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## Appeal Decision

Inquiry Held between 22 February and 22 March 2022

Site visit made on 1 March 2022

**by Nick Palmer BA (Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13<sup>th</sup> April 2022**

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**Appeal Ref: APP/A1530/W/21/3285769**

**102 East Road, West Mersea, Colchester, Essex CO5 8SA**

- 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 Blue Square Homes Limited against the decision of Colchester Borough Council.
  - The application Ref 201467, dated 1 July 2020, was refused by notice dated 29 April 2021.
  - The development proposed is residential development of 56 dwellings including landscaping and access from East Road following demolition of existing dwelling.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application is for outline permission with all detailed matters reserved. An illustrative layout plan has been submitted with the appeal. This differs from the illustrative layout submitted with the application. Because it is illustrative of a possible scheme, I shall consider that plan as such.
3. Means of access to the site is a reserved matter but following the Council's sixth reason for refusal the appellant has been in discussion with the highway authority and produced two access options for consideration at the Inquiry. Because those options would require land at the front of 100 East Road, an amended site plan was submitted before the Inquiry opened. Notice was served on the owner as required by the Town and Country Planning (Development Management Procedure) (England) Order 2015. The appellant provided a copy of an option agreement to purchase that land.
4. The amended site plan is submitted in order to facilitate two of the suggested access options. This plan amends the proposal and has not been subject to consultation. I am mindful that parties could be prejudiced by the lack of opportunity to comment on this amendment. Notwithstanding this, I shall consider the access options that are dependent on this change.
5. The Council's seventh reason for refusal concerned drainage and the parties have agreed that that reason has been overcome and that there is no longer any dispute between them on this point. I shall not therefore consider this as a main issue.

6. A section 106 agreement has been submitted in order to address the eighth reason. Given that this is no longer in dispute, I shall consider this separately from the main issues. The Inquiry was closed in writing following receipt of the section 106 agreement on 11 April 2022.

### **Main Issues**

7. The main issues in the appeal are:
- i) whether or not the Council can demonstrate a 5 year supply of deliverable housing sites;
  - ii) the effect of the development on the character and appearance of the area, including its effect on the setting of a heritage asset, and design and density considerations; and
  - iii) the effect of the development on highway safety.

### **Reasons**

#### *The Development Plan*

8. The development plan for the area consists of the Core Strategy (CS)<sup>1</sup>, the Development Policies (DP)<sup>2</sup>, the Site Allocations<sup>3</sup>, and the Section 1 Local Plan<sup>4</sup>.
9. The emerging Section 2 Local Plan<sup>5</sup> is at an advanced stage having undergone examination and consultation on main modifications. Because it is at such an advanced stage that plan can be given significant weight.
10. The West Mersea Neighbourhood Plan (WMNP) was subject to referendum on 17 March 2022 when 88% of those voting supported it. That plan has not yet been formally made but it can be given significant weight as forming part of the development plan.

#### *Housing Supply*

11. Policy SP4 of the Section 1 Local Plan sets out the objectively assessed need for Colchester of 18,400 homes over the plan period. There is agreement between the parties that the 5 year requirement, including a 5% buffer is 4,830 homes or 966 dwellings per annum (dpa).
12. In the Statement of Common Ground (SoCG) on Housing Land Supply, the Council's position is that the supply is 5,545 dwellings or 5.74 years' supply. The appellant's position as stated in the SoCG was that the supply was 4,716 dwellings or 4.88 years. This position was amended during the course of the appeal to 4,739 dwellings or 4.91 years. This figure is 91 dwellings less than the 5 year requirement.
13. The matters of dispute concern the assumed build out rates (BOR) of four sites<sup>6</sup> which the appellant considers should be pushed back to years 6-10, and a further three sites<sup>7</sup> which the appellant considers should be excluded from the

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<sup>1</sup> Colchester Core Strategy (2008) as amended by the Focused Review (2014)

<sup>2</sup> Colchester Development Policies (2010), reviewed 2014

<sup>3</sup> Colchester Site Allocations (2010)

<sup>4</sup> North Essex Authorities Shared Strategic Section 1 Plan 2013-2033 (2021)

<sup>5</sup> Publication draft of the Colchester Local Plan 2017-33

<sup>6</sup> Chesterwell, Cowdray, Barbrook Lane and Lakelands.

<sup>7</sup> Tendring Colchester Borders Garden Community, Rugby Club and Extra Care site, Mill Road, Colchester

supply. The number of disputed sites has been reduced from those that were identified in proofs of evidence, the appellant having confirmed that it no longer challenged the planning to delivery periods assumed by the Council.

