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## Appeal Decisions

Hearing held on 22 October 2013

Site visit made on 22 October 2013

**by P J Asquith MA(Hons) MA MRTPI**

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

**Decision date: 7 November 2013**

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### **Appeal A, Ref: APP/A1530/E/13/2196707**

#### **Part J2B, Colchester Garrison, Colchester, CO2 7GE**

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
  - The appeal is made by Bovis Homes Ltd against the decision of Colchester Borough Council.
  - The application, Ref. 121613, dated 4 September 2012, was refused by notice dated 1 November 2012.
  - The demolition proposed is that of buildings known as CAV 2, CAV 9, CAV 10 and IC 9 to enable redevelopment of area J2B at Colchester Garrison to proceed.
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### **Appeal B, Ref: APP/A1530/A/13/2193550**

#### **Part J2B, Colchester Garrison, Colchester, CO2 7GE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for approval of reserved matters following the grant of outline planning permission.
  - The appeal is made by Bovis Homes Ltd against Colchester Borough Council.
  - The application, Ref. 121612, is dated 4 September 2012.
  - The development proposed is the construction of 94 new build dwellings on part of area J2B, Colchester Garrison.
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### **Procedural Matter**

1. At the Hearing the appellant submitted an amended site layout plan<sup>1</sup> showing a revised parking arrangement which would allow the retention of additional trees adjacent to Circular Road West. The Council was content that this should be considered as a substitute. I have duly taken this plan showing minor revisions into account on the basis that no substantial prejudice would arise to any party from so doing.

### **Decisions**

#### *Appeal A – conservation area consent*

2. The appeal is dismissed.

#### *Appeal B – approval of reserved matters*

3. The appeal is dismissed.

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<sup>1</sup> Ref. CO2B-PL-001 Rev C

## **Main Issues**

4. From all I have seen, read and heard, I consider the main issue in this case is the impact of the proposals on the appearance and character of the Garrison Conservation Area.

## **Reasons**

### *General background*

5. Outline planning permission for the Garrison Urban Village Development was granted in June 2003 and remains extant<sup>2</sup>. The appeals site – the majority of Area J2B – forms part of this development. The present application subject to Appeal B seeks approval of all reserved matters for this area. At the time of granting outline permission the Council had made known its intention to designate the historic core of the former garrison site as a conservation area. The extensively-drawn Garrison Conservation Area was duly designated in May 2004 and encompasses the appeals site together with other developed and formerly developed areas of the garrison and large open tracts of Abbey Field. The appellant acquired certain parcels of the Garrison Urban Village Development in 2006, the land containing a number of buildings that formed part of the former cavalry and artillery barracks.
6. In terms of the planning history of the appeals site, a reserved matters application was approved in August 2011<sup>3</sup> for the erection of 80 new dwellings. The layout of this scheme indicated the provision of dwellings with the existing former cavalry barrack's buildings CAV 2, CAV 9, CAV 10 and IC 9 remaining. This permission also incorporated an area to the south-east of CAV 6. The present reserved matters appeal application excludes<sup>4</sup> this latter area where dwellings have been built under the previous reserved matters permission. It would also see the removal of CAVs 2, 9 and 10 and IC 9 and the redevelopment of the appeal site with 94 two- and three-bedroomed dwellings. These would comprise a mixed development of semi-detached, terraced, flatted, and mews-style flats of two, two-and-a-half and three storeys. The present proposals have been put forward on the basis that the previously-approved scheme is not viable.

### *Existing buildings*

7. Colchester has been a garrison town for almost 2000 years, with the history of the present garrison dating back to the Crimean War and the first permanent barracks being constructed in 1862-64. The Council indicates that the 19<sup>th</sup> century barracks are the only remaining ones of this period in the country. Area J2B is the central section of the former cavalry barracks with sections to the north-east and south-west being within different development areas.
8. CAV 2 is part of the original 1862-4 barracks development, being a single-storey smithy and shoeing shed of brick construction and with a slate roof that retains a louvred ventilator and brick-built forge chimney. CAV 10 is the former Sergeants' Mess and School of the same period, being principally of two storeys, brick and slate-roofed construction, with timber sash windows but with some later single-storey additions. IC 9 is a building dating from 1935, being

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<sup>2</sup> Ref. O/COL/01/0009.

