
Appeal Decision

Hearing held on 21 August 2014

Site visit made on the same day

by Isobel McCretton BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10th November 2014

Appeal Ref: APP/A1530/A/14/2220669
Sports Ground, Bromley Road, Colchester

- 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 Dishland Limited against the decision of Colchester Borough Council.
 - The application Ref. 140364, dated 23 January 2014, was refused by notice dated 17 April 2014.
 - The development proposed is demolition of 2 no. existing bungalows. Provision of about 50 dwellings to include affordable housing. New vehicular and pedestrian access. Extension to existing clubhouse for use by football club and community groups. Provision of all-weather playing pitch. Provision of new car park for use as a school drop-off facility.
-

Decision

1. The appeal is dismissed

Procedural Matters

2. The appellants submitted a Unilateral Undertaking which would secure a financial contribution (£71,800) towards the provision of public open space, a minimum of 20% of the dwellings as affordable housing and transfer of the community facilities (sports pitch, pavilion, car park and all weather pitch) to a Community Facilities Company for nil consideration. I return to these matters below as well as the Council's concerns about the Undertaking itself.
3. The application was in outline with all matters reserved other than access. An indicative drawing showing a layout for 50 dwellings was submitted for illustrative purposes. I have determined the appeal on this basis.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the character and appearance of the area, having regard to national and local policy for the location and delivery of housing;
 - The effect on the provision of sports pitches in the district; and

- Whether adequate provision has been made for community and educational facilities to meet the additional needs arising from the proposed development.

Reasons

5. The appeal site lies on the northern side of Bromley Road. To the north-west and south-east are residential properties, to the north-east is the Welsh Wood Local Wildlife Site, while to the south west is the Bromley Road neighbourhood centre. The existing access, which also serves a dental surgery, is from Bromley Road. The site, around 3.74 ha in area, comprises a car parking area, small pavilion, 2 football pitches, a training pitch and an area of trees and rough shrubbery.
6. It is proposed to demolish 2 dwellings in Salary Close (nos.24 and 26) to the south and to construct up to 50 dwellings, including affordable housing, on the northern part of the site (including on one of the existing football pitches) with an area of public open space and a children's play area, to extend and upgrade the pavilion and changing rooms and to provide a new multi-use, all-weather pitch on the site of the training pitch. The remaining grass pitch, the all-weather pitch, pavilion and car park would be transferred to the Gas Recreation Football Club (GRFC), and opportunity would be given to community groups, particularly the 8th Colchester Scout Group (the Scouts), to use the pavilion. The car park would be extended and upgraded with use allowed as a drop-off point for Roach Vale Primary School.

Character and Appearance/Location for Housing

7. The development plan for Colchester includes the Core Strategy adopted in 2008, and the Site Allocations and Development Policies Development Plan Documents adopted in 2010 (SADPD and DPDPD).
8. Core Strategy policy SD1 seeks to promote sustainable development with growth directed to the most accessible and sustainable locations in accordance with the listed settlement hierarchy. Among other things, policy ENV1 seeks to protect, and where possible enhance, unallocated greenfield land outside settlement boundaries. Policy H1 directs most housing developments to the regeneration areas in Colchester Town, with other allocations made through the SADPD. The site lies outside the defined settlement development boundary for Colchester and is allocated on the Proposals Map as Private Open Space.
9. The National Planning Policy Framework (2012) (the Framework) is a significant material consideration in the determination of planning applications. Paragraph 14 states that, at the heart of the Framework, is a presumption in favour of sustainable development. For decision-taking this means approving development proposals that accord with the development plan without delay and, where the development plan is absent, silent or relevant policies are out of date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
10. The Framework seeks to boost significantly the supply of housing. Paragraph 49 of the Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up to date if the

local planning authority cannot demonstrate a five-year supply of deliverable sites.

