense areas of scrub. There are also some trees interspersed and the boundaries are vegetated by trees and shrubs. The appeal site does not have any specific landscape designations. Nonetheless, I saw that the site is essentially rural in character and appearance and this is a key characteristic of this land. Whilst not farmed, it hosts attributes of open undeveloped countryside and for this reason the appeal site relates to the wider countryside landscape north, east and south of the site.
12. The appellant asserts that the development would respond to the existing settlement pattern of West Bergholt and would be of a similar scale and density to the surrounding areas of the settlement. Although the proposal has been submitted in outline with scale reserved for future consideration, the appellant comments that "*at this current time it is envisaged that most buildings on the site would be 2 storey with some single storey buildings on the north side and a frontage along Colchester Road with some three storey elements*". Indeed, the illustrative street scene show a substantial development along Colchester Road even if set back from the site frontage. I cannot be certain that the advocated Zone of Theoretical Visibility modelling at a 9m ridge height is realistic. Nonetheless, the proposed development would create visually urbanising development over a large area of land and the effect upon this rural landscape would be substantial.
13. The proposed development would fill the gap between the settlement edge and the two residential properties to the east of the site where the settlement speed limit of 30mph is in place along Colchester Road. Beyond this, the gap of 700m between the settlements would be maintained and open fields and the A12 corridor would maintain a separation between settlements. Whilst not creating linkage of settlements, the proposal would represent a significant

encroachment into the open countryside and into the land that separates West Bergholt and Colchester.

14. The proposed development would fail to conserve this existing natural environment and would diminish the gap between settlements. For these reasons the development would be harmful.
15. I acknowledge that the appellant has undertaken an assessment of viewpoints and considers that in 15 years landscaping around the site would have matured and screen long distance views towards the site and so considers the impact of the proposed development to be negligible (neutral). Although the site could be delineated by augmented vegetation, the development would be extremely likely to be visible through and above this vegetation, particularly during those months when vegetation is not in leaf, much in the same way the existing development at Maltings Park Road can be seen on the approach to the settlement and in views from surrounding land. I accept that in distant views illustrated within the appellant's revised Landscape and Visual Impact Appraisal (LVIA) that the proposed development would be less noticeable within the landscape, nonetheless it would certainly be discernible in short to medium views from the surrounding area.
16. I, therefore, consider the visual harm arising from the proposal would be clear in views from Colchester Road when approaching West Bergholt in a westerly direction. This visual harm arising from the development would also be evident to adjoining existing residential occupiers and in views from the Public Right of Way north of the appeal site, as well as in wider countryside views. I do not agree with the appellant that the visual impact of the development toward the east would be limited or that the visual effects arising from the proposed development would be minor.
17. I find, consequently, that the proposal would be harmful to the character and appearance of the area and would not conserve and enhance the natural environment. The proposal would not accord with the aims of Policy ENV1 of the Core Strategy as the site is unallocated greenfield land outside the settlement boundaries and within such areas development is to be strictly controlled. The scheme would also encroach into the existing separation between West Bergholt and Colchester and this bring the development into conflict with the Colchester Borough Landscape Character Assessment. Furthermore, the development would not sustain or be compatible with the character of the countryside and this also brings the proposal into conflict with Policy SD1 of the Core Strategy.

#### *Character and appearance – Appeal B*

18. This proposal has also been supported by a revised LVIA. The Appraisal notes that the development of the site would not intrude further into the landscapes of the St Botolph's and Colne River valleysides, however it also recognises that the settlement boundary of West Bergholt will change.
19. The appellant is critical of the Council's Statement of Case assessment of the landscape impact of the development. Whilst it is to some extent limited the Council nevertheless explains that its concerns relate to the effect of the proposal's encroachment on the countryside and considers this would cause harm to its character and appearance in respect of its intrinsic countryside beauty.