#### *Build out rates*

14. The Council's housing land supply as set out in its Annual Position Statement<sup>8</sup> is based upon past completion rates in the borough, site-specific information and input from developers and local estate agents. The appellant is critical of this approach on the basis that developers' views are subject to optimism bias. The appellant also points out that the evidence base relied upon by the Council is narrow and considers that national data should be preferred in order to model BOR. The appellant also refers to the small sample sizes used by the Council and the partial nature of this information with respect to developments of different sizes.
15. The appellant agrees that 98% of the Council's housing supply is not subject to optimism bias but argues that such bias is apparent in the case of four sites. On this basis the appellant considers that those four sites should be moved into years 6 to 10 of the trajectory. Because a very high percentage of sites are not claimed to be subject to optimism bias, it is not the case that such bias is in any way inevitable or to be expected. Rather, the appellant argues that this applies in a select few cases, where national data indicates BOR that are less than those assessed by the Council.
16. The Planning Practice Guidance (PPG)<sup>9</sup> on housing land availability assessment states that "*Information on suitability, availability, achievability and constraints can be used to assess the timescale within which each site is capable of development. This may include indicative lead-in times and build-out rates for the development of different scales of sites. On the largest sites allowance should be made for several developers to be involved. The advice of developers and local agents will be important in assessing lead-in times and build-out rates by year.*" While benchmarking information on BOR for different scales of sites can be used on an indicative basis, this forms one component of the assessment, with site-specific information and advice from developers and local agents also adding to the overall assessment.
17. Of the four sites that are disputed on the basis of BOR, three<sup>10</sup> have detailed planning permission and are deliverable in accordance with part (a) of the definition in the National Planning Policy Framework (the Framework).
18. The first of the sites in part (a) of the definition is Chesterwell. This is a large site of 1,600 homes. There are two developers, Mersea Homes and Countryside. Mersea Homes is building out phases 4 and 5 and a reserved matters application for phase 6 is under consideration. Countryside has sold its part of the development (201 homes) to Leaf Living for provision of rental housing and a start on that development is imminent.
19. The Authority Monitoring Report shows that 146 units were completed at Chesterwell in 2018/19. A significantly reduced number of 56 units was completed in 2020/21 but this reduced number may be a result of the pandemic and its associated effects on the economy. The Council considers

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<sup>8</sup> Colchester Borough Council 2021 Housing Land Supply Annual Position Statement

<sup>9</sup> ID: 3-022-20190722

<sup>10</sup> Chesterwell, Cowdray and Barbrook Lane

- that 152 units will be delivered in 2021/22 and that this figure will decrease slightly over the remainder of the 5 year period. While the appellant's BOR for this site of 120 dpa is based on national data, the Council's rate is based on past rates of delivery on this site. There is no site-specific evidence before me to demonstrate convincingly that the Council's figure is unrealistic.
20. At the Cowdray Centre, the Council predicts 75 dpa reducing to 50 dpa, while the appellants predict 43 dpa. The Council<sup>11</sup> advised that 49 units had been completed by December 2021. On this basis the Council's figure for this year has been demonstrated to be realistic and the appellant's modelling to be overly cautious.
  21. At Barbrook Lane, development has commenced, with the first completions anticipated to be in May 2022. Bloor Homes envisages that the development of 200 dwellings will be built out over 4 years, averaging 50 dpa. This is based on that developer's past experience of building homes in Colchester, the absence of phasing and delivery by one team. The appellant's modelling was originally on the basis that development would commence in 2023/24 but this has been amended to bring forward the commencement. This is another instance where the Council's assumptions have been shown to be realistic and the appellant's assumptions to be overly cautious.
  22. The site at Lakelands is allocated for development, an outline application has been submitted and there is a planning performance agreement (PPA). Access to the site has been provided. These matters provide evidence of deliverability in accordance with the PPG<sup>12</sup> and with part (b) of the definition of deliverability in the Framework.
  23. The Council has taken a conservative approach with its assessment in respect of Lakelands, having reduced the anticipated BOR significantly from the figure suggested by the developer. The Council predicts that 50 dwellings will be delivered in 2025/26 while the appellant predicts 40 dwellings in that year. This difference is limited, and I see no reason to prefer the appellant's assessment with respect to this site.
  24. The appellant's modelling is useful in terms of it being based on wider national evidence on BOR and there are weaknesses in the Council's assessment where local data is missing. However, this does not provide a complete picture and consideration of the past record of developers in the local area, their knowledge of the local market and estate agent's views are also important, as are site-specific issues such as infrastructure provision.
  25. Taking these matters into account, I am satisfied that the Council's forecast BORs for the four disputed sites have been adequately assessed, are robust and can be relied upon. It has not been convincingly demonstrated that delivery on the four disputed sites should be moved back to years 6 to 10.
  26. The second part of the appellant's case is that three of the sites within the 5 year supply which do not have permission should be excluded from the supply on the basis that none of the claimed homes will be delivered within the 5 year period up to 2026. These are the Tendring Colchester Borders Garden Community, the Rugby Club and Mill Road Extra Care sites.

