
Appeal Decision

Hearing held on 12 January 2017

Site visit made on 12 January 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 14 February 2017

Appeal Ref: APP/X1545/W/16/3156862

Manor Farm, Old Heath Road, Southminster, Essex CM0 7BW

- 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 Smart Planning against the decision of Maldon District Council.
 - The application Ref FUL/MAL/16/00301, dated 18 March 2016, was refused by notice dated 16 May 2016.
 - The development proposed is described as 'revised orientation of farm worker's dwelling and use of roof void to provide bedroom accommodation incorporating rear dormer (revision of FUL/MAL/10/00702, 13 October 2010)'.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Smart Planning against Maldon District Council. This application is the subject of a separate Decision.

Procedural Matters

3. At the Hearing it was agreed that the development subject to application FUL/MAL/16/00301 has not been commenced, notwithstanding the reference on the application form to building works having started on 9 October 2013. The appellant clarified that the start date reference concerned the development subject to planning permission FUL/MAL/10/00702 (the 2010 permission). The appellant and the Council therefore agreed that I should consider the appeal as being for a standalone development.
 4. Two of the application drawings have a reference number of 15.3037/P205, one of which is entitled 'Overlay of Proposed Dwelling with Extant Planning Permission', while the second version is labelled 'Proposed Plans' and shows floorplans. Drawing 15.3037/P206, which is entitled 'Proposed Plans' also shows floorplans and the appellant and the Council agreed that the floorplans shown on drawings 15.3037/P205 and 15.3037/P206 are identical to one another and that I should disregard the former drawing in determining the appeal.
 5. Given the reference in the reason for refusal to the development being for a '... four bedroom dwelling ...' I sought clarification as to where that reference had come from because drawing 15.3037/P206 shows three bedrooms. The parties confirmed that there was no other relevant floorplan drawing. The
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Council explained that it had assessed the ground floor study as being a possible fourth bedroom and the appellant confirmed it did not disagree with that proposition. I have therefore considered the appeal on that basis.

6. The Council in its appeal statement referred to an undetermined enforcement notice appeal¹ concerning the residential conversion of part of one of the barns at Manor Farm that adjoins the appeal site. Prior to the Hearing the appellant was requested to give an update re the enforcement appeal's determination and a copy of the decision of 5 January 2017, allowing that appeal and quashing the notice, was provided. I advised the parties at the Hearing that I had read the enforcement appeal decision. In advance of the Hearing and to assist my understanding of the site's planning history the Council was requested to provide various documents² relating to applications FUL/MAL/10/00702 and LDE/MAL/16/00052, which neither party had provided as part of their initial cases.
7. A signed Statement of Common Ground (SoCG) was provided at the opening of the Hearing and I have had regard to its contents.

Main Issue

8. The main issue is whether there is a functional need for a rural worker's dwelling of the proposed size.

Reasons

9. The development would involve the construction of a three/four bedroom chalet bungalow to be occupied as an agricultural worker's dwelling.

Background and Site History

10. The appellant explained that the landowner, Mr Roman, commenced his poultry farming enterprise at what is now known as Manor Farm in 2003 and originally the holding had an area of 4.85 hectares (12 acres). In December 2006 a three year temporary permission was granted for a mobile home to be occupied by Mr Roman while he established his poultry enterprise. A little after the expiry of the mobile home permission Mr Roman made an application for the two bedroom dwelling subject to the 2010 permission.
11. The dwelling subject to the appealed application would be an alternative to that subject to the 2010 permission. The main differences between the dwelling subject to the 2010 permission and the appeal development would be the turning of the dwelling through ninety degrees, the provision of two bedrooms and a bathroom in the dwelling's roof space and the addition of a rear dormer.
12. The 2010 permission was granted because the Council was content at that time that there was a viable poultry enterprise with a functional need for one farm worker to be permanently resident at Manor Farm³. The appellant explained that the need for a permanent dwelling of the size subject to the 2010 permission was based upon a poultry farm with a flock of between 2,000 and 2,500 birds. Mr Roman then got into financial difficulties and left

¹ APP/X1545/C/16/3145308

² Decision notices, approved drawings and officer reports

³ The officer report for application FUL/MAL/10/00702

this country in August 2012. I was told at the Hearing that Mr Roman has no intention of returning to this country and will not farm again at Manor Farm.