20. I note the appellants describe the site as maintained grassland, however, I observed at my visit that the site is an overgrown vegetated area, but its key characteristic is that it is open undeveloped land. Its site frontage along Armoury Road is vegetated with trees and shrubs. Despite the surrounding existing residential development, I saw that the site has an intrinsic rural character and appearance and this rural appearance of the site is prevalent when viewed from Armoury Road. There is a small bungalow with some small outbuildings at Brambles, east of the site, but that site is sparsely developed and, from what I saw, the site has a distinct link as it merges visually with the open garden land relating to The Brambles and the wider countryside to the east.
21. The appeal site does not have any specific landscape designations. The scenic quality of the appeal site is not outstanding, and it does not demonstrate physical attributes which would take it beyond mere countryside. The site does not have a significant impact upon the settlement separation between West Bergholt and Colchester. However, the proposal, would replace this open vegetated site with a housing estate by placing up to 26 dwellings with associated hardsurfaces and managed gardens. This would substantially domesticate this site. It's effect on the localised landscape would be significant. The proposal, therefore, would encroach into the countryside and the proposed development would fail to conserve this existing natural environment.
22. I do not agree with the conclusion of the appellant's Landscape Appraisal that the landscape character areas of the site would be low. The site lies on the southern edge of Character Area B6 and the Council's key landscape strategy objective relating to this landscape have been set out at paragraph 10 above. Whilst the site is not farmland and I accept that the resulting scale and character of the development proposed would conform to the context of the residential development in the surrounding area the proposal would not conserve and enhance the landscape character of the area or the natural environment. The proposed development would be harmful for this reason.
23. The visual harm arising for the development would be evident to adjoining existing residential occupiers and in glimpsed views through the boundary vegetation along Armoury Road. It would also be clearly visible to users of the existing public path at the eastern side of the appeal site.
24. Consequently, I find the proposal would be harmful to the character and appearance of the area and would not conserve and enhance the natural environment. The proposal would not accord with the aims of Policy ENV1 of the Core Strategy as the site is unallocated greenfield land outside the settlement boundaries. Within such areas development is to be strictly controlled. The development would not sustain or be compatible with the character of the countryside and this also brings the proposal into conflict with Policy SD1 of the Core Strategy.

*Community provisions – Appeals A and B*

25. The appellant acknowledges the expectation to meet or contribute towards local infrastructure needs arising from or exacerbated by the proposed development. For each of the appeals the appellant has provided a completed Section 106 legal agreement to secure the affordable housing provision and financial contributions arising from the development. I am satisfied that this

would address these matters and that this would comply with the applicable development plan policies and adopted Supplementary Planning Documents.

*Five-year supply of housing sites – Appeals A and B*

26. The Council's stance is that given that both sites' locations are beyond the settlement boundary, the sites lie within the countryside for the purposes of relevant development policies where restraint is placed on new housing. However, according to the appellant, the Council is unable to demonstrate that a deliverable five-year supply of housing land is available, as required by the Framework. The appellant suggests the Council's adopted policies relating to housing provision cannot be considered up-to-date.
27. The Council advises that, apart from a small shortfall since 2013, it has had a good track record of delivering new homes since the start of the current Plan period in 2010. The Council has continued to monitor its housing land supply and has published its annual Housing Land Position Statement in May this year. This confirmed that as of February 2019 the Council can demonstrate a five-year housing land supply.
28. The submission by the appellant is highly critical of the Council's methodology and approach used to inform the housing need requirement. The Council has directed me to the Local Plan Inspector interim findings letter of June 2018 in which the Inspector commented that the housing requirements were soundly based. Whilst the Council may have utilised an alternative approach to the standard method to assessing its housing need requirement, it does not appear to me that this renders the Council's evidence base as flawed.
29. The appellant is also concerned about the timescale since publication of Council reports with no known date for adoption of the emerging Local Plan. The appellant has undertaken an independent Housing Land Supply Update report. This report confirms why the appellant considers that the five-year housing land supply position is 3.37 years when using standardised methodology.
30. The appellant argues that even if the Council is able to demonstrate that it has a five-year supply of housing sites the relevant housing supply policies in the development plan should be treated as out-of-date. The Council has referred me to a recent appeal decision (Appeal Ref: APP/A1530/W/18/3209214). In this, the Inspector found that Policies SD1 and H1 of the Council's settlement strategy to be broadly consistent with the aims of the revised Framework in promoting sustainable development in rural areas. However, the appellant has further clarified that it is the housing numbers that relate to these policies that are considered to be out-of-date.
31. The Council is confident that it can meet the Borough's objective housing needs, nonetheless the definitive housing requirement figure remains to be determined in the examination of the emerging Local Plan. Notwithstanding the dispute between parties concerning the adequacy of the Council's supply of housing, the situation appears to be evolving. However, on the evidence before me, I am unable to reach a firm conclusion one way or the other.
32. I have taken into account the detailed argument in respect of the Borough's five-year HLS provided by the appellant on 4 June 2019. Although the Council was asked to consider this, the Council did not respond directly. Nevertheless,

for the reasons already given above it is not necessary for me to take the information provided by the Council into account.

