The Planning Inspectorate

# Appeal Decision

Site visit made on 5 November 2019

**by D. Szymanski, BSc (Hons) MA, MRTPI**

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

**Decision date: 22nd November 2019**

**Appeal Ref: APP/W1525/W/19/3231283**
**Wheelers Farm, Wheelers Hill East, Chelmsford, Essex, CM3 3LZ**

- 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 Tom Robert against the decision of Chelmsford City Council.
- The application Ref: 19/00017/FUL received by the Council on 25 January 2019, was refused by notice dated 3 May 2019.
- The development proposed is demolition of existing kennels and rebuilding as a domestic single storey house.

## Decision

1. The appeal is dismissed.

## Procedural Matters

2. A completed and signed Section 106 Unilateral Undertaking has been submitted by the appellant. It seeks to secure a contribution towards mitigation measures on a Special Protection Area (SPA) and Ramsar site in the area. I return to this matter later.

3. The appellant has another planning application subject of a separate appeal, for the demolition of 3 storage buildings and the construction of 4 detached houses (Ref: APP/W1525/W/19/3230832) which lies adjacent to this appeal site. The appeals are being considered separately because they are for different proposals on different appeal sites, with differing merits and impacts. However, as Inspector for that other appeal I am aware of the full details of that case and have had regard to it as necessary in reaching this decision.

4. The Chelmsford Draft Local Plan Pre-Submission Document (the CDLP) was submitted to the Secretary of State with examination hearings held in late 2018. In a post hearing advice note the Inspector advised the plan could be found sound, subject to Main Modifications and the outcome of consultations. The Council has published and consulted on its main modifications. At the time of my consideration of this appeal the CDLP remains unadopted and since it could be subject to change, I afford its policies limited weight.

5. Evidence submitted to the appeal by the appellant includes a revised plan showing a considerably extended and differing red line and potential access arrangement. The revised plan represents a significant and material change from that submitted with the planning application and would be substantially different to the application proposals upon which the Council reached its

decision. I have applied the 'Wheatcroft Principles'[1] and find that the acceptance of the plan would deprive those who should have been consulted on the amended development, the opportunity of such consultation. I have therefore dealt with the appeal on the basis of the scheme subject of the planning application determined by the Council.

6. The appellant has provided plan/drawing Ref: A4/4679/b/208 which was submitted to the Council accompanying the planning application but did not form a basis for determination, because (amongst other things) it had an incorrect red line and is not drawn to an identified scale. Advice in the National Planning Practice Guidance (Reference ID: 14-024-20140306) is that plans should be suitably scaled, and the application site edged clearly in red including all land necessary to carry out the development, such as access to the site from a public highway. Any other land owned by the applicant should be outlined in blue. Plan/drawing Ref: A4/4679/b/208 is based upon an unclear aerial photograph image, appears not to be at an identifiable scale, and the red line encompasses far greater land than necessary for the development. On this basis I cannot use this plan as a suitable basis to determine this appeal.

## Main Issues

7. The main issues are:

- whether the proposals are for a type of a development that would be permitted on the site by Policy DC11 of the adopted development plan (the CSDCP) or Policy CO4 of the draft plan (the CDLP); and,
- whether the proposed development could provide a safe access to the public highway.

## Reasons

*The development plan*

8. The appeal site is composed of a single storey timber boarded barn with an asbestos roof and some additional land to the north and east measuring approximately 17 x 34 metres (m). It is within a small group of agricultural style buildings to the east of the main farm dwellings, forming a modest complex of mainly residential, storage and agricultural buildings. It is bound by the public highway (Wheelers Hill East) to the south but set within a largely open and verdant agricultural landscape, mostly composed of hedgerow lined fields.

9. The application seeks permission to demolish an existing barn and construct a new four-bedroom three-bathroom single storey dwelling. The proposed replacement building would have similar dimensions to the existing barn but would include a sizeable gable end projection to the south eastern side.

10. Wheelers Farm and the appeal site is located within the rural area beyond the Metropolitan Green Belt where Policy DC2 of the Chelmsford Core Strategy and Development Control Policies Development Plan Document (CSDCP)[2] requires the intrinsic character and beauty of the countryside should not adversely impacted upon. Although placing strict controls upon the types of development

[1] Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]
[2] Chelmsford Core Strategy and Development Control Policies Development Plan Document 2001-2021 – adopted in 2008, reviewed and adopted in 2013

permitted in the rural area, in principle DC2 allows the replacement of a building subject to it meeting the requirements of Policy DC11 of the CSDCP. Policy DC11 requires that replacement dwellings and buildings must meet four criteria. The first of these requires the dwelling or building is of the same use, position, volume and scale of the proposed dwelling or building is appropriate to the site. The third requires buildings must not adversely affect the character; appearance or visual amenities of the area and the intrinsic character and beauty of the countryside.

11. Whilst the main section of the new dwelling would appear to be built at a similar height, width and depth to the existing barn, the proposals include a significantly sized projection to the south east to accommodate a lounge. There is also a sizeable area of land to the north and east of the building within the application area which appears to include some access gates indicating some degree of domestication and/or enclosure. In particular, the gable projection is significantly outside the footprint of the existing barn, for which I see no reasoned justification. The significant increase in built development in the rural area would be contrary to Policy DC11 of the CSDCP and result in harm to the character and appearance of the rural area.