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<sup>11</sup> Ms Syrett, evidence in chief

<sup>12</sup> ID: 68-007-20190722

*Tendring Colchester Borders Garden Community*

27. The Garden Community is a proposed new settlement that will straddle the boundary between Colchester and Tendring. Policy SP8 of the Section 1 Local Plan sets out the requirements and policy SP9 requires the production of a Development Plan Document (DPD) which will set out the nature, form and boundary of the new community. Policy SP8 of the emerging Section 2 Local Plan states that the development will provide around 2,500 dwellings as part of an overall total of 7,000 to 9,000 homes.
28. There is a PPA in place which provides a good degree of certainty as to the pre-application and application stages. A hybrid application is to be submitted in December 2022 with a permission expected to be granted in the third quarter of 2023. The site is to be developed by Mersea Homes and Clarion, an affordable housing provider. Mersea Homes expects to start on site in 2024, delivering 50 units by March 2025 and a further 100 units the year after.
29. The Council's consideration of the planning application is to be carried out at the same time as progression of the DPD towards adoption. Consultation has started under Regulation 18.<sup>13</sup> The submission version of the DPD is to be subject to consultation towards the end of this year, and examination and subsequent adoption are expected in 2023. A Joint Committee has been established comprising members from Colchester Borough Council, Tendring District Council and Essex County Council which will oversee the preparation of the DPD.
30. Planning permission has been granted for a link road and rapid transit system and the first phase of the rapid transit system is to be provided when the relevant condition has been discharged. Provision of the link road is subject to tender. Funding for this has been obtained from the Housing Infrastructure Fund although further funding is required. The funding provision that has been obtained is dependent on delivery of dwellings by 2025, which will place an imperative on delivery within the 5 year period. The Council stated that 150 homes could be delivered without the link road being completed in full.
31. Policy SP6 of the Section 1 Local Plan requires that funding approval for the link road is secured before any planning approval is granted for development. The Council is progressing negotiations with funding bodies and the current absence of full funding does not mean that the development would necessarily be delayed beyond the period envisaged by the Council.
32. The development site has two owners, and 1,000 acres are under option to Mersea Homes. There may be ownership issues to resolve in respect of the link road, but the Council is preparing for Compulsory Purchase Orders as a precaution.
33. Policy SP8 of the Section 1 Local Plan requires that no planning consent for development will be granted until the DPD has been adopted. The preparation and processing of the planning application in parallel with the stages of adoption of the DPD would leave very little scope for any necessary amendments to the application that may be required as a result of changes to the evolving DPD.

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<sup>13</sup> Of the Town and Country Planning (Local Planning) (England) Regulations 2012

34. Delivery of the envisaged 50 dwellings in 2024/25 would depend on both the DPD being adopted and planning permission being granted, together with conditions discharged by late 2023. Because any planning permission would be dependant on adoption of the DPD there is clear potential for slippage in the envisaged timescales. The Council's trajectory does not allow sufficiently for this. For these reasons I find that the Council's anticipated timescale for delivery of the Garden Community site is overly optimistic. This does not necessarily mean that none of the dwellings would be deliverable within the five year period. However, if the site were removed entirely from the supply, this would remove 150 dwellings.

*Rugby Club, Mill Road, Colchester*

35. The Rugby Club site is expected by the Council to deliver 250 homes within 5 years, with 50 units being delivered in 2023/24 and 100 dpa thereafter. These homes are to be developed by the Council's development company, Colchester Amphora Homes. A hybrid application for residential development and care accommodation (the Extra Care facility) has been approved and is awaiting completion of planning obligations. The scheme is allocated in a made Neighbourhood Plan. There has been a delay in completing the planning obligations, but they are close to completion which will enable the permission to be issued. Reserved matters applications will then be submitted.
36. Funding has been provided from the Housing Infrastructure Fund for infrastructure including a renewable energy centre and heat distribution network and pedestrian and cycle routes. The infrastructure is in the process of being provided.
37. Although reserved matters will have to be approved and conditions discharged, there is nothing before me to indicate that these processes would delay delivery unduly. The Council indicated<sup>14</sup> that the evidence for reserved matters submissions has been prepared but that this may require updating. An archaeological investigation has commenced.<sup>15</sup> Given that the first homes are anticipated to be delivered in 2023/24 this need not delay that anticipated timescale. The development is not controversial and public consultation is unlikely to introduce significant delay. In a recent appeal decision<sup>16</sup> the Inspector concluded that this site was deliverable and that it would provide 300 dwellings within the period 2020-25.
38. I find that there is a realistic prospect that this development will deliver housing within the 5 year period and see no reason to doubt the Council's anticipated numbers per year.

*Extra Care, Mill Road, Colchester*

39. The Extra Care facility is covered by the hybrid application for the Rugby Club site and will require approval of reserved matters. It is expected to provide 60 units per year from 2023/24 onwards. Similar considerations apply as those given above in respect of the Rugby Club site. Because the facility will be a flatted form of development this enables quicker provision than general housing in terms of unit numbers.

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<sup>14</sup> Mr Cairns, round table session

<sup>15</sup> Ms Syrett rebuttal para. 3.5

<sup>16</sup> APP/A1530/W/20/3248038

40. The development is to be carried out by a developer specialising in this type of accommodation. A sale has been agreed by the Council's commercial housing company<sup>17</sup>. While I understand that there is not yet a developer in place, the Council states that there is built-up demand for this type of accommodation in Colchester. For these reasons I find that delivery of the Extra Care units as envisaged by the Council is realistic.

