



Appeal Decisions

Hearing Held on 20 July 2017

Site visit made on 20 July 2017

by Paul Selby BEng (Hons) MSc MRTPI

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

Decisions date: 11.08.2017

Appeal A Ref: APP/A1530/W/16/3163332

Fordham House Farm, Mount Bures, Bures CO8 5AZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Barry East against the decision of Colchester Borough Council.
 - The application Ref 161569, dated 6 July 2016, was refused by notice dated 7 September 2016.
 - The application sought planning permission for 'New detached house with farm office. Resubmission of 120409' without complying with a condition attached to planning permission Ref 121555, dated 28 November 2012.
 - The condition in dispute is No 4 which states that: 'The occupation of the dwelling hereby approved shall be limited to a person solely or mainly working, or last working at Roberts Stud Farm, and to any resident dependents'.
 - The reason given for the condition is: 'The site lies in a rural area where residential development would not normally be permitted except in association with the use of the farm for horse breeding'.
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Appeal B Ref: APP/A1530/W/16/3163327

Fordham House Farm, Mount Bures, Bures CO8 5AZ

- 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 Mr Barry East against the decision of Colchester Borough Council.
 - The application Ref 161570, dated 23 June 2016, was refused by notice dated 7 September 2016.
 - The development is 'Addition of conservatory to South East elevation, proposed stables, proposed rear dormer windows, addition of gate/pillars/walls and the repositioning of the garage to the front of the dwelling'.
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for 'New detached house with farm office. Resubmission of 120409' at Fordham House Farm, Mount Bures, Bures CO8 5AZ, in accordance with the application Ref 161569, dated 6 July 2016, without compliance with condition number 4 previously imposed on planning permission Ref 121555, dated 28 November 2012, subject to the replacement condition set out in the schedule to this decision

letter, and to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Appeal B

2. The appeal is dismissed insofar as it relates to the relocated garage. The appeal is allowed insofar as it relates to the conservatory, dormer windows, stable block, gates, pillars and walls, and planning permission is granted for Addition of conservatory to South East elevation, proposed stables, proposed rear dormer windows and addition of gate/pillars/walls at Fordham House Farm, Mount Bures, Bures CO8 5AZ, in accordance with the terms of the application Ref 161570, dated 23 June 2016, subject to the conditions set out in the schedule to this decision letter.

Procedural Matters

3. The appellant intends to change the nature of the business on the appeal site from a stud farm to a full livery and racehorse recuperation and retraining facility. At the Hearing the Council confirmed its view that this amended business model would constitute a material change of use. Whether or not this is the case, the change of use of the site from a stud farm to a full livery and racehorse recuperation facility does not feature in the description of development for either appeal scheme. In my view, determining the appeal proposals as if a change of use for the site is sought would prejudice interested parties, including the highways authority. I have therefore proceeded to determine the appeals primarily on the basis of the permitted stud farm use.
4. Breach of condition notices to demolish the temporary dwelling, planning permission for the use of which as a garage expired in November 2016, have been brought to my attention. As enforcement matters are beyond the scope of these appeals I have not afforded these notices weight in my decisions.
5. As elements of the Appeal B scheme have commenced planning permission is sought partly in retrospect. I have amended the description of development based on that included in the Council's decision notice, which is more succinct.
6. The north elevation of the proposed stabling building on the submitted drawings is labelled as the south elevation, and vice versa. The design of the building on the drawing labelled 'east elevation' appears inconsistent with the other drawings. I have taken the intended siting and footprint of the proposed stabling to be as shown on the site layout plan.

Main Issues

7. The main issues are:
 - whether the condition is necessary and reasonable, having regard to local and national policy relating to rural workers' accommodation; and
 - whether the proposed physical changes are justified on the basis of supporting an equestrian business, having regard to the location of the site within the open countryside.

Reasons

8. The appeal relates to an extensive site situated in the open countryside. The site accommodates stables, paddocks and facilities associated with its use as a

stud farm, as well as fields set to pasture, a 4 bedroom dwelling and a building used as temporary accommodation. Mature field boundaries are located at the margins of the site, including along the adjacent single track lanes from which the site is accessed.

