



Appeal Decision

Site visit made on 21 January 2021

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2021

Appeal Ref: APP/W1525/W/20/3250692

Rolphs Farm, Blasford Hill, Little Waltham, Chelmsford, CM3 3PF

- 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 Philip Cunningham against the decision of Chelmsford City Council.
 - The application Ref 19/01952/FUL, dated 25 November 2019, was refused by notice dated 13 February 2020.
 - The development proposed is the demolition of existing buildings and erection of a replacement dwelling, with associated landscaping and car parking.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The second reason for refusal relates to the location of the appeal site within the zone of influence of the Essex Estuaries Special Area of Conservation (the SAC), which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Within the emerging Essex Coast Disturbance Avoidance & Mitigation Strategy strategic mitigation measures are incorporated to be delivered to avoid adverse impacts. This is achieved by financial contribution which, at the time that the planning application was refused, the appellant had neither provided a Unilateral Undertaking to ensure this, nor a monetary sum. Subsequently the appellant has submitted a receipt from the council which shows that the requisite sum of £125.58 in respect of 1 dwelling has been paid, which satisfies the requirement. Therefore, the second reason for refusal has been overcome.

Main Issues

3. The main issue in this case is the effect of the proposal on the openness of the Green Wedge within which the site is situated and the character and beauty of the countryside, when considered against the local plan policy governing replacement buildings.

Reasons

4. The appeal site is a roughly rectangular parcel of land located on the eastern side of Main Road/B1008, which is an arterial route leading out of the City of Chelmsford. The appeal site is on the northern edge of a cluster of buildings formed around a farmyard. Access to the site is taken from Main Road and

also serves the farm buildings to the south. The site contains two existing buildings; the first is a small low level red brick building with a dilapidated but substantial corrugated roof. The second is a pole barn type structure, the roof standing on concrete supports which are part of a portal frame, with no walls or sides.

5. Chelmsford Local Plan 2013 – 2036 (CLP) was formally adopted on 27 May 2020. It replaces the previous development plan documents. Since the examination of the CLP was concluded after the publication of the 2019 version of the National Planning Policy Framework (the Framework), it must be considered to be in accord with the Framework. The council's first reason for refusing the application quotes policies from the then emerging plan. In view of the adoption of the CLP, it is the policies in that document that must be used in considering this appeal. It should be noted that the numbering of policies has changed from the pre-submission document
6. The primary policy of relevance to this appeal is Development Management Policy 7 (DM7) which concerns new buildings and structures in the Green Wedge. Policy DM7 states that planning permission will be granted for new buildings and structures in the Green Wedge where the development does not conflict with the purposes of the Green Wedge and the development is for a number of listed development types. Bullet points set out such development types that are acceptable in the Green Wedge; it is bullet point xi of part A that is of relevance to this appeal in that it lists replacement buildings which come within Part C of the Policy.
7. Beyond the primary designation of the Green Wedge, the site is also located within the Rural Area (countryside), wherein Development Management Policy 8 (DM8), concerning new buildings and structures in the Rural Area (part A, xiii), applies. The Policy states that Planning permission will be granted for new buildings and structures in the Rural Area where the development will not adversely impact the identified intrinsic character and beauty of the countryside and where the development is for replacement buildings in accordance with Part C of this Policy.
8. The first 3 criteria of Part C of Policies DM7 and DM8 are the same, with an additional criterion in DM7. It is only necessary for me to set out part C of DM7, since this covers all the material matters:
DM7 C) Replacement buildings
Planning permission will be granted for the replacement of a building provided that:
 - i. the existing building being replaced is of permanent and substantial construction; and*
 - ii. the new building is in the same use as the existing; and*
 - iii. the new building would not be out of keeping with its context and surroundings, and does not result in any other harm and;*
 - iv. the new building is not materially larger than the one it replaces.*
9. I will deal with each criterion in turn: i. permanent and substantial construction. The council accepts that the red brick building is of a permanent and substantial construction, such that it complies with this element of the Policy. However, the council considers that the pole barn structure fails this test, stating that the structure does not represent a building having regard to the case of R (Hall Hunter Partnership) v FSS & Waverley BC 2007. This is

authority that there are three primary factors relevant to the question of whether there is a building: size, permanence and degree of attachment to the ground. Taking these factors into account, the barn is of considerable size, it is obviously well attached to the ground, and has every appearance of a structure capable of remaining unchanged indefinitely. Criterion i. is met.