#### *Conclusion on Housing Land Supply*

41. For the reasons given I have found that the only uncertainty in the Council's five year housing land supply is the inclusion of Tendring Colchester Borders Garden Community in the supply. If this site were to be excluded, the Council would still have a supply of 5,395 homes or 5.58 years' supply at 966 dpa. On this basis and given that no other evidence to the contrary has been provided, the policies which are most important for determining the application are not out-of-date. The presumption in favour of sustainable development in paragraph 11 (d) of the Framework does not therefore apply.
42. Policy SP1 of the Section 1 Local Plan sets out the presumption in favour of sustainable development which is similar to that contained in the Framework. For the reasons given the presumption as set out in that policy is not engaged.

#### *Housing Need in West Mersea*

43. Policy SG1 of the emerging Section 2 Local Plan sets out the spatial strategy, in which West Mersea is identified as a sustainable settlement. Policy SG2 identifies that 200 homes are to be provided in West Mersea. Policy SS12a identifies the two allocated sites in West Mersea as Dawes Lane and Brierley Paddocks, each of which is to accommodate 100 dwellings.
44. The WMNP notes that permission has been granted for a net increase of 100 dwellings at Brierley Paddocks. Policy WM2 states that the plan provides for approximately 100 additional dwellings as identified in the emerging Section 2 Local Plan. As previously noted, both the Section 2 Local Plan and the WMNP are at advanced stages in the adoption process and can both be accorded significant weight.
45. Notwithstanding the provision made by the emerging Section 2 Local Plan and the WMNP, the appellant has assessed housing need in West Mersea to be 266 dwellings using the neighbourhood planning toolkit<sup>18</sup> and taking into account recent completions.
46. This is a method used for assessing the housing requirement to be included in neighbourhood plans where the requirement is not specified in strategic policies, which is not the case for West Mersea. Therefore, this does not fill any gap in the provision made in the adopted and emerging development plan. While the appellant's figure may be indicative of local housing need it does not outweigh the figure as set out in the emerging development plan. Nonetheless the proposal would be of benefit in addressing local need for both market and affordable housing.
47. In the preferred options version of the Section 2 Local Plan the two allocated sites were identified as accommodating 350 homes, but this figure was

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<sup>17</sup> Ms Syrett rebuttal para. 2.26

<sup>18</sup> Housing Needs Assessments at Neighbourhood Plan Level

subsequently reduced to 200. Part of the Council's assessment in this regard included its Settlement Boundary Review. This concluded that the level of infrastructure in West Mersea supports 200 new homes. Many higher order services and facilities are located on the mainland and the only access to Mersea Island is via a single road which floods at high tide and therefore has limited accessibility. Examples of such facilities are hospitals and secondary schools.

48. The Council also explained that, during the plan process, a site on the edge of Colchester<sup>19</sup> came forward and that this was preferable to the preferred options allocations at West Mersea in terms of the settlement hierarchy. These factors explain the reason for reduction in housing numbers in West Mersea during the plan process. It is also clear that the number of dwellings has not been determined by the capacity of the two allocated sites because these were originally expected to accommodate a higher number.
49. The site is outside the settlement boundary for West Mersea as defined in the adopted and emerging development plan. A number of development plan policies restrict development outside those boundaries. Policy ENV1 of the CS strictly controls such development and states that unallocated greenfield land outside those boundaries will be protected and where possible enhanced. Policy WM1 of the WMNP also restricts development outside settlement boundaries.
50. Policy OV2 of the emerging Section 2 Local Plan similarly restricts residential development in the countryside to small scale rural exception sites needed to meet local affordable housing needs. The proposal does not accord with these policies. Neither does it accord with Policy WM2 of the WMNP which allows for windfall development to take place on brownfield sites and infill plots within the settlement boundary.

#### *Character and Appearance*

51. The site adjoins the built up area of West Mersea and consists of an open paddock together with a dwelling which fronts onto East Road and would be demolished to provide the means of access. There is a storage building for equipment used to maintain agricultural land in the western part of the site next to the rear gardens of adjacent dwellings. There are hedgerows along the eastern and southern boundaries. To the west and north are the rear gardens of houses along Cross Lane, Cross Way and East Road respectively and a public house together with its car park and garden.
52. To the east of the site, separated by a hedgerow is a long rear garden to an adjacent dwelling, 118 East Road. I noted on my visit that this is a grass area enclosed by hedges and that it has a pond and a garden structure at its far end. The Council states that the use of this land as a garden does not have planning permission. Because the adjacent garden is enclosed by the hedgerow its appearance when viewed from the site is no different to that of an adjacent field or paddock.
53. A public footpath leads from the end of Cross Lane towards the coast which is a short distance away. That footpath adjoins the southern boundary of the site and provides clear views across the site towards the buildings on East Road.