13. The appellant further explained that in 2012 he was given power of attorney to handle all land related matters at Manor Farm and that since taking on that role he has been endeavouring to optimise the value of the landholding in readiness for its sale. I was advised that in 2012 around 3.24 hectares (8 acres) of the landholding were sold, leaving a retained holding of around 1.62 hectares (4 acres). Within the retained holding there are two barns that are located to the east of the appeal site. During the summer of 2007 works commenced on the conversion of the western end of the larger of the barns to form residential accommodation and Mr Roman moved into that accommodation (the barn dwelling) in August 2007 where he lived until August 2012⁴.
14. The appellant informed me that from August 2012 onwards the barn dwelling has been occupied as a residence under the terms of short term tenancies and the retained land has not been farmed viably, albeit that hay is being cut and the current occupiers of the barn dwelling have been keeping some poultry as a hobby activity. That hobby activity uses parts of the landholding for the keeping of poultry on an informal basis, ie on parts of the landholding not subject to the residential tenancy. The enforcement appeal decision has established that the barn dwelling can lawfully be occupied as such.
15. In October 2013, just prior to the expiry of the 2010 permission, some of the foundations for the permitted dwelling were laid. A lawful development certificate, issued under file reference LDE/MAL/16/00052, by the Council on 16 March 2016 has established that works relating to the 2010 permission have been lawfully commenced. That permission is therefore extant.
16. Very shortly after the appealed application's determination a second application (FUL/MAL/16/00577) for a chalet bungalow was submitted to the Council. Outwardly the dwelling subject to the later application would be identical to that subject to this appeal, with the difference being that for the former application the accommodation in the roof space is shown as a single open plan room. The later application was granted permission by the Council on 17 August 2016 (the 2016 permission).

Policy Context

17. Manor Farm is in the countryside for the purposes of the Maldon District Replacement Local Plan of 2005 (the Local Plan) and the parties agree that saved Policy CC14 is relevant to the consideration of the development⁵.
18. Policy CC14 of the Local Plan addresses the provision of agricultural workers' dwellings and states that permission for such dwellings will only be permitted when six listed criteria are met. The criteria can be summarised as being: (1) evidence is submitted demonstrating there is a functional need for a dwelling to be located on the holding; (2) the need relates to a full time worker who is primarily employed in agriculture and his/her dependants; (3) the size of the dwelling is appropriate to the functional need for it; (4) where a new building is proposed there are no extant planning permissions for agricultural dwellings nor are there buildings or dwellings on the holding capable of being converted

⁴ As recorded in the enforcement notice appeal decision

⁵ Section 3 of the SoCG

or altered to provide suitable accommodation; (5) prior to an application's submission no dwelling or building capable of being converted to a dwelling has been sold and no relevant occupancy condition has been removed from a dwelling on the holding; and (6) evidence is provided demonstrating a functional need and the viability of the enterprise can support the additional accommodation.

19. The explanatory text to Policy CC14 explains that the context for this policy is the Local Plan's strategic objective of directing new residential development to the urban areas within the Council's area. New dwellings in the countryside will therefore not normally be permitted, although agricultural workers' dwellings may be considered as exceptional development in the countryside.
20. Paragraph 55 of the National Planning Policy Framework (the Framework) promotes sustainable development in rural areas and advises that housing should be located where it will enhance or maintain vitality in rural communities. Paragraph 55 further advises that isolated homes in the countryside should be avoided unless special circumstances apply, such as there being an essential need for a rural worker to live permanently at or near their place of work in the countryside. While Policy CC14 predates the Framework's publication and is founded on national policy that is no longer extant, like the parties, I consider that Policy CC14 is generally consistent with the Framework. Significant weight can therefore be attached to Policy CC14 for the purposes of the determination of this appeal.
21. The Local Plan is in the process of being replaced and the emerging Local Plan⁶ has reached an advanced stage in its production, with the submission version of this plan having been submitted to the Secretary of State for examination in 2015. The examination of the emerging Local Plan recommenced on 10 January 2017 and it is intended that its Policy H7 will address 'Agricultural and Essential Workers' Accommodation'. Emerging Policy H7 sets out five criteria for the consideration of proposals for agricultural and essential workers' accommodation and its criteria are similar to those set out in the extant Policy CC14. The parties informed me that they were unaware of any unresolved objections concerning emerging Policy H7 and I therefore consider that some weight can be given to this emerging policy, when regard is paid to paragraph 216 of the Framework.