9. The construction of the dwelling on the appeal site was originally justified on the basis of supporting a stud farm. There is no dispute amongst the parties that an occupancy condition remains necessary and reasonable; Appeal A instead seeks to vary the existing condition.
10. A form of words for the varied condition was not specified on the planning application form. Wording suggested by the Council, which would restrict the occupation of the dwelling to a person employed at 'the equestrian facilities on the site' rather than 'Roberts Stud Farm', would support the viability of the permitted stud farm use and would continue to restrict the occupancy of the dwelling to a person employed on the site. But this form of wording would apply to a broad range of equine uses, including uses for which there may be no justification for an on-site dwelling. This variant of the condition would therefore be wider in scope than would be necessary to achieve its desired objective in relation to the extant planning permission. Consequently it would fail the tests of necessity and relevance set out in the National Planning Policy Framework ('the Framework') and the accompanying advice of the Planning Practice Guidance (PPG).
11. Notwithstanding the above, I have considered whether a more specific form of wording for the varied condition, relating solely to the intended full livery and racehorse recuperation and retaining business, would instead be acceptable. A 'Supporting Statement' has been submitted by the appellant relating to this future enterprise. In terms of racehorse recuperation, I am persuaded by this evidence that an on-site dwelling would provide for the general welfare of racehorses stabled on the site for protracted periods of time. The evidence also adequately justifies the need for 24 hour on-site supervision of horses on the basis of supporting the viability of a full livery of the scale proposed.
12. The Council considers that the submitted evidence is not sufficiently robust or authoritative and has drawn my attention to what it considers to be deficiencies in the business plan. Nonetheless, Appeal A relates solely to the necessity and reasonableness of amending the occupancy condition rather than the acceptability or viability of the intended business model in this location. I find that the evidence provides sufficient justification for varying the occupancy condition with reference to the intended future business. Whilst it would apply to a wider range of equine uses which may fall outside the scope of the currently permitted use, the objective of the varied condition would be indistinguishable from that of the existing condition and there would be no harmful conflict with the Framework tests.
13. For the given reasons I conclude that the deletion of Condition 4 and its replacement with a new condition restricting occupation to a marginally wider range of equestrian uses would accord with the rural and spatial objectives of policies ENV1, ENV2 and H6 of the Colchester Borough Core Strategy (CBCS) and policy DP9 of the Colchester Borough Development Policies (CBDP).
14. Turning to Appeal B, two rear dormer windows would facilitate the provision of 2 additional bedrooms in the loft void of the main dwelling, bringing the total to 6. A conservatory would modestly extend the ground floor living space. At the

Hearing the appellant confirmed that the rationale for these elements is solely to seek additional living space; they are not connected to the intended change to the equestrian business.

15. The extended living space would result in a building of some scale, beyond what could reasonably be regarded as the minimum functional requirement for a dwelling to serve a stud farm. But in my view that is already the case. In addition to substantial ground floor living space and 4 bedrooms, I saw that the dwelling also accommodates a gym and snooker room in its basement and, in the loft void, 2 (albeit windowless) rooms accessed via a stairwell. The parties do not dispute that the dwelling has been built as per the approved plans and there is no evidence to suggest otherwise.
16. The appellant contends that the physical changes to the dwelling could be achieved under permitted development (PD) rights were these not to have been removed via a condition attached to the existing planning permission. The reason for removing PD rights related solely to visual impacts. The Council is satisfied that the dormers and conservatory would not result in visual harm, and I agree that they would be clearly subsidiary in scale to the dwelling and acceptable in appearance. The proposal would thus not offend the original reason for restricting PD rights.
17. The Council submits that it remains necessary for the appellant to justify the additional floorspace against the functional and financial viability tests for assessing rural workers' dwellings set out in CS Policy H6. Little justification for the additional living space has been provided. Nonetheless, the internal floorspace would increase only moderately and any additional costs of servicing the building would be limited. Moreover, the occupancy of the dwelling would continue to be restricted via a condition. Given the specific circumstances of the case, I am satisfied that the proposed dormers and conservatory would not harmfully conflict with local and national policy to restrict isolated residential development in the open countryside.
18. Irrespective of the lawfulness of the existing garage structure, at the Hearing it became apparent that the submitted block plan indicating the siting of the proposed replacement garage was inaccurate and that its design and materials would differ from the existing building. No drawings or dimensions of the proposed garage have been submitted as part of Appeal B; nor were they submitted or consulted on as part of the planning application against which the appeal is made. Due to the absence of information relating to the garage, I am unable to conclude with any certainty that the proposal would not be visually harmful. I therefore find this element of the proposal to be unacceptable.
19. A proposed additional stable block has been justified on the basis of the intended future business rather than the existing stud farm. But in any case, the addition of a modest building accommodating 6 stables, taking the total number of stables on the site to around 21, would not take the facility as a whole beyond a 'small scale' development as referred to in CBCS policy DP9 and the Framework. As other buildings on the site appear well used, I am satisfied that the additional stabling could not be accommodated in an existing building. The stable block would be compatible with the permitted use and would not unacceptably increase the nature and intensity of the existing stud farm operation, with limited traffic generation, noise or pollution impacts.