*Planning balance – Appeals A and B*

33. Even if the appellant is right to say there is a shortfall in the supply of housing land that is sufficient to override the constraints of the Council's existing settlement policy, it would still be necessary for me to assess the sustainability credentials of this proposal, with particular reference to the economic, social and environmental objectives of sustainable development, as set out in paragraph 8 of the Framework.
34. With respect to economic considerations, both proposals would provide employment opportunities during the construction period and the occupiers of the new housing would contribute to the local economy. These are modest benefits of the proposed scheme.
35. In terms of social considerations, both proposals would contribute to the provision of housing in the Borough, which would include a proportion of affordable homes. The appeal sites appear to be in a reasonably accessible location, and this would potentially place less reliance upon the use of private vehicle to reach services and facilities. The developments could also create improved pedestrian and cycle routes on the northern eastern side of West Bergholt and connection between new and existing areas of public open space. Again, these are modest benefits of the proposed scheme.
36. In regard to Appeal A that proposal would bring about social benefits of providing retirement living/sheltered housing units and a care home, noting the appellant advises that discussions have taken place with St. Helena Hospice to extend operation to the site. This in turn would provide employment opportunities. These would also be modest benefits of this scheme. Although it is said a new community cafe/space would be provided as part of this scheme, I have limited details in respect of this and I cannot be certain that it would provide any benefit to the public.
37. In relation to Appeal B the housing created could potentially be suitable for first time buyers and those wishing to downsize and could be built to meet lifetime homes standards. This is a modest social benefit of that scheme.
38. Turning to environmental considerations, paragraph 8 of the Framework makes it clear that sustainable development should contribute to protecting and enhancing the natural, built and historic environment. This is so, whether or not the development would fall within those landscape designations listed under Footnote 6 pursuant to paragraph 11 of the Framework. With regard to character and appearance I have found that the proposed developments would harmfully alter the character and appearance of the area. This brings the proposal into conflict with the environmental objectives of the Framework. I do not consider the suggested conditions advanced by the appellant, including those relating to landscaping, and improvement to the ecology value of the sites would satisfactorily mitigate this harm.
39. Weighing all the relevant considerations in the planning balance, I conclude that both proposals would be contrary to the existing settlement policy for the area. I further conclude that when the current proposals are considered against the Framework as a whole, the adverse environmental impact of the

schemes would significantly and demonstrably outweigh the considerations advanced in favour of the proposal. Overall, I find that both developments would constitute an unsustainable form of development.

*Other matters – Appeals A and B*

40. The appellant advises that there has been lengthy liaison with the Parish Council and that the sites, the subject of these appeals, are deliverable and would meet the aspirational housing needs of the local community of West Bergholt. In regard to the emerging Neighbourhood Plan it does not appear to me, from the information provided, that either site would be allocated for future housing or other development as part of that emerging Plan. I note that the Council and interested third parties are concerned that if these appeals were allowed this would potentially undermine the housing policies within the emerging Local and Neighbourhood Plans.
41. The appellant advises that there are unresolved objections to a number of the policies within the emerging Local Plan, including those most relevant to these appeals and the Neighbourhood Plan has yet to be examined. I, therefore, consider that limited weight can be afforded to these Plans at this point in time as their policies remain subject to scrutiny through the adoption process and could be subject to change or deletion. However, this matter does not alter my findings above that have regard to the current development plan and the Framework.
42. The Parish Council and interested parties raise a series of other concerns about the proposals but in view of my conclusions on the main issues there is no need for me to address these in the current decision.

**Conclusion – Appeal A**

43. Having regard to the above findings, the appeal should be dismissed.

**Conclusion – Appeal B**

44. Having regard to the above findings, the appeal should be dismissed.

*Nicola Davies*  
INSPECTOR