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<sup>19</sup> Middlewick Ranges



- Views over the southern hedgerow are possible because of the rising land levels towards the north and the limited height of the hedgerow.
54. Historically development took place along East Road in a linear pattern and the development along the road to the north of the site still reflects that historic pattern. In this respect the immediate surroundings differ from the more comprehensively built up areas to the west. The pattern of development is consistent with a transition from the urban area to the rural area. The site is open and forms part of the rural area in conjunction with the fields to the south and east. The character of the site and its surroundings is predominantly rural, albeit that it adjoins the built up area. The adjacent garden to the east does not alter the rural character.
  55. In the Colchester Borough Landscape Character Assessment (LCA), the site is within the E1 Mersea Island Coastal Farmland Landscape Character Area. It is a landscape strategy objective of the LCA to conserve and enhance the landscape setting of West Mersea, and pressure from expansion of the settlement edges is identified as a key planning and land management issue. The development would not accord with the stated objective of the LCA.
  56. The development would be particularly prominent and intrusive in its rural setting when seen from the footpath to the south given the close proximity of that route and the rising land towards the north. The effect of the existing hedgerow in screening the development would be limited because the trees within the hedgerow are widely spaced apart. New planting within the site would take time to mature and the roofs and upper parts of the proposed dwellings would still be likely to be visible.
  57. The development would also be visible across the fields from Waldegraves Lane to the east. It would be visible in gaps between buildings on the adjoining road frontages, including across the public house car park and along the proposed new access into the site. It would change the setting of the settlement and would remove the visibility of the countryside from the adjoining roads.
  58. For these reasons the development would be visually intrusive and would adversely affect the rural landscape outside the settlement boundary. Policy WM22 of the WMNP limits such impacts and the proposal would not accord with that policy. Neither would it accord with Policy DP1 of the DP which requires development to respect or enhance the landscape, or Policy SP3 of the Section 1 Local Plan, which requires growth to be planned to conserve the setting of settlements.
  59. In the broader context the site lies within National Character Area 81, Greater Thames Estuary. This is predominantly a remote and tranquil area which includes some of the least settled areas of the English coast. In the development plan, all of Mersea Island other than the built up areas is designated as part of the Coastal Protection Belt. Policy DP23 of the DP requires that development is not significantly detrimental to the landscape character of the coast and Policy ENV2 of the emerging Section 2 Local Plan has similar requirements. Although the site is not immediately next to the coast it is within the Coastal Protection Belt and the sea is visible from the site. The detrimental effect on the landscape as described would conflict with policies DP23 and ENV2.

60. For these reasons the proposal would not accord with Policy ENV1 of the CS or Policy ENV1 of the Section 2 Local Plan, both of which seek to conserve and enhance the countryside environment and restrict development within the Coastal Protection Belt that would adversely affect its character.
61. For the reasons given I find that there would be unacceptable harm to the character and appearance of the area in terms of the landscape impact of the development.

*Heritage Asset*

62. To the east of The Fox public house are two cottages (114-116 East Road) which together form a grade II listed building. The building dates from the 18<sup>th</sup> century, is of timber frame construction and clad in weatherboarding, with a gabled roof of plain tiles. It is of two storeys and is representative of local vernacular architecture.
63. To the rear and west of the listed building is a further pair of historic cottages (108-112 East Road) which are not listed or identified as being of heritage interest. The site is separated from the listed building by the public house car park. The cottages to the rear and a rear extension to the pub also screen views of the listed building from much of the site, but nonetheless it is visible, at least in part, from much of the site including from its southern boundary.
64. Historically the listed building occupied an open setting with only limited development along East Road taking place during the 19<sup>th</sup> and early part of the 20<sup>th</sup> centuries. During the 20<sup>th</sup> century linear residential development has taken place on the northern side of East Road. There is also a dwelling to the east of the listed building. Other than these developments, the open setting to the listed building remains and the site forms a key part of that setting.
65. The site boundaries reflect the historic field pattern as shown on historic mapping. It appears that there was historically a functional link between the listed building and the appeal site as they were in the same ownership. Although any such linkage has long since disappeared, this historic relationship aids an understanding of the significance of the building.
66. Details of layout and design have not been submitted but the appellant has demonstrated that it would be possible to design the layout to preserve open views of the listed building from the southern and western parts of the site. Notwithstanding this, the development would remove a key part of the open setting to the listed building and thereby affect its significance.
67. Although the development would harm the setting, this effect would be limited by the degree of separation of the site from the listed building by the car park and by other buildings. For these reasons the harm to the heritage asset would be less than substantial. Although the degree of harm would be limited, nonetheless the conservation of the heritage asset must be given considerable importance and weight. On this basis I give great weight to the identified harm to its setting.
68. There would be social and economic benefits arising from the proposed development which I shall weigh against that harm. The development would boost the supply of housing in an area identified as needing family housing and affordable housing. It would provide both market homes and affordable homes at 30% of the total provision. As well as the social benefits from this provision,