20. Although the drawings for the proposed stable block are somewhat limited in detail and accuracy, they indicate a modest building of typical rural design. The structure would be located adjacent to existing stabling facilities, with a limited extension onto land currently occupied by paddocks. Given the existing character of the site and the screening provided by mature hedgerows at the site margins, I find that the visual impacts of the stable block would be acceptable, subject to a condition requiring detailed designs to be provided and approved by the Council prior to construction. As a consequence, despite the limited evidence of need relating to the permitted use, I am satisfied that there would be no harmful conflict with local and national rural policy objectives.
21. Timber gates and pillars are proposed to be erected on the entrance lane, set well back from the highway. Brick walls immediately southeast of the dwelling, intended to provide security, have already been erected. The Council considers the visual impact of these elements of the proposal to be acceptable. Based on the submitted documents and from my site observations I have no reason to find otherwise.
22. For the reasons set out above, I conclude that the conservatory, rear dormer windows, proposed stable block, and gate/pillars/walls elements of the Appeal B scheme would accord with the rural and design objectives of CBCP policies ENV1 and H6, the rural economic objectives of CBDP policy DP9 and the general aims of the Framework. However, due to the absence of information relating to the proposed garage, I conclude that this element of the Appeal B scheme would have the potential to cause visual harm, thereby conflicting with the design objectives of CBCP policy ENV1.

Conditions

23. The Council has suggested various conditions which were the subject of discussion at the Hearing. For the Appeal A scheme, for reasons already given I have imposed an amended condition in place of the existing Condition No 4. The planning permission also remains subject to the other conditions imposed on 121555, so far as the same are still subsisting and capable of taking effect.
24. The dimensions and locations of the walls for which permission is sought via Appeal B are not specified on the submitted documents. The drawings for the proposed stable block are also not sufficiently detailed or accurate. In the interests of proper planning it is therefore necessary to impose conditions requiring detailed designs for these elements of the scheme to be submitted and approved by the Council. In the interests of water quality and flood risk, it is also necessary to impose a condition to secure acceptable site drainage.

Conclusions

25. For the above reasons I conclude that Appeal A should be allowed. In terms of Appeal B, as that element of the development that I have found to be unacceptable is clearly severable from the remainder, I conclude that the appeal should succeed in relation to the conservatory, rear dormer windows, proposed stable block, and gate/pillars/walls. However, the appeal should be dismissed insofar as it relates to the proposed garage.

Paul Selby

INSPECTOR

SCHEDULE OF CONDITIONS (APPEAL A: REF: APP/A1530/W/16/3163332)

- 1) The occupation of the dwelling currently known as Fordham House Farm shall be limited to a person solely or mainly working or last working at the stud farm/racehorse recuperation and retraining facility/full livery on the site, and to any resident dependents.

SCHEDULE OF CONDITIONS (APPEAL B: REF: APP/A1530/W/16/3163327)

- 1) Within one month of the date of this decision a scaled drawing of the stable building showing the size, detailing and position of all openings in the elevations of the building hereby permitted shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved drawing.
- 2) Within one month of the date of this decision details of drainage works for the proposed stable block shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) Within one month of the date of this decision, a site plan and scaled drawing of the brick walls to the south east of the dwelling, showing the siting and dimensions of all parts of the wall hereby permitted, shall be submitted to and approved in writing by the local planning authority.

APPEARANCES

FOR THE APPELLANT:

Michael McGarr	Appellant's agent
Barry East	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ishita Sheth	Planning Officer
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DOCUMENTS SUBMITTED AT THE HEARING

1. Copies of CBCS policies SD1 and H6 and CBDP policy DP10.
2. Unredacted version of financial appendix to the appellant's statement.

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Copies of CBCS (2014) policies ENV1, ENV2, H6 and SD1; and CBDP (2014) policies DP1, DP9 and DP10.
2. Copies of dwelling floor plans attached to planning permission Ref 121555.