11. The Core Strategy has recently been reviewed in the light of changes to Government policy set out in the Framework. This review was adopted in July 2014. The housing delivery policies of the development plan are therefore up-to-date and accord with the Framework and it is no part of the appellants' case that the Council cannot demonstrate a five-year supply of housing land. As such, I do not find the relevant policies for the supply of housing in the Core Strategy and SADPD to be out of date.
12. Furthermore, the appeal site was considered at the time of the SADPD. The Inspector who examined the SADPD found that sufficient allocations had been made to meet the dwellings requirement of the Core Strategy so that there was no need to allocate additional sites within the urban area which are currently in another use. This also applied to sites which are in open space use, with the Bromley Road Sports Ground specifically mentioned.
13. Thus, although the site is in a sustainable location and would provide an element of affordable housing in a part of Colchester where the appellants claim there is a shortage of supply, there is no compelling need identified for housing development on the site in terms of the Council's overall housing strategy or the Framework.
14. The Townscape Character Assessment identifies this part of Colchester as containing interconnected areas of green space and the land use, culture and vitality of the character area as predominantly a quiet residential suburb overlooking a swathe of green space at the centre. The Council considers that this site and the connections to the adjoining areas, particularly Welsh Wood, play an important part in this character. The Colchester Parks and Green Spaces Strategy aims, among other things, to improve the quality of existing parks and green spaces.
15. The remaining playing pitch and adjoining school field would be cut off from Welsh Wood by the proposed housing. Although the appeal site is privately owned, I consider, nevertheless, that in terms of character and appearance, it contributes to the interconnected green space which leads out to the open countryside beyond Colchester. An area of open space would be provided within the development and the perimeter tree belt retained. Nevertheless, given the amount of development proposed, this would not be likely to be of a size which would satisfactorily maintain this green connection.
16. Within Salary Close, 2 bungalows would be removed and replaced with a dwelling and the access road into the site. The indicative drawing shows a new detached dwelling alongside the proposed access which would be a 2-storey house. Neighbouring residents are very opposed to the principle of the development and access from Salary Close, but there is also specific objection to this aspect of the scheme which, as shown, they consider would be out of keeping with the bungalows on this side of Salary Close. It is also felt that it would have an unacceptable impact on the living conditions of the occupiers of no.22, the bungalow directly alongside the proposed house which is shown sited hard up against the boundary with no.22. Similarly, the Council has identified a number of shortcomings in the design and layout of the indicative scheme. However, this is an outline scheme. The exact details of the layout, the proposed dwelling and the access road (or, indeed, whether both an

additional dwelling and the access road can be satisfactorily accommodated and successfully integrated into the street scene in Salary Close), would be a matter for consideration at the reserved matters stage.

17. There is an existing road off Salary Close to the east at Barbel Road which leads to a further area of housing in Grayling Drive and Bram Court. The addition of the proposed access to the development would change the nature of this part of Salary Close, but I do not consider that it would have a detrimental effect on the character of the area as a whole such that the appeal should be dismissed in this regard. As above, it is the detailed design which would be crucial to the acceptability of the scheme.
18. I conclude that the proposed development would be detrimental to the character and appearance of the area through the loss of open green space. It would be a development of housing outside the defined settlement boundary for which there is no identified need or special justification. The proposal would be contrary to the Council's Parks and Green Spaces Strategy and would not accord with Core Strategy policies SD1, ENV1 and H1 or the Framework.

Sports Pitches and Open Space

19. The proposal involves the loss of one grass pitch. The remaining pitch would be improved and a further multi-use pitch established along with the extension and refurbishment of the pavilion.
20. DPD policy DP15 sets out that development of any existing or proposed public or private open space, including outdoor sports grounds, will not be supported unless it can be demonstrated that (i) alternative and improved provision will be created in a location well-related to the functional requirements of the relocated use and its existing and future users; (ii) the proposal would not result in the loss of an area important for its amenity or contribution to the green infrastructure network or to the character of the area in general; and (iii) it achieves the aims of the Colchester Parks and Green Spaces Strategy. I have already found that the proposal would result in the loss of an area important for its contribution to the green infrastructure network and would be contrary to the Parks and Green Spaces Strategy, so the proposal would not accord with criteria (ii) and (iii) of this policy.
21. Paragraph 74 of the Framework states that existing open space, parks and recreational buildings and land, including playing fields, should not be built on unless an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or the development is for alternative sports and recreational provision, the need for which outweighs the loss.
22. Sport England (SE) has also objected to the proposal. SE's Policy Statement¹ sets out its opposition to the grant of planning permission which would lead to the loss of, or would prejudice the use of, all or any part of a playing field, or land last used as a playing field unless one of 5 specific circumstances applies. SE maintains that none of the five listed exceptions (E1-5) are met. I consider that these exception criteria also provide a useful basis for assessing whether