<sup>3</sup> Ref. 111001.

<sup>4</sup> Except for two small areas where altered parking layouts are proposed.

the former Regimental Institute. Of brick construction and with a more complex winged format with hipped roofs of slate, metal casement windows and Art Deco door surrounds on its frontage to the open expanse of the former parade ground, it presents something of a contrast with the other nearby buildings. The Council considers it to be a good example of garrison architecture of this period, illustrative of the improvement in troop welfare in the 20<sup>th</sup> century. Whilst none of these buildings is statutorily listed they have been included on a local list of buildings of special architectural or historic interest, a list compiled after the appellant's purchase of the site<sup>5</sup>.

9. CAV 9 is a former troop stables. It is a long single-storey building of painted brick under a slate roof with high-level windows. It has been extensively altered, with the loss of some doors and windows, the north-east wall facing the former parade ground having been partially rebuilt. There are no internal features of interest. This building has not been included on the Council's local list of buildings of interest.
10. English Heritage (EH), in its consultation response on the conservation area consent application, took into account the Heritage Assessment submitted with the application. Its conclusion was that CAV 2, CAV 10 and IC 9 make a positive contribution to the conservation area; their loss would cause substantial harm and would not preserve or enhance the character or appearance of the conservation area. The Heritage Assessment considers CAV 9 does not contribute to the significance of the area and EH does not suggest that its loss would cause substantial harm. Whilst the Council considers this latter building's importance is now enhanced by reason of it being the sole remaining stable block of four previously identical ones, I am satisfied that its loss would not be unduly harmful to the character or appearance of the conservation area providing the site was to be satisfactorily redeveloped.
11. Having regard to the other three buildings which implementation of the proposals would see demolished, I share the view of EH that these non – designated heritage assets make a positive contribution to the conservation area. With the other surrounding buildings centred on the former parade ground they reflect the traditional functional character and former use of the area. Despite the more recent construction of IC 9, and some detracting alterations and additions that have taken place to it, this building does have something of a landmark quality about it and it sits comfortably alongside the other remaining buildings. I disagree with the appellant's Heritage Assessment that this building only makes a neutral contribution to the conservation area.
12. Both the upper elements of this building, CAV 10 and the roof of CAV2, with its distinctive brick chimney, are prominent in views from Butt Road above the tall brick boundary wall that would be retained. They therefore help to make a wider positive contribution to townscape than simply from within the barracks site itself. There is no suggestion that the structural condition of the buildings is such that, potentially, they could not be put to suitable alternative use. This is the case even though they are suffering current neglect, with what appears to be inadequate attention to the prevention of weather ingress and damage,

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<sup>5</sup> There was discussion at the Hearing about the process of consultation on the compilation of this local list, with the appellant expressing concern that it did not believe it had had the appropriate opportunity to make representations, the Council arguing to the contrary. Whatever the rights or wrongs of this process, the buildings are now on this local list, a list which does not carry statutory weight but which indicates the value placed on the buildings in a local context.

vegetative growth and inappropriate human access. I consider that the buildings form an integral part of a cohesive historic grouping including buildings CAV 1 and CAVs 3 - 8, which lie immediately adjacent to the appeals site. Their loss would result in the reduction of the contribution of this grouping to the character and appearance of the conservation area. Even if the context of the buildings was to be changed through the residential redevelopment of the currently open expanse of the former parade ground, this would not fatally diminish the contribution of these buildings which would continue to illustrate the history and past function of the former barracks.

13. The National Planning Policy Framework (the Framework) at paragraph 132 indicates that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. In this case the designated heritage asset is the Garrison Conservation Area as a whole, area J2B and its present buildings making a contribution to its character, appearance and significance. Framework paragraph 138 indicates that the loss of a building which makes a positive contribution to the significance of a conservation area should be treated either as substantial harm or less than substantial harm, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the conservation area as a whole.
14. The Council considers that the loss of the buildings in question would lead to substantial harm to the significance of the conservation area. It is my judgement that, for the reasons given above, there would be harm although this would be less than substantial. In these circumstances Framework paragraph 134 indicates that where there would be less than substantial harm to the significance of a designated asset this harm should be weighed against the public benefits of the proposals. I therefore turn to look at the nature of the proposed redevelopment scheme and the benefits which might arise.