Functional Need

22. At issue is whether or not the dwelling would be of a size that would be appropriate to the functional need for it. The Council's concern being that evidence has not been presented demonstrating that a dwelling of up to four bedrooms would be of an appropriate size for an agricultural workers' dwelling at Manor Farm.
23. The appellant argued that Policy CC14's reference to 'size' relates to the physical dimensions of a dwelling and that considering the number of bedrooms is irrelevant. The appellant contends that externally the alternative dwelling would have dimensions very similar to those of the dwelling benefitting from the 2010 permission. The appellant's case is also heavily reliant upon the existence of the 2010 permission and the 2016 permission as the means of establishing the principle for an agricultural worker's dwelling in

⁶ Maldon District Local Plan 2014-2029

this location and/or as representing an implementable fallback position as an alternative to the appeal scheme. On that basis the appellant maintains that there is no need to provide evidence demonstrating a functional need for the dwelling now proposed.

24. The Council, however, argues that size has a wider meaning for the purposes of Policy CC14, with size being applicable not only to a dwelling's physical dimensions but also to how it would function, with the number of bedrooms contributing to the dwelling's functioning. The appellant responded that the nature of a dwelling's occupation by any given individual is a matter of personal choice and that while rooms have labels that does not mean they will be so used.
25. On my reading of Policy CC14, and its explanatory text, I find nothing within its wording that precludes an assessment of the number of bedrooms that would be available and the appellant accepted this in response to a question that I asked. I find the Council's interpretation of the meaning of size for the purposes of Policy CC14 to be persuasive, and thus preferable, to the narrow one relied upon by the appellant. I also consider that the wording of emerging Policy H7 does not provide any particular support for the appellant's narrow interpretation of the meaning of size.
26. It is clear that when the application for a permanent dwelling was first considered in 2010 by the Council, it accepted that there was a functional need for one farm worker to be permanently resident at the holding, given the intention that there would be a flock of between 2,000 and 2,500 birds. The appellant advised me that the specialist agricultural advice that had been obtained indicated that the size of the holding and the quality of the land meant that an enterprise at Manor Farm would be likely to be associated with poultry rearing rather than any other farming activity.
27. I further note from the Council's officer report for the 2010 application that the Council was content for the dwelling to have a second bedroom so that any relatives or guests could be accommodated, notwithstanding the fact that the recognised functional need was for a single worker to be housed.
28. Currently there is no viable farming activity at Manor Farm, unlike the situation in 2010, which in effect makes the development now proposed a speculative one. The appellant was very frank in explaining that the purpose for seeking a new permission is to assist with optimising the landholding's value, by providing a dwelling with an orientation and internal layout of a more widely acceptable nature, as an alternative to the one designed to meet Mr Roman's specific requirements. That being said I also recognise that there are two extant planning permissions for a dwelling at this site, which means that the basis for the consideration of the appealed application is unusual. That is because the normal starting point for assessing the functional/essential need for a farm worker's dwelling would be whether a viable enterprise exists and if so whether it requires a permanent residential presence to support it.
29. I consider this case is further complicated by the fact that both the 2010 and 2016 permissions are subject to two restrictive occupancy conditions⁷,

⁷ Respectively numbered 4 and 6 in the case of the 2010 permission and 3 and 5 in the case of the 2016 permission

that appear to conflict with one another, something that became evident during the course of the without prejudice discussion of planning conditions at the Hearing. That potential conflict might arise because the first of the occupancy conditions allows the permitted dwelling to be occupied by any person solely or mainly working or last working in agriculture or forestry in the 'locality', which I presume to mean the wider area. However, the second of the occupancy conditions is more onerous and has the effect of restricting the occupation of either dwelling to someone who is engaged in farming at Manor Farm.