- there would be economic benefits arising both from construction and occupation of the homes. I give significant weight to these benefits.
69. The access options put forward include measures for traffic calming and a footpath along the southern side of East Road but these are merely options and do not form part of the development applied for. The highway authority maintains its objection to those options. Accordingly, I cannot give these suggested measures any weight in favour.
70. Financial contributions towards infrastructure would be secured by the section 106 agreement. These would be necessary to address the needs of the development. I recognise, however, that the contributions towards sports and recreation, community and playspace may also confer wider benefit to the community. Because those contributions would primarily address the needs of the development, I give these benefits limited weight.
71. The provision of landscaping, including new planting and the retention of existing trees would be necessary to mitigate the effects of the development and would not represent a net benefit.
72. I have given significant and limited weights to the public benefits. These are not sufficient to outweigh the great weight that I have given to the less than substantial harm to the heritage asset.
73. For the reasons given, the development would not accord with development plan policies that require preservation and enhancement of the historic environment, including listed buildings and their settings. Policies ENV1 and UR2 of the CS, Policy SP7 of the Section 1 Local Plan, Policy DP14 of the DP, Policies OV2 and DM16 of the emerging Section 2 Local Plan and Policy WM26 of the WMNP have these requirements and the proposal would not accord with those policies.

#### *Design and Density*

74. The proposed development would be at a density of about 33 dwellings per hectare (dph). Evidence was provided by the Council at the Inquiry as to densities in the neighbouring areas which the Council say vary between 14dph and 21dph. These figures can only be given limited weight because they have not been verified or tested. However, I think it is fair to say that prevailing densities in the immediate area are around 20dph or less. Recently approved, but as yet unbuilt developments at Dawes Lane and Brierley Paddocks will have densities of 20dph and 17dph respectively, which are consistent with the general density of development in the area.
75. The exception to this is a development at Wellhouse Avenue, which is off East Road to the west of the site. This has a density of 35dph. I walked around this development on my visit and noted that, notwithstanding its design quality, it differs from the surrounding area in terms of the close spacing of buildings and their height. This development forms part of the context for the proposed development but it is some distance away from the site and the prevailing densities are much lower.
76. While matters of layout and design are reserved, the illustrative layout does not demonstrate that a high quality design could be achieved. A number of design matters were identified during the Inquiry with reference to the illustrative layout. These include the close proximity of the dwellings and

garages to the hedge on the eastern boundary, the courtyard access to the rear of plots 36 to 41 and the absence of visitor parking spaces.

77. Although there are issues with the illustrative layout this does not mean that a high quality design could not be achieved on the site. That said, the context of the site is an important consideration. The Framework<sup>20</sup> states that decisions should support development that makes efficient use of land, taking into account the desirability of maintaining an area's prevailing character and setting.
78. The density of the adjacent built up area forms an intrinsic part of its character, and the proposal would not sit well with that character. Neither would it enable a transition between the built up area and the countryside but would rather emphasise a hard edge to the built up area in contrast to the adjacent open rural surroundings.
79. In these respects, the proposal would differ from the proposed development at Dawes Lane, which while also adjoining the open countryside would be at a significantly lower density. When Wellhouse Avenue was developed, it also adjoined open countryside, but the individual circumstances of that development differed from the proposal in terms of the policies that were applicable at the time.
80. A number of development plan policies require consideration of context and that development respects and enhances local character while making efficient use of land. Policies UR2 and H1 of the CS, Policy SP7 of the Section 1 Local Plan and Policy DP1 of the DP have these requirements. The emerging Section 2 Local Plan includes Policy DM9 which requires development to be at an appropriate density having regard to the character of the site and its immediate surroundings as well as the wider locality. Policy DM15 of that plan requires development to respect and where possible enhance the character of the site, its context and surroundings. The context of the site does not in my view support development at the density proposed and for this reason, the requirements of the above policies would not be met.
81. For this reason and those given above, I conclude overall on this main issue that the development would unacceptably harm the character and appearance of the area.

### *Highway Safety*

82. It is agreed between the parties that the visibility splays required at the junction of the new access road with East Road are 2.4m x 43m. Access is a reserved matter, but in order to address the Council's reason for refusal an access option<sup>21</sup> (option A) was submitted with the appeal. This shows that achievement of the eastern splay would require third party land. This is a paved forecourt to the front of 104 and 104A East Road.
83. There is a driveway that gives access to a rear parking area for those two dwellings. Condition 9 of the planning permission<sup>22</sup> for one of those dwellings requires that there is no obstruction greater than 600mm in height within a sight splay of 120m x 2.4m from the junction of the drive with the highway.

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<sup>20</sup> NPPF paragraph 124

