

Appeal Decision

Site visit made on 11 October 2016

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 20 October 2016

Appeal Ref: APP/A1530/W/16/3153274

Land at the corner of Bergholt Road and Tufnell Way, Colchester, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Hornchurch Construction against the decision of Colchester Borough Council.
 - The application Ref 160048, dated 8 January 2016, was refused by notice dated 11 March 2016.
 - The development proposed is the creation of 6 No one and two bedroom apartments, plus associated car parking and landscaping.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposal on:
 - the character and appearance of the area;
 - the living conditions of the occupiers of 188 Bergholt Road, with particular regard to overlooking;
 - highway safety, with particular regard to the proposed car parking arrangements.

Reasons

Character and Appearance

3. The appeal proposal includes two blocks (labelled Block A and Block B) providing a total of five two bedroom flats and one single bedroom two storey dwelling.
 4. The appeal site is a vacant area of land at the junction of Bergholt Road and Tufnell Way. Tufnell Way provides access to a large, recently developed, residential area and I understand that the appeal site, together with a narrower area of land on the opposite side of the junction, was landscaped and formerly used for marketing purposes as part of that development. Consequently the junction has an open, spacious character. The established properties lining Bergholt Road are generally fairly closely spaced and follow a consistent building line.
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5. However, it is notable that, at junctions giving access to significant areas of later residential development, such as Fernlea and Enid Way, the adjoining buildings are set back to provide more open, well planted layouts. These arrangements provide attractive, green relief to the tighter grain of development elsewhere along Bergholt Road and contribute positively to local distinctiveness. By virtue of their roles as entrances to significant areas of later residential development, they are more analogous to the Tufnell Way junction than, for example, the Three Crowns Road junction referred to by the appellant.
6. The two storey Block A would face Bergholt Road. The front of the block would follow the local building line and its scale and form would be generally consistent with the adjoining two storey semi-detached pairs and short terraces. However, the flank elevation of the new building would be close to the Tufnell Way footpath and its corner would almost touch the footpath. Given the curving alignment of Tufnell Way, it would not necessarily be appropriate to seek a high degree of balance between the two sides of the road. Nevertheless, Block A would substantially close down the spaciousness of this locally significant junction to the point where the building would appear cramped on the site and in the wider street scene. Having regard to this setting for Block A, I consider that the appellant's comparison of its siting with other Bergholt Road properties located on the back edge of the footpath is not appropriate.
7. Moreover, although the details of the proposed landscaping could be secured by condition, the relationship between the corner of new building and the footpath would not leave room for meaningful planting of the type which contributes to the character of the comparable Fernlea and Enid Way junctions.
8. Consequently, I consider that, by virtue of its siting, Block A would be harmful to the character and appearance of the area. The appellant argues that Block A would help to draw the eye round the junction, screen the unsightly side elevation of the adjoining property at No 188 and frame the view along Tufnell Way. Whilst I recognise that these may be worthwhile objectives, it has not been adequately demonstrated that they could not be achieved in other, less harmful, ways. Therefore, they do not outweigh the concerns set out above.
9. The three storey Block B would be located towards the rear of the site with a frontage onto Tufnell Way. There would be a significant gap between Blocks A and B and Block B would be separated from the four storey residential block further along Tufnell Way by a single storey sub-station and a turning area. The front of the building would also be close to the back edge of the Tufnell Way footpath. The appellant argues that it would follow the building line on this side of Tufnell Way. However, to the south of Block B, the line is interrupted by the sub-station and, to the north, it would be formed by Block A, which I have already concluded would be unacceptably close to the Tufnell Way footpath.
10. As such, whilst Block B would sit opposite the end of a three storey terrace on the other side of the road, have the same number of storeys and share some elevational design characteristics of that building, it would be prominent and isolated in the street scene. Whereas the terrace opposite establishes the start of a coherent pattern of built form, Block B would be a singular feature unrelated to adjoining buildings in its form or siting. I recognise that the three

storey height of the new block would provide an intermediate step between the two storey buildings fronting Bergholt Road and the four storey block further south along Tufnell Way. However, the sizeable gap between these existing buildings ensures that the difference in heights is not jarring and does not provide a robust justification the introduction of a new block in the location proposed.