30. It appears to me that to be certain of compliance with either of the 2010 or 2016 permissions an occupier of either dwelling would need to be associated with an agricultural enterprise operating at Manor Farm. Assuming my understanding of the compliance implications of both of the extant permissions is correct, and neither the appellant nor the Council commented otherwise during course of the discussion about conditions, then, in the absence of a current farming activity, the potential utility of the 2010 and 2016 permissions is limited, a matter I shall return to later in my reasoning.
31. Given the assessment of the functional need for a one bedroom dwelling made in 2010, I find, on the available evidence, that a four bedroom dwelling would exceed the likely functional need for a poultry enterprise on a landholding of 1.62 hectares, were such an enterprise to be re-established. I therefore consider that a dwelling with up to four bedrooms would be of a size that cannot currently be justified under Policy CC14's third criterion.
32. In considering whether the development is justifiable under the provisions of Policy CC14, I am also of the opinion that there is a new material consideration that should be taken account of, namely the adjoining barn dwelling very recently found to be lawful. The appellant stated at the Hearing that in order to run a poultry enterprise, with a flock of between 2,000 and 2,500 birds, then the whole of the partly converted barn would be required for bird rearing. However, that presupposes that another farmer would wish to run an enterprise along the lines envisaged by Mr Roman and that might not necessarily be the case.
33. Having regard to the provisions of Policy CC14's fourth criterion, I sought clarification at the Hearing from the Council as to why it had not identified any conflict with the fourth criterion, when determining both of the 2016 applications, given that the enforcement notice had been issued prior to the submission of both of those applications. The Council responded that while the case officer was aware of the enforcement notice there was no certainty about the status of the barn dwelling and the appellant's enforcement notice appeal evidence was unavailable when the applications were determined.
34. Notwithstanding the parties' comments concerning the barn dwelling and the indication in the SoCG that only Policy CC14's third criterion was at issue, I consider that the barn dwelling's existence means that there is another dwelling within the landholding. In my opinion that dwelling has the potential to house an agricultural worker if a farming enterprise was to be re-established at Manor Farm. I therefore consider that there is also now conflict with Policy CC14's fourth criterion.
35. I appreciate that the 2016 permission would provide a dwelling with two floors of accommodation and that following its construction and occupation internal

works could then be undertaken to create bedrooms without the need for an express planning permission. Such a scenario amounts to a theoretical fallback position, however, I have reservations about whether it would arise in practice, at least immediately after the completion of the dwelling subject to the 2016 permission. That is because of the current absence of a viable farming enterprise and, for the reasons I have given above, for anyone wishing to benefit from the 2016 permission, and to be compliant most particularly with condition 5, farming would need to have been resumed at Manor Farm.

36. Notwithstanding the inconsistency between the two occupancy conditions imposed on both the 2010 and 2016 permissions, I have further doubts as to whether a farmer already engaged in farming would live at Manor Farm while concurrently farming land that was remote from this landholding. That is because if such a farmer was engaged in livestock rearing that would require that farmer to live away from the stock he/she would be tending. In my experience livestock farmers are keen to be housed close to the animals they tend so that they are readily on hand to provide around the clock care.
37. The appellant submitted that the Council's approach to the determination of the 2016 applications exhibits ambiguity. However, having heard the parties' respective cases I consider that the suggestion of ambiguity arises from the difference there has been in the interpretation of the meaning of size for the purposes of Policy CC14. As I have stated above I consider the Council's interpretation to be appropriate and because of that I see no particular ambiguity in the way the Council determined the 2016 applications.
38. Accordingly for the reasons given above I attach limited weight to the possibility of the first floor accommodation subject to the 2016 permission being sub-divided to provide two bedrooms immediately following the dwelling's completion and occupation.
39. For all of the abovementioned reasons I conclude that it has not been demonstrated that there is a functional need for a rural workers' dwelling of the size proposed. That conclusion results in there being conflict with the third criterion of Policy CC14 of the Local Plan. I also consider that there would be conflict with Policy CC14's fourth criterion because there is potentially now another building within the landholding that could be occupied as an agricultural workers' dwelling. While not being determinative I also find that there would be some conflict with Policy H7 of the emerging Local Plan for similar reasons as the conflict arising with Policy CC14.
40. The evidence before me also indicates, in the absence of an active viable agricultural enterprise, that there is currently no essential need for a rural worker to live at Manor Farm, with the result that the development would be in conflict with paragraph 55 of the Framework. However, I recognise that position could well be different, given the landholding's planning history, were there to be a viable farming enterprise operating at Manor Farm.

Conclusion

41. For the reasons given above I conclude that it has not been demonstrated that there is a functional need for a rural workers' dwelling of the proposed size and that there would be conflict with Policy CC14 of the Local Plan.

Further conflict arises with Policy CC14 because part of another building within the landholding could now accommodate an agricultural workers' dwelling.

42. The appeal is therefore dismissed.

Grahame Gould

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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Of Smart Planning acting as Appellant/Agent
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FOR THE LOCAL PLANNING AUTHORITY

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DOCUMENTS SUDMITTED AT/AFTER THE HEARING

1. Statement of Common Ground of 12 January 2017
2. Written Costs Application made by the Appellant at the Hearing
3. Written response to the Costs Application made by the Council at the Hearing
4. Copies of Policies S2, BE1 and CC6 of the Maldon District Replacement Local Plan of November 2016