<sup>21</sup> Plan ref. IT2211/SK/001 Rev D

<sup>22</sup> Ref. F/COL/02/0190

- The appellant's position is that the splay required by that condition would also provide visibility from the site access. Photographic evidence has been provided of vehicles having been parked on the forecourt from time to time which appear to have obstructed that sight splay.
84. Provision of the requisite visibility splays is essential to ensure an adequate standard of highway safety. This would ensure that drivers emerging from the site access would be able to see vehicles and cyclists travelling along the road, and vice versa. Conversely, if visibility were inadequate, drivers on East Road could be forced to brake suddenly to avoid collision with vehicles emerging from the access, and there would be greater potential for collision.
  85. Development plan policies require safe access and minimisation of conflicts between traffic and with cyclists. Policy DP17 of the DP, Policy DM21 of the emerging Section 2 Local Plan and Policy WM12 of the WMNP have these requirements. The Framework requires safe and suitable access for all users.
  86. The parties disagree as to whether condition 9 can or should be enforced on the basis of the photographic evidence. The Council points to evidence of breaches having taken place over more than 10 years, while the appellant points to case law<sup>23</sup> which establishes that each breach must be considered individually.
  87. It is not for me to determine the enforceability of the condition under this appeal. However, it is evident that parking has taken place on the adjacent forecourt and within the visibility splay. The temporary nature of such parking does not alter the fact that it may obstruct visibility.
  88. Unrestricted parking can take place on roads which may interfere with visibility. The highway authority can take action where a safety hazard has been identified. This does not reduce the importance of ensuring visibility splays to new accesses such as that proposed are kept clear, however.
  89. If outline permission were to be granted, it would be necessary in the interest of highway safety to impose a condition requiring provision of visibility splays of 2.4m x 43m. Option A indicates that this is not achievable within the site as originally submitted. Reliance on third party land to provide the eastern splay would mean that the appellant would not have control and such a condition would not meet the test of enforceability if that option were pursued.
  90. During the course of the appeal the appellant continued discussion with the highway authority and produced two further access options, referred to as options B<sup>24</sup> and C.<sup>25</sup> The highway authority continues to oppose the development on grounds of highway safety. The appellant's position is that the options are part of an evolving process, and it is confident that agreement could be reached.
  91. In both of those access options, the new junction would be positioned further to the west than in option A, requiring an area of land from the front of 100 East Road. This would enable provision of the required visibility splays within highway land. Because the eastern splay would be measured to the centre of

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<sup>23</sup> Nicholson v Secretary of State for the Environment [1998] and St Anselm Development Co Ltd v First Secretary of State [2003]

<sup>24</sup> Plan ref. IT2211/SK/002 Revs A and B

<sup>25</sup> Plan ref. IT2211/SK/002 Rev C

- the road rather than the nearside carriageway, traffic calming measures would be required to reduce vehicle speeds. Traffic calming measures have not been deemed necessary in connection with option A and there has been no request from any party for such measures to address any existing highway safety issue on East Road.
92. Option B included the provision of kerb build-outs to provide chicanes. This would require the introduction of waiting restrictions along the road and relocation of bus stops. The position of the kerb build-outs in relation to both the site access and the access to 104 East Road would necessitate manoeuvres which could be confusing to road users. This option has been superseded by Option C.
93. Option C shows the introduction of a 2 metre wide footway along the southern frontage which would provide a pedestrian link between the southern footpath to the west of the site and the public house to the east. This would narrow the carriageway width to 3.6 metres. Give way markings would be provided on the westbound carriageway to the east of the public house car park entrance.
94. Because the visibility splay to the east from the access would not extend as far as the eastern section of narrowed carriageway, it would be necessary for drivers to move forward into the carriageway in order to see any westbound vehicle that had committed to that section of road. Without full visibility along the entire stretch of narrowed carriageway there would be the possibility of vehicles meeting and having to reverse or alternatively mounting the pavement.
95. The appellant considers that no restrictions on vehicle waiting would be necessary on the narrowed section of road. If this were the case any visitors to properties fronting East Road, such as delivery drivers would still be tempted to park on the road, blocking either the carriageway or the footway.
96. I concur with the highway authority's view that there would be fundamental highway safety concerns with the option B and C access arrangements. For the reasons given I find that safe access for all road users has not been demonstrated.
97. The submitted evidence does not indicate any likelihood that an acceptable means of access could be provided. I have found that the proposal conflicts with development plan policies for other reasons which indicate that the appeal should be dismissed. On this basis there is no need for me to consider whether a negatively-worded condition would be appropriate in order to allow scope for agreement to be reached between the parties on the means of access.
98. For the reasons given, I conclude on this issue that the development would not accord with Policy DP17 of the DP, Policy DM21 of the emerging Section 2 Local Plan or Policy WM12 of the WMNP and that it would be likely to unacceptably harm highway safety.
99. I have also noted that the amended site plan has not been subject to public consultation and that parties could be prejudiced if a decision were based on that plan. Options B and C are dependent on that plan, and this reinforces my finding on this main issue.
100. With option C there would be benefits to pedestrian accessibility and improved visibility for drivers emerging from the public house car park and the

access to 104/104A, but this does not form part of the proposed development and such benefits would be outweighed by the adverse effects on highway safety as a whole.

### *Planning Obligation*

101. A planning obligation has been provided which would secure contributions towards archaeological investigation, sports and recreation facilities, community facilities, mitigation in connection with Natura 2000 designated sites, open space and amenity areas, affordable housing, healthcare facilities, education facilities and playspace facilities. This addresses the Council's last reason for refusal.
102. The contributions would be necessary to meet the requirements of planning policies and to provide for the infrastructure that would be needed as a result of the proposal. However, I have already identified that the contributions towards sports and recreation, community and playspace could also provide benefit to the wider community. I have given limited weight to the benefit of the proposal in this regard because the contributions are primarily necessitated by the development and any wider benefit to the community would be secondary.