#### *The proposed scheme*

15. The housing scheme would occupy the former parade ground together with the sites of CAVs 2, 9 and 10 and IC 9 and land adjacent to the Butt Road boundary. It would seek to carry forward the style and form of residential development that has been built on area J1A to the north-east, which has been designed to reflect the Victorian character of the area. However, it would amend the design and layout approved on area J2B under permission ref. 111001. As already noted, this excluded CAVs 2, 9 and 10 and IC 9, leaving the potential for these to be retained and converted.
16. The Council considers the proposals represent a 'watering down' of the previously-approved scheme and fail to achieve a high quality of design, consequentially having a detrimental impact on the appearance and character of the conservation area. This is suggested to manifest itself in the proposed demolition of the buildings – already discussed above – the arrangement and provision of car parking, the design detailing of the new housing, and landscape proposals.
17. The Council accepts that the proposed scheme is compliant with its parking standards, adopted as a Supplementary Planning Document, in terms of the number of private residential parking spaces although there would be some

deficiency in terms of the number of visitor spaces<sup>6</sup>. Its principal concern, however, is that the arrangement of parking would result in a car-dominated environment. Whilst the level of parking provision for the dwellings fronting onto the road within the development running parallel to Circular Road West would be about the same as that within permission 111001, the configuration would be different. The dwellings (Plots 141- 154) would be set slightly closer to the road and there would be a lesser amount of screen hedging parallel to it. Whilst the site layout plan suggests a similar amount of tree planting along the north-eastern side of this road, the submitted detailed landscaping scheme shows a marked reduction in number compared with the concept layout plan for the previously-approved scheme<sup>7</sup>. Overall, this would lead to car parking taking on a more dominant and intrusive role on a street that would be a principal vehicular thoroughfare and entrance into the site.

18. Parking courts behind frontage development are a feature of the approved scheme on area J2B. Those proposed with the present scheme are larger and incorporate elements of tandem parking, which the Council's guidance advises against as this discourages the uptake of spaces and encourages on-street parking. The parking court to the rear of dwellings on the site of CAV 9 would be set back from Circular Road West behind a belt of retained Plane trees but would be screened only by low railings. As a consequence, this area, capable of accommodating 16 vehicles, would be a prominent and somewhat intrusive element when seen from Circular Road West beneath the tree canopy. Proposed additional tree planting, and hedging, would be unlikely to significantly mitigate this impact. In addition, apart from the dwelling on plot 224, the dwellings within this area are orientated into the site, turning their backs to Circular Road West thus emphasising the more utilitarian aspect and setting created by the car parking arrangement.
19. The Council views the proposed north-east/south-west shared accessway as part of an important pedestrian/cycle link through to the existing 'pocket park' within area J1A, which is seen as a centrepiece. It would also be a link to the garrison neighbourhood centre to be developed to the south-western side of Circular Road West. This accessway would be fronted in its middle section to both sides by mews-style flats over open-fronted 'car barns'. I share the Council's concern that, to a degree, this arrangement would lead to the perception of a car-dominated dead frontage with lack of active ground floor surveillance. Furthermore, the long unbroken roofs over these elements to both sides of the street would result in a somewhat unrelieved and bland roofscape that would little benefit this thoroughfare. That said, I note that the approved scheme also included this form of mews-style flats and with adjacent off-street parking. Nonetheless, that scheme is distinguishable in the variation of the frontage development, not least the retention of IC 9.
20. A further feature of concern of the proposed scheme is the relationship of the mews flats blocks to the rear of plots 167-179 and 141-150. These effectively would be set within a large expanse of car parking, with restricted aspects and which, in my view, would serve to provide a somewhat poor and austere living environment for their occupants. Again, I accept that this form of provision is a feature of the previously-approved scheme albeit that that is orientated

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<sup>6</sup> There is an acknowledgement that parking requirements have risen since the earlier development of area J1A.