¹ Sport England Planning Policy Statement – A Sporting Future for the Playing Fields of England (published 1997, updated 2010)

the proposals accord with the policies of the development plan and the Framework set out above.

23. With regard to exception E1, the Council's study of sports provision in 2007, in line with PPG17², highlighted an overall shortfall of pitches within the urban north area both in 2007 and projected to 2021. The appellants argue that this study is now 7 years old and therefore does not necessarily reflect the current situation.
24. However, the Council's Playing Pitch Strategy, drawn up to inform Colchester's Leisure Strategy as well as the Local Development Framework, has identified a shortfall in provision in the District. The appellants have pointed out that, within the immediate locality, there are a number of other outdoor facilities including the playing fields and multi-use sport and leisure facility at Colchester Academy which are available to the public at evenings, weekends and during the school holidays. Nonetheless other than this, no formal assessment has been undertaken by the appellants which contradict the findings of the Playing Pitch Strategy with regard to provision in the district as a whole. Given the increase in population, increase in the number of teams playing³ and no significant increase in overall supply since then, there is no substantiated evidence to show that the shortfall then identified has been addressed or that there is a surplus of pitches as should be demonstrated to accord with DPDPD policy DP15, the Framework and SE's exception E1.
25. The proposed development is not for ancillary facilities supporting the principal use of the site as playing fields and one grass pitch would be lost. The scheme does not affect only land incapable of forming part of a playing pitch. The scheme therefore would not accord with SE's exceptions E2 and E3.
26. Exception E4 is that the playing field to be lost would be replaced, prior to the commencement of development, by a new playing field site or sites of equivalent or better quality and equivalent or greater quantity, in a suitable location and subject to equivalent or better management arrangements. Exception E5 is that the proposed development is for an indoor or outdoor sports facility, provision of which would be of sufficient benefit to the development of sport as to outweigh the detriment caused by the loss, or prejudice to the use, of the playing field. It is these matters which lie at the heart of the appellants' case for developing part of the playing field.
27. The appellants state that the playing pitch affected by the proposal is used for training purposes and does not provide a pitch of the quality required for matches. Development of this part of the site and the adjoining unused rough grass area with housing would fund the construction of a new all-weather pitch and improved clubhouse facilities for the GRFC. It would improve the quality of training facilities for the club and provide an income stream for the club to better manage the overall retained club facilities. The plans allow for the refurbishment and extension of the existing changing rooms to a standard commensurate with the current level of the football club and it would be a facility for match day hosting. There would also be the ability to allow for wider community use by other local groups or members of the public, providing income for the club. The main group intending to use the facility would be the Scouts.

² Planning Policy Guidance Note 17: Planning for Open Space, Sport and Recreation (2002) (PPG17)