### **Planning Balance**

103. For the reasons given, the development would not accord with the development plan considered as a whole. I have found harms to the character and appearance of the area, including harm to the setting of a heritage asset, and harm to highway safety, which together weigh considerably against the development.
104. I have set out above the public benefits in relation to the heritage balance. These would amount to the provision of market and affordable housing in an accessible location together with community benefit from the section 106 contributions.
105. As set out above, I give significant weight to the social and economic benefits arising from the proposed housing, and limited weight to the improvements to infrastructure arising from the section 106 contributions. These weights are not sufficient to outweigh the identified harms and the conflict with the development plan.

### **Conclusion**

106. For the reasons given, I conclude that the appeal should be dismissed.

*Nick Palmer*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Simon Pickles, of Counsel instructed by Karen Syrett, Colchester Borough Council

He called:

Karen Syrett MRTPI

Lead Officer for Planning, Housing and Economic Growth, Colchester Borough Council

Rachel Forkin MRTPI

Principal Planning Policy Officer, Colchester Borough Council

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Development Manager, Colchester Borough Council

Catherine Bailey BSc (Hons) MPhil  
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Martin Mason MSC DIC MILT

Strategic Development Engineer, Essex County Council

Benjy Firth BSc MSc

Urban Design Officer, Colchester Borough Council

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Planning Manager (South Team), Colchester Borough Council

### FOR THE APPELLANT:

David Matthias, of Queens Counsel and Jonathan Welch of Counsel instructed by David Maxwell of G L Hearn

They called:

Ivan Tennant MSc MBA AssocRTPI

Associate Planning Director, GL Hearn

Matthew Black BA (Hons) MA MRTPI

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Allan Cox BSc (Hons) MA CMLI

Consultant Landscape Architect, GL Hearn

Christopher Griffiths LLB (Hons) MA  
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Associate Director, Heritage Collective UK Group

Steven Williamson B Eng (Hons)  
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Associate, Intermodal Transportation Ltd

David Maxwell BA (Hons) Dip MRTPI

Planning Director, GL Hearn



INTERESTED PERSONS:

Councillor John Akker	West Mersea Town Councillor
Neil Bentley	Local resident
David Cooper	Local resident on behalf of STOP350
Faith Richardson	Local resident and member of the Mersea Island Society
Chris Wood	Local resident
Stephen Bloyce	Local resident
Donna Hadsley-Chaplin	Local resident
Roger Munday	Local resident
M R Jowers	Local business proprietor

## **DOCUMENTS SUBMITTED**

- CD 11.1 Opening Statement on behalf of Colchester Borough Council
- CD 11.2 Opening Statement of the Appellant
- CD11.3 Authority Monitoring Report 1 April 2018 to 31 March 2019
- CD11.4 Annual Housing completions spreadsheet
- CD 11.5 Appellant's BOR Calculation – 23 February 2022
- CD 11.6 Petition and letters
- CD 11.7 Publication draft Local Plan – Consultation responses to 350 dwellings proposed at Mersea
- CD 11.8 Colchester Borough Council: Landscape Capacity of Settlement Fringes in Colchester Borough (August 2005)
- CD 11.9 Landscape Capacity of Settlement Fringes 2005 Figure 11
- CD 11.10 Summary of parties' positions on individual disputed sites
- CD 11.11 Start to Finish report – Lichfields (February 2020)
- CD 11.12 Update to table in Rebuttal Proof – Housing Need: Housing Completions in West Mersea 2017-2021
- CD 11.13 Land Use – East Road, West Mersea
- CD 11.14 Report to ECC Cabinet re: Link Road tender
- CD 11.15 Report to Planning Committee re: DPD consultation
- CD 11.16 Option Agreement 23 February 2022
- CD 11.17 Option C (B Variant) – alternative traffic calming scheme
- CD 11.18 Option C (B Variant) – Highway Authority's Preliminary Responses to Option C (B Variant)
- CD 11.19 Benjy Firth Comments on Indicative Layout
- CD 11.20 E-mail from Louis Broadway dated 20 February 2022
- CD 11.21 Parking photographs in East Road
- CD 11.22 Note on maximum legal width of vehicles
- CD 11.23 R (on the application of) Forge Field Society v Sevenoaks DC [EWHC 1895 (Admin)]
- CD 11.24 Jones v Mordue [2015] EWCA Civ 1243
- CD 11.25 Nicholson v Secretary of State for the Environment [1998] JPL 553
- CD 11.26 St Anselm Development Co Ltd v First Secretary of State [2003] EWHC 1592 (Admin)]
- CD 11.27 British Railways Board v Secretary of State for the Environment [1993] 3 PLR 125

- CD 11.28 Appeal ref. APP/W1145/W/19/3238460
- CD 11.29 GL Hearn Housing Land Supply analysis spreadsheet
- CD 11.30 Closing Submissions on behalf of Colchester Borough Council
- CD 11.31 Closing Statement of the Appellant
- CD 11.32 Legal submissions on behalf of Colchester Borough Council
- CD 11.33 Legal submissions of the appellant – response
- CD 11.34 Signed Section 106 Agreement