<sup>7</sup> Ref BV007-02-01 Rev D.

differently and would provide a greater degree of landscaping to provide visual relief and softening.

21. Having regard to other concerning elements of design, the proximity of the three and two-and-a-half storey dwellings on plots 197 and 207 to the single storey retained buildings of CAVs 1 and 3 would result in a somewhat awkward and unsympathetic juxtaposition. I also share the Council's concerns about the lack of visual interest and relief to roofscapes as a result of the paucity of chimneys. Chimneys are certainly not absent within the scheme but there are considerable elements of lengthy unrelieved roofs which, combined with the repetitive elevational treatments of the blocks, serve to produce, in places, a rather dull and monotonous townscape that is not befitting the setting created by the surrounding retained buildings.
22. I acknowledge the efforts made to conceive a development of interest, there would be a similar palette of materials to that within area J1A and the basic form and design of dwellings used there would be repeated. Nonetheless, for the reasons given, the present scheme would not replicate the standard already achieved and would fail to positively contribute to the character and appearance of the conservation area when taken together with the loss of present buildings.
23. As such, there would be conflict with a raft of policies in the Council's adopted Core Strategy (2008) (CS) and its adopted Development Policies Development Plan Document (2010) (DP). Amongst these, CS Policies ENV1, UR2, PR2 and DP Policies DP1 and DP14 variously seek to: conserve Colchester's historic environment; preserve or enhance heritage assets, including protecting and enhancing those buildings which have a particular local importance or character which it is desirable to keep; secure high quality design, with developments which fail to enhance the character, quality and function of an area not being supported; and secure attractive, safe and people-friendly streets.

### *Viability*

24. The appellant states that the cumulative impact of a range of factors including existing market conditions, the provision of affordable housing, retention of existing buildings and various development standards have put the currently-approved scheme 'at risk' on account of viability. This has prompted the submission of the present scheme which seeks to forego an affordable housing element and provides for an amended layout and design.
25. A viability assessment of this scheme, based on residual valuation and using the Homes and Communities Agency's Development Appraisal Tool, has been carried out, reviewed by consultants on behalf of the Council. Residual valuations are by their nature and complexity sensitive to small changes to value and costs inputs. Whilst figures differ between the appellant's assessment and the Council's review, based on cost and value assumptions made, including a developer profit of 20%, it is an agreed position that, assuming 100% market housing<sup>8</sup>, there would be a development deficit. This

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<sup>8</sup> The Council has advised that it has previously taken a flexible approach towards the re-negotiation of planning agreements where this is justified on the grounds of viability. If planning permission was to be granted without the requirement for affordable housing provision it would be necessary for a request to be made for a deed of variation to an existing legal agreement made under Section 299a of the Town and Country Planning Act 1990 (as amended). This agreement over-arches the garrison development and would require the provision of 18 affordable units on this site. The possibility of provision of 'assisted purchase' dwellings might be contemplated.

would range from some £4.1m to £2.3m on the respective appraisal figures. A supplementary report was produced on behalf of the appellant to assess how figures would alter based on the retention of CAV 10. This indicated that a combination of increased costs and reduced income would amount to an additional deficit to the scheme of around £350,000<sup>9</sup>, providing a deficit on completion of about £4.48m. At the Hearing the appellant's consultant suggested that it was probable that a midway figure between the two projected deficits could be agreed. No appraisal has been carried out based on the possible retention and conversion/reuse of CAV 2 or IC 9.

26. Sensitivity testing in the review of the appellant's initial appraisal suggested that sales values of the present scheme would need to rise by about 12.5% before it would become viable. At the Hearing the appellant's consultant considered that such a necessary uplift would be more likely to be in the region of 20%. The appellant suggests that without the possibility of a viable scheme the site will be effectively 'mothballed'.
27. Viability is clearly an important consideration. However, there are now signs that the general economy and housing markets are beginning to recover and the appellant's viability consultant acknowledged at the Hearing that house prices within the area were likely to rise over the next couple of years. From the evidence, it may well be that short-term viability of development of the site, particularly if the present buildings were to be retained, is questionable. However, a medium-term prognosis may be more favourable. This may allow a scheme to be devised that could permit the retention and incorporation of the existing buildings of value, particularly if the Council was to exercise flexibility in certain development requirements and which it states it has done in the past.

#### *Scheme benefits*

28. I have carefully considered the claimed benefits that could result from allowing the present scheme. The proposals would provide a choice of housing types with a range of prices in what is a sustainable urban location. There would be economic benefits as a result of construction activity, continuing regeneration of the garrison area, and possible job creation. It is also suggested that the early release of public open space on area J1C, which includes the remains of a scheduled Roman circus, could be brought forward at a nominal cost to the Council enabling its development as a tourist/visitor attraction. However, the Council indicates that the provision of this public open space is a requirement of the outline planning permission and has to be delivered anyway as part of the redevelopment of area J1.
29. The development could promote the retention and re-use of other surrounding barracks buildings within the appellant's ownership but outside the present application site (CAVs 1 & 3-8). Whilst the appellant has suggested there is a direct link between development of the present site and these, I have not been made aware of any specific plans for them that are contingent on the current scheme receiving reserved matters approval, nor is there any indication of a linking mechanism to secure the repair or conversion of these. There may even be a contractual buy-back of these buildings from the garrison lead developer.

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<sup>9</sup> It was indicated that the Council's consultants had not commented on the supplementary appraisal and they were not represented at the Hearing.

*Overall conclusions*

30. Paragraph 134 of the Framework notes that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. As noted above, the appellant's position is that in the absence of permission being granted for the present scheme the site is likely to be mothballed on the basis of adverse viability. I accept that this would therefore not result in the claimed benefits that could flow from the scheme coming forward imminently. Nonetheless, because of the identified drawbacks of the proposals, including the loss of CAVs 2 and 10 and IC 9, and the design shortcomings of the scheme which would replace them, it is my view, on balance, that the harm which would arise is not outweighed by the public benefits attributed to the proposals.
31. The Framework has at its heart the promotion of sustainable development. The proposals would certainly have some sustainability credentials, as referred to above. Nonetheless, a core planning principle of the Framework is to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations. The loss of locally-valued existing buildings, which contribute to heritage asset of the Garrison Conservation Area as a whole, would mean that the proposals would fail to do this. The scheme would not acceptably fulfil the environmental dimension of sustainable development in its failure to adequately preserve or enhance this heritage asset and would conflict with development plan policies which seek to achieve this. It is therefore my overall conclusion, having taken into account all other matters raised, including the suggested conditions in the event of consent and approval being granted, that the proposals are unacceptable and the appeals must fail.

*P J Asquith*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT

Hamish Buttle	Planning Manager, Bovis Homes Ltd
John Dale	Senior Architect, Bovis Homes Ltd
Andrew Brown	Director, Woodhall Planning and Conservation
Richard Ashdale	Director, Upside London Ltd
Terry Tedder	Development Director, Bovis Homes Ltd

### FOR THE COUNCIL

Simon Cairns	Planning Project Manager, Colchester BC
Alistair Day	Principal Planning Officer, Colchester BC

### INTERESTED PERSONS

Dorian Kelly	Interested third party
Jess Jephcott	Interested third party

## **DOCUMENTS AND PLANS** (handed in at the Hearing)

1. Letters of notification of the Hearing and lists of persons notified
2. Copy of High Court judgement [2012] EWHC 4344 (Admin) Bedford Borough Council v Secretary of State for Communities and Local Government and Nuon UK Ltd
3. Colchester Garrison Urban Village Master Layout Plan, July 2004
4. Copy of National Planning Practice Guidance 'Conserving and enhancing the historic environment'
5. Plan C02B-PL-001 Rev C, site layout
6. Plans BV007-60-06, Rev C, BV007-60-08 Rev D & BV007-60-12 Rev D
7. Proposed Development Concept Layout for previous reserved matters scheme, Ref. BV007-02-01 Rev D2

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