12. Part C) of Policy CO4 of the CDLP permits replacement buildings in the rural area provided amongst other things, the new building is in the same use as the existing, would not be out of keeping with its context and surroundings and not result in any other harm. Various uses and former uses of the building are referenced by the parties. The appellant advocates the last use was a kennels (although not necessarily agricultural) and is now redundant. The Council cites the use as an agricultural building with some storage and there is no lawful use certificate to demonstrate anything to the contrary. At the time of my visit it appeared to be used for storage. Based upon the evidence before me, the current barn is not residential, and so the new building would not be of the same use as the existing building thereby being contrary to Policy DC11 of the CSDCP and Policy CO4 C)ii) of the CDLP.

13. Additionally, Part B) of CO4 permits the redevelopment of previously developed land where it would not adversely impact upon the intrinsic character and beauty of the countryside and will be assessed as such, by reference to (amongst other things) the size, scale, spread of new development, visual impacts, and comparison between the impacts of existing and proposed uses. The Council is of the view the building is agricultural therefore not previously developed land. The appellant considers it is previously developed citing the length of the time the building has been in place (some 40 years), as well as the kennel use. There is no evidence before me to demonstrate the nature of the kennel use (for example the number and type of dogs and other animals kept, and when this use ceased).

14. Having regard to the evidence before me, with no other substantive evidence from the appellant or any lawful development certificate to the contrary, I am of the view that it is most likely that the current lawful use is agricultural. Accordingly, I cannot reasonably conclude the site would constitute previously developed land as defined in the National Planning Policy Framework (2019) (the Framework), and so the proposed development could not be compliant with Policy CO4 B) as a matter of principle, even if other elements of that policy were satisfied by the development.

15. Therefore, for the reasons set out above the proposed new building would be contrary to Policy DC11 of the CSDCP, resulting in harm by reason of introducing a market dwelling as a new use, and increasing the footprint and volume of development in the Rural Area that has a detrimental effect on the intrinsic rural character of the countryside. For similar reasons the proposed development is also contrary to Policy CO4 of the CDLP.

16. The appellant is of the view that the whole site is too small to be used as a farm and that the buildings on site should be put to alternative uses otherwise, they could deteriorate and collapse. However, there is no substantive evidence before me to demonstrate this and it doesn't represent an overriding reason to allow the development before me.

*Highway access*

17. The third reason for refusal in the Council's decision notice is due to the appellant's application plan not showing a suitable access required by Policy DC11 of the CSDCP. Plan/drawing nos. A4/4679/b/205 (Site Plan) and A4/4679/b/206 (Location Plan) submitted with the application indicate the appeal site area outlined in red, which whilst being bound by the public highway to the south does not indicate details of how the development would be accessed from the public highway. There is an indication of internal access gates to the new dwelling into the farm yard area to the north west, but no land within the appeal site that would allow egress from these gates to the highway in a demonstrably safe manner.

18. The appeal statement confirms that the appellant proposes to use the existing access to the farm, highlighting that the Highway Authority has not objected to the proposed development. I have noted the Highway Authority's consultation response to the planning application. I am also aware that in appeal reference APP/W1525/W/19/3231283, the same appellant appears to secure an access within his control. However, for the reasons set out in the procedural matters section above, I am simply not able to accept the plans that encompass the appellant's suggested access as part of this appeal. Therefore, whilst it appears highly likely that a safe and suitable access could be provided, it is not part of the planning application.

19. For the reasons set out above the proposed development would not be able to secure a safe access, and it would not be compliant with Policy DC11 ii) of the CSDCP as it would not be served by a metalled or otherwise suitable access.

20. Even if I were to have based my decision upon the amended proposals or A4/4679/b/208, and agreed a safe access can be secured (as suggested by the Highway Authority), this would not outweigh the harm set out above in respect of the rural area.

**Other Matters**

21. The appellant has submitted an Ecological Appraisal which considers the impact of the proposals upon biodiversity on and close to the appeal site. It concludes that there are no bats using the appeal site barn, but that some might be using an adjacent barn. Subject to safeguards during construction, the appeal proposal would be unlikely to result in harm to protected species on or adjacent to the site. However, reason for refusal No 4 on the Council's decision notice relates to a failure to address the impact of the development on the Blackwater

Special Protection Area (SPA) and Ramsar site either through submitting any ecological evidence to inform a Habitat Regulation Assessment, or a contribution towards mitigation measures.

22. Subsequently the appellant agreed to pay a financial contribution and provided a completed and signed Section 106 Unilateral Undertaking to secure a contribution towards mitigation measures for the SPA and Ramsar site. However, in light of my findings on the main issues above, it is not necessary to look at this matter in detail, given that the proposal is unacceptable for other reasons.

23. The appellant has submitted a Phase 1 Environmental Desk Study Report which sets out the site is located in an area of low environmental sensitivity for controlled water receptors, and potential for and safeguarding measures in respect of contamination. The Council's adviser refers to the requirement for further investigations, an asbestos survey, and a planning condition, if permission had been granted. However, given the development is unacceptable for other reasons I have not considered this matter in further detail.

**Conclusions**

24. The proposed development would be contrary to the development plan and there are no other considerations, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

*Dan Szymanski*

INSPECTOR