³ Football Association Football Participation Report – Colchester 2013/14

28. Under the terms of the submitted Unilateral Undertaking, a Community Facilities Company (CFC), with the directors being representatives of the GRFC and the Scouts, would be set up. The community facilities i.e. the grass pitch, pavilion, car park and the all-weather pitch would be transferred to the CFC, at nil consideration, and it would have full responsibility for running it.
29. At the Hearing, it was evident from the passionate representations on behalf of the GRFC and the Scouts, and from the St Edmunds youth football team which also trains at the ground, that ownership of the facility is a very attractive proposition. I have much sympathy for their point of view as the Scouts want a permanent base and the GRFC and the St Edmunds youth team fear that the ground would otherwise be sold. They have struggled for some time with a poor pavilion and so are very keen to have an improved clubhouse and would find an all-weather training area useful. However, if the facility they find themselves in control of is not economically sustainable, it seems to me that they could be left in a worse position. It is not clear what would happen in such an event.
30. I have a number of concerns about what is on offer for the club/CFC. There is no indication as to what the pavilion extension and improvements involve and the standard of the facilities which would be provided in the clubhouse (for instance would it be just a shell or a finished product with lighting, heating, showers, equipped kitchen, bar etc). The 'community facilities land' has to be transferred to the CFC before the 20th market house is occupied, but there is no time frame within which any of the works would be done.
31. No information has been given as to what works are necessary/will be done to improve the remaining pitch nor is there any specification for the all-weather pitch or timing for when it would be constructed. SE normally expects any alternative provision to be made prior to the commencement of the development, but this is not in the Undertaking. At the Hearing, SE explained that, from the information supplied by the appellants, it has considerable reservations as to whether adequate funding for the all-weather pitch has been allowed for. The sum on which the appellants have based their calculations may be a considerable underestimate if an acceptable standard of pitch is to be secured. The usefulness of the pitch would very much depend on its quality, but such pitches can be very expensive, there can be considerable on-going maintenance costs and they have a limited life span before needing to be replaced. In addition, the size of the pitch proposed is only suitable for matches for 7-8 year olds and the type of surface is not likely to be suited to some aspects of training for older players. It could also have limited use as an outdoor area for the Scouts, depending on the surface provided.
32. I have seen no cogent business plan which shows that the facilities which would be on offer could be run on a viable basis. Some other groups which currently use the facility at weekends would be displaced and the use by the Scouts may conflict with potential use by other groups who may provide a more profitable income stream.
33. Moreover, there is no transfer or control over the access for the CFC. Apparently it is unclear as to who owns part of the access road, but in the future this obviously could be crucial to the running of the facility.
34. To conclude on this issue, I consider that there is insufficient detail about the all-weather pitch and the upgraded clubhouse and no certainly as to when the

works would be carried out. As it stands I am not satisfied that the pitch to be lost is surplus to requirements or that the pitch would be replaced by equivalent or better provision in terms of quantity or quality. As such I find that the proposed development would not accord with DPDPD policy DP15 or the Framework.

Community, Education and Other Facilities

35. During consideration of the planning application the Council agreed that contributions towards community facilities would not be required if the extended pavilion and the all weather pitch would be available to the wider community outside the specific needs of the GRFC and the Scouts, and charges for hiring the facilities were reasonable. Community use is provided for in the Unilateral Undertaking.
36. The County Council has formally objected as provision has not been made in the Unilateral Undertaking for contributions towards additional school places for primary school age children and 11-16 year olds. The appellants argue that there is capacity in the local schools and therefore it is not reasonable to secure contributions in respect of this site to compensate for shortfall elsewhere in the education authority's planning area. The County Council points out that a deficit of places is forecast in the district because of a growing population and that additional school places would be needed even if no new housing were proposed in the area so the system is already under pressure. The forecasts only account for growth in line with housing allocations and there is no provision for windfall sites such as this.
37. There would be family housing on the site (the exact amount being determined at the reserved matters stage) and this would create a sustained demand for school places during the lifetime of the development. Therefore the need to contribute towards school places is related directly to the scheme. For various reasons not all children will go to their nearest school (e.g. some may go to faith or selective schools) and there will be fluctuations in numbers from year to year, so I consider it is reasonable to look at the broader picture with regard to existing and future capacity, as the County Council has done. Also, as noted in the Essex Developers' Guide to Infrastructure Contributions (2010), there should be a surplus of places of around 5% to maintain flexibility in the system and allow for parental choice. I am satisfied that the required contributions are necessary and would accord with the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. As education contributions are not included in the Undertaking, I find that insufficient provision has been made to meet the additional need arising from the development. This would not accord with Core Strategy policy SD2 and the Framework.
38. The Council and the appellants also disagree over the level of contributions which should be made towards public open space. £71,800 is allowed for in the Unilateral Undertaking, but the Council calculates that a contribution of £66,535 is necessary to provide for strategic open space, sports and recreational facilities in line with the adopted SPD⁴, plus a contribution of £57,270 for maintenance of the open space within the proposed development, there being no other mechanism put forward to secure this.

⁴ Provision of Open Space, Sport and Recreational Facilities Supplementary Planning Document (2006) (SPD)

39. The proposed open space with an equipped children's play area within the housing scheme would meet the need for local play space generated by the development, but would have to be maintained. In addition to this there would be demand for strategic open space and leisure facilities from future occupiers. The appellants argue that community use of the all weather pitch is provided for when previously this was a private ground, but that is part of the compensation for the loss of the grass pitch, not mitigation for the additional demands of the residential scheme. I therefore agree with the Council that insufficient provision has been made to meet the additional need for strategic open space and sports facilities or for the maintenance of the open space within the development. Thus the proposal would not accord with Core Strategy policy SD2 and the Framework in this respect.

Other Matters

Highway Safety

40. Residents are concerned about the increased traffic which would be generated and, in particular, highway safety at the junction of Salary Close and Bromley Road. I note that the Highway Authority has raised no objection in this regard subject to various conditions. Nor has issue been taken with the Transport Assessment submitted with the planning application which, based on TRICS data, estimates between 31 and 33 additional trips in the AM and PM peaks. While there would be more traffic on Salary Close, there is no substantiated evidence to show that there is a capacity problem on the local network or that highway safety would be compromised.
41. I saw that on-street parking takes place in the bell-mouth of the junction, but this does not necessarily obstruct sight lines onto Bromley Road. In any event this is a matter which could be addressed through parking controls if the Highway Authority considered it to be expedient. Also, it is stated that the Highway Authority intends to reduce the speed limit to the east along Bromley Road which should decrease the speed of approaching westbound traffic at this point. I do not consider that this is a reason to refuse planning permission and it would not conflict with the requirement of the Framework to provide safe and suitable access for all people.

Living Conditions of Adjoining Occupiers

42. This is an outline scheme, and I have no reason to doubt that a scheme could be designed which would accord with accepted standards for maintaining light and privacy to the existing nearby houses.
43. There is concern about noise from the access, but, as indicated above, full details of the access road into the development and whether/how a new dwelling is provided in Salary Close at this point would be the subject of a further application. Any scheme would also be required to provide suitable landscaping and screening to minimise the impact of the access on the adjoining residential properties.
44. At the Hearing there was a discussion about what conditions on the use of the improved clubhouse might be appropriate if the appeal were allowed, e.g. a restriction on the hours of use and use of amplified sound. Such conditions should protect the living conditions of nearby occupiers, but they could potentially have implications for any business plan for running the facility.

Drop-off point

45. The proposal to allow the use of the pavilion car park as a drop off point for children being taken to Roach Vale School has caused some consternation. However, at the Hearing it was explained that it was not the intention that young children would be left to walk alone to school. Rather, it had been suggested by the head teacher that this was a place where parents could park while taking children to school because of parking problems in the road near the school.
46. There are no details as to how this would be controlled and it seems to me that, without some regulation, it could lead to indiscriminate parking by customers to the nearby shops as well as by parents taking children to school. I note that the Highway Authority has not objected, but if planning permission were granted I consider that further details of this should be submitted for approval before the use as a drop-off area commenced.

Flood Risk/Drainage

47. The area where the housing would be located is currently undeveloped. There would therefore be an increase in hard surfacing. Although the site is in Flood Zone 1 as shown on the Environment Agency's (EA) flood risk maps, the size of the site (> 1ha) means that a Flood Risk Assessment (FRA) had to be submitted with the application to ensure that there would be no risk of flooding elsewhere as a result of the development. The EA issued a holding objection when the application was first considered. The EA required a revised FRA to be submitted to show either that infiltration tests had been undertaken, in accordance with BRE Digest 365, to demonstrate that the proposed infiltration scheme could be achieved in principle, or provision of an alternative drainage scheme which is achievable and has the confirmed consent of the parties affected.
48. The appellants have suggested that a condition requiring details of drainage to be approved prior to the commencement of development would be appropriate: there are several options for drainage of the site and such a scheme would identify any mitigation, such as storage of storm water, which may be necessary both on and off site to ensure that the issues raised by the EA are satisfactorily addressed. In my view, a condition would be acceptable providing this were a 'Grampian' style condition requiring the details to be approved and, if necessary, off site works completed, prior to the commencement of any development on site. This would mean that the development could not take place unless satisfactory drainage arrangements could be made. With such a condition, I consider that the requirements of Core Strategy policy ENV1, DPD policy DP20 and the Framework, which seek to safeguard people and property from the risk of flooding would be met.

Bats

49. The Habitat Survey submitted with the planning application noted that the appeal site presents good quality foraging, roosting and commuting habitat for bats. It recommended that, if the existing buildings to the south of the site were to be removed and/or some of the trees, then further survey work should be undertaken. As the Council points out, Government advice and case law has established that such surveys should be carried out before planning permission is granted so that that it can be ensured that there would not be an

adverse effect on protected species and/or that appropriate mitigation is possible.

50. The appellants submitted a further study of bat activity at the site with the appeal. This found no evidence of bats roosting in the trees on the site, though bats were recorded foraging and commuting along the woodland boundaries and in the woodland to the north-east. As no evidence of bats roosting on site has been found, I am satisfied that conditions, in line with the recommendations of the study, could be imposed to require landscaping and other features which would preserve or enhance the foraging and commuting routes along the site boundaries, planting which would encourage bats to the site and improve the quality of foraging habitat and an appropriate lighting scheme to avoid directly lighting the trees and boundary woodland and to minimise light spill. The scheme would therefore accord with DPDPD policy DP21.

Unilateral Undertaking – Other Issues

51. In addition to the matters referred to above, the Council has expressed a number of other concerns about the Unilateral Undertaking. Most importantly not all the landowners are party to the agreement. A clause has been inserted into the amended Undertaking requiring the appellants not to commence development until they own the 'second, third and fourth properties' (i.e. the relevant dwellings in Salary Close), but I am not convinced that this would be sufficiently binding in some circumstances. Furthermore, the access from Bromley Road is not included. As I intend to dismiss the appeal on the substantive merits of the case I have not pursued this further.

Conclusion

52. The Framework contains a presumption in favour of sustainable development and seeks to boost housing supply. However, in this case I consider that the adverse impact of the development on the character and appearance of the area with the loss of the green space, the location outside the settlement boundary contrary to the policies of the adopted Core Strategy, the lack of adequate compensation for the loss of the football pitch and lack of adequate provision for education and strategic open space/sports facilities significantly and demonstrably outweigh the benefit of the proposal when assessed against the policies in the Framework taken as a whole.
53. For the reasons given above, I conclude that the appeal should be dismissed.

Isobel McCretton

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ray Ricks	Director, Boyer Planning
Denis Diggin	Director, Dishland Ltd
Sean Rafferty	Director, Dishland Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Alistair Day	Planning Officer
Karen Syrett	Place Strategy Manager

INTERESTED PERSONS:

Maggie Taylor	Sport England
Blaise Gammie	Infrastructure Planning Manager Essex County Council
Neil Keylock	School Places Data and Intelligence Manager Essex County Council
Michael Turner	Gas Recreation Football Club
Catherine Spindler	8 th Colchester Cub Scouts
Zena Smart	Chair, Bromley Park Residents Association
Cllr Mike Hogg	Ward Councillor
Daniel Carson	Local Resident
Rachel Myers	Under 10s Manager, St Edmunds
Cllr Barry Cook	Ward Councillor
Adrian Kirby	Local Resident
S Gibson	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING:

- Document 1 Council's Letters of Notification of the Hearing
- Document 2 Table 5.10 from Colchester's Playing Pitch Strategy