11. For these reasons, the proposal would be detrimental to the character and appearance of the area. It would, therefore, conflict with Policies DP1 and UR2 of the Council's Development Policies 2010 (DP). Together, these policies require development to be designed to a high standard and to respect the character of the site and its context. Nor would the proposal accord with paragraphs 56 and 57 of the National Planning Policy Framework (the Framework) which have similar aims.

Living Conditions

12. The side elevation of Block B facing towards the rear of No 188 would include first and second floor windows serving kitchens, bedrooms and a landing. The kitchens served by these windows are also served by other windows facing in a different direction. They, and the landing window, could, therefore, be fitted with obscured glazing and kept locked shut. However, the bedroom windows are the only ones serving those rooms which would be likely to be used for significant periods of the day. The use of obscured glazing in those windows would, therefore, unacceptably harm of the outlook of future occupier of the proposed flats.
13. Although the bedroom windows would be offset from the neighbouring property to a degree, they would still allow fairly direct views to the rear elevation (which includes windows that appear to serve habitable rooms) and the rear garden. Whilst the distance between the bedroom windows and the rear elevation of No 188 would be some 26m, the distance to the private area of the neighbouring garden would be less than 15m. The 1.8m high close boarded fence, any planting on the boundary between the properties and the gently sloping site level would do little to screen the views from windows at first and second floor levels.
14. Consequently I find that, by virtue of the views from the bedroom windows in Block B facing No 188, the proposal would have a harmful effect on the living conditions of the occupiers of the neighbouring property by reason of loss of privacy.
15. The side elevation of Block A facing No 188 would include first floor windows. The Council considers that they would give rise to the perception of overlooking on the part of the occupiers of No 188, even if they were fitted with obscured glazing and kept locked shut. It further contends that the perception of overlooking would be heightened because the windows serve flats which are likely to be more intensively occupied than two storey dwellings, particularly at first floor level. However, in this case the windows would serve landings and a bathroom. Such spaces are unlikely to be occupied intensively even in flatted buildings.
16. Whilst the windows would be located fairly close to the private rear garden area of the neighbouring dwelling, they are modestly sized and a condition could be imposed to secure the use of highly patterned and obscured glazing. On this

basis, I consider that the windows would not give rise to the perception of overlooking to the extent that it would be harmful to the living conditions of the occupiers of No 188.

17. Nevertheless, in view of my conclusion regarding the Block B windows, the proposal would not comply with DP Policy DP12 insofar as it requires residential development to achieve acceptable levels of privacy for rear facing habitable rooms and sitting out areas.

Highway Safety

18. The proposal would provide six car parking spaces to serve the new dwellings. The Council's adopted parking standards¹ require dwellings with two bedrooms or more to have two parking spaces. The standards also require 0.25 visitor spaces per dwelling. Rounding up this requirement to two spaces leaves the proposal seven spaces short of the adopted standard.
19. There is no reason to doubt the appellant's evidence that the site is accessible to a good range of local facilities and services and is well served by buses. It is also around a 10 minute walk from the main Colchester railway station. Moreover, the proposal includes covered storage for 10 cycles. I recognise that these characteristics would limit the demand for car use on the part of future occupiers. Therefore, whilst I am not persuaded that the location is a 'main urban area' for the purposes of paragraph 2.5.1 of the adopted standard, I accept that some reduction of the standard would be appropriate. This reflects the approach in DP Policy TA5. It is also generally consistent with the views taken by the Inspectors in the appeal decisions² cited by the appellant. Although, each proposal must be considered on its merits and different development plan policies and levels of accessibility would have informed the extent of the reductions in parking provision considered appropriate in those cases.
20. The appellant has also produced evidence on car ownership levels in the Mile End and Castle Wards. Although paragraph 39 of the Framework advises that such data may be used to set local car parking standards, it does not support its use in planning applications or appeals. Moreover, I am mindful of the Council's evidence that the Castle Ward includes the town centre where much of the residential development takes the form of flats in highly accessible locations. As such, I give limited weight to this aspect of the appellant's evidence.
21. The appellant's evidence includes a parking survey for the streets around the appeal site³. As well as showing that there is a limited amount of unrestricted on street parking in the vicinity of the site, it confirms that there was a small amount of spare capacity (2 or 3 spaces) at the survey times (overnight on term time weekdays) and only slightly more (6 spaces) during a 'snapshot' survey at 1400 hours on a weekday. The Council's photographic evidence suggests a high demand for day time parking in the area caused, in part, by its proximity to the train station. On the site visit I also saw signs of parking stress with cars parking in the turning area next to the sub-station and close to junctions off Tufnell Way.