10. I can take criterion ii. very quickly: the new building would not be in the same use. Criterion iii) requires a planning judgement as to whether the proposed building would be out of keeping with its context and surroundings. Since the context of the appeal site is that of the rural area and its immediate surroundings are of buildings that have the characteristics of a farm complex and open agricultural fields, and the proposal is for a dwelling of modern appearance, I conclude that it would be out of keeping with its context and surroundings.
11. The fourth criterion in Policy DM7 is that the new building should not be materially larger than the one it replaces. In this context, it seems to me that it is necessary to consider that 2 buildings are being replaced (see my comment below at paragraph 16). Whilst I have not been given the dimensions of the pole barn, the council only comparing the size of the proposed dwelling with the brick building, from my view of the 2 buildings at my site visit and the dimensioned drawings of the proposed dwelling, I am satisfied that the proposal is not materially larger than that which it replaces.
12. It must be noted that both policies include an 'and' between each criterion, and therefore the proposed development is expected to meet all 3, or 4 in the case of Policy DM7, of the criteria. The new dwelling clearly fails 2 criteria in both policies, which means that the appeal proposal is contrary to both policies that are part of the newly examined and adopted CLP.
13. There are a number of statements and contentions made on behalf of the appellant that I need to deal with. It is contended that the proposal is not for a new use, because the red brick building benefits from a Class Q permission for the change of use of the building to residential, approved on 18 October 2018 (Council ref. 18/01754/CUPAQ). I cannot accept this, since the Class Q development has not been implemented, the permitted dwelling does not exist, and the existing use of the building remains agricultural. Furthermore, since the Class Q proposal has not been implemented, there is no sense in the appellant's statement that 'the current application seeks to demolish the approved dwelling to be created from the red brick building and replace it with a new dwelling', it is the existing red brick agricultural building that it is proposed to demolish.
14. Following from the reference above to the Class Q permission, the appellant draws attention to a recent appeal decision that is considered to be persuasive in the present case. In that decision (reference APP/D3830/W/16/3156030, dated 24 January 2017), allowing a new dwelling as a replacement for an agricultural building, the Inspector took into account, as being of critical importance, the fact that prior approval had been granted by the council for the change of use of an agricultural building to a dwelling. His conclusion rested on no net addition of dwellings; no significant effects on the suitability of the location for residential development compared to the permitted scheme; and although the proposal before him would conflict with the council's planning policies and with relevant elements of the Framework, the conflict was

outweighed by the existence of the previous permission and that no substantive conflict would arise with the development plan taken as a whole.

15. I observe that the appeal referred to was against the decision of a different council, with different policies and the site was situated in countryside with no specific landscape designation. The proposal in that appeal was on the same site as the Class Q permission and effectively of the same size; in that respect it differs from the current appeal in which the site of the proposed dwelling (largely on the footprint of the pole barn), is not the same as the Class Q permission site. All in all, I receive little assistance from my fellow Inspector's decision. In this case the Class Q permission simply stands as a fall-back position, as a material consideration; but of little consequence since its implementation would be materially smaller and less damaging than the appeal proposal.
16. That leads me to the statement that 'it is not being proposed to replace the existing pole barn with a replacement building, the removal of the barn structure is offered as a benefit which can be secured through the replacement dwelling application'. This makes no sense when the proposed dwelling the subject of this appeal is substantially over the site of the pole barn, and the development could not take place without the demolition of the barn. Effectively the new dwelling replaces, at least in part, the pole barn. I also note the terms of the application when describing the development for which planning permission is sought - the demolition of existing buildings and erection of a replacement dwelling. This can only mean – demolish 2 buildings and replace them with 1 dwelling.
17. My attention has been drawn to an allocation in the CLP for housing development - Strategic Growth Site 8 (Land North of Broomfield). This allocation is on the western side of Main Road, in part opposite the appeal site, with a masterplan submitted to the council by Bloor Homes for 450 dwellings, infrastructure, etc. It is suggested that the appeal site would become more visible due to this strategic development, with its character and appearance changing significantly. In my view the strategic development makes it more important to maintain the rural and agricultural character on the east side of Main Road. The strategic site is part of a plan for the area as is the Green Wedge in which the appeal site sits; ad hoc development does not assist in the achievement of the aims of CLP.

Conclusions

18. Having taken account of all other matters raised, I conclude that the appeal proposal conflicts with CPL Policies DM7 and DM8 and that there are no considerations that override the harm to the openness of the Green Wedge and the character and beauty of the countryside that would occur should the appeal development be allowed. I therefore dismiss the appeal.

Terrence Kemmann-Lane

INSPECTOR