¹ Essex Planning Officers Association Parking Standards 2009 and DP Policy DP19

² Appeal refs: APP/M1520/A/10/2141516, APP/B1930/A/12/2183711 and APP/B1550/A/13/2207737

³ Countsequential Surveys ref: ARD/762

22. These findings indicate that the area around the appeal site experiences a significant level of parking stress overnight and during the day which would be exacerbated by any overspill parking from the proposed development. Even allowing for some reduction in parking demand at the proposed development based on the accessibility considerations set out above, the overspill would be likely to take up most, if not all, of the spare capacity of the unrestricted parking spaces. Moreover, none of that capacity directly adjoins the appeal site and some is a significant distance away.
23. The parking survey also found that capacity was available on the north side of Bergholt Road where spaces are subject to weekday peak period restrictions. However, parking in these locations is unlikely to be attractive to future occupiers of the proposed flats as it would involve crossing the busy Bergholt Road and the need to move vehicles during periods when the restrictions are in operation.
24. Overall therefore, I find that the proposal would exacerbate parking stress in the area, leading to pressure to park at inappropriate locations. Having regard to the site's location at a junction on a busy road, I consider that this would result in a reduction in highway safety on the roads adjoining the appeal site. Consequently, the proposal would be contrary to DP Policies DP12 and DP19 which require development to provide parking in accordance with the adopted standards and Framework paragraph 35 which requires proposals to create safe and secure layouts which minimise the conflict between traffic, cyclists or pedestrians.

Other Matters

25. The appellant has submitted a completed Planning Obligation which would secure financial contributions to community facilities and open space, sport and recreational facilities. However, since the appeal is being dismissed for other substantive reasons, it is not necessary for me to consider the Obligation further.
26. I have had regard to the other concerns expressed locally, but none has led me to a different overall conclusion.

Planning Balance and Conclusion

27. Framework paragraphs 7 and 8 require the social, economic and environmental roles of sustainability to be considered together.
28. Framework paragraphs 17 and 47 seek to boost the supply of housing and the re-use of previously developed land at accessible locations. Policy SD1 of the Council's Core Strategy sets out the target for the delivery of new dwellings in the Borough. There is nothing to suggest that this target is not being met. Nevertheless, the provision of six new dwellings would make a modest contribution to the supply of housing in the area and, therefore, to the social role of sustainability. This consideration weighs in favour of the proposal.
29. The proposal would make a material contribution to the economic role through construction activity, the New Homes Bonus and local spending by future occupiers. The appellant has referred to the economic benefit of the Planning Obligation financial contributions. However, in order to meet the tests set out in the Community Infrastructure Levy Regulations 2010, such contributions must be necessary to make the development acceptable in terms and should

not, therefore, constitute a benefit. On the other hand, I have found that the development would be harmful to the character and appearance of the area, to the living conditions of neighbouring occupiers and to highway safety. In these respects, the proposal would have significant negative effects on the environmental and social roles of sustainability.

30. Overall, therefore, I find that the proposal would not be sustainable and does not benefit from the presumption in favour of sustainable development.

31. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR