



Appeal Decision

Hearing Held on 17 November 2020 and 23 February 2021

Site visit made on 24 February 2021

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 8 March 2021

Appeal Ref: APP/X1545/W/20/3245811

Clarks Farm, Wash Lane, Little Totham CM9 8LX

- 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 S Cobb against the decision of Maldon District Council.
 - The application Ref FUL/MAL/19/00772, dated 8 July 2019, was refused by notice dated 3 September 2019.
 - The development proposed is change of use from a veterinary building to a two bedroom residential dwelling (Class C3) for an assistant manager of the associated greyhound business.
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Decision

1. The appeal is allowed and planning permission is granted for Change of use from a veterinary building to a two bedroom residential dwelling (Class C3) for an assistant manager of the associated greyhound business at Clarks Farm, Wash Lane, Little Totham CM9 8LX in accordance with the terms of the application, Ref FUL/MAL/19/00772, dated 8 July 2019, subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, 01, 02 and 07/0612/01.
 - 3) The occupation of the dwelling hereby permitted shall be limited to a person solely working, or last working, in connection with the keeping of greyhounds on the site or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
 - 4) Full details of the provision and subsequent retention of both hard and soft landscape works on the site shall be submitted to and approved in writing by the local planning authority prior to any works occurring above ground level at the application site. These details shall include:

Soft landscape works

 - i) Details of proposed schedules of species of trees and shrubs to be planted, planting layouts with stock sizes and planting numbers/densities.
 - ii) Details of the planting scheme implementation programme, including ground protection and preparation, weed clearance, stock sizes, seeding

rates, planting methods, mulching, plant protection, staking and/or other support.

iii) Details of the aftercare and maintenance programme.

The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the occupation of any part of the development hereby approved unless otherwise agreed in writing by the local planning authority. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted in its replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written consent to any variation.

Hard landscape works

iv) Details of walls with brick types, construction design and dimensions

v) Details of paved surfacing, with materials finishing and edgings

vi) Details of street furniture, with designs materials and dimensions

The hard landscape works shall be carried out as approved prior to the first use/occupation of any part of the development hereby approved and retained and maintained as such thereafter.

- 5) Details of the siting, height, design and materials of the treatment of all boundaries including gates, fences, walls, railings and piers shall be submitted to and approved in writing by the local planning authority prior to first use/occupation of the development hereby approved. The screening as approved shall be constructed prior to the first use/occupation of the development to which it relates and be retained as such thereafter.
- 6) Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking or re-enacting that Order) no garages, extensions or separate buildings (other than incidental outbuildings not exceeding 10 cubic metres in volume) shall be erected within the site without planning permission having been obtained from the local planning authority.

Applications for costs

2. Applications for costs have been made by Maldon District Council against Mr S Cobb and by Mr S Cobb against Maldon District Council. These applications are the subject of separate Decisions.

Preliminary Matters

3. During the first day of the Hearing, on 17 November 2020, the appellant submitted a financial projection for an ongoing 12 month period. Given the relevance of the information to the case I accepted the document. However, due to the technical nature of the contents it was necessary to adjourn the hearing to a later date to allow the Council an opportunity to properly consider the document. The Hearing was reconvened on 23 February 2021.

4. The proposal would provide a dwelling for a member of staff employed at the greyhound rescue centre with which it is associated. Occupancy would be linked to that employment and I have considered the proposal on that basis.

Main Issues

5. The main issues are: -

- Whether there is an essential need for a rural worker to live permanently at the appeal site; and: -
- The effect of the proposal on the local economy.

Reasons

Suitable location

6. The proposal site is part of a small group of buildings located to the west of Wash Lane, including an existing dwelling, known as Oakbury, that operate as a greyhound rescue centre. The appeal building, which has permission to operate as a veterinary medical centre open to the general public, forms part of the larger greyhound rescue centre and is set back slightly from the carriageway behind a modest grassed area and recently planted hedge.
7. The building that is the subject of this appeal is a timber clad single storey building with a slate roof. At the Hearing it was agreed that the works to the appearance of the building had already taken place and so there would be no further alteration to its external appearance.
8. The site is situated outside any settlement boundary and is defined as countryside by the development plan. It is therefore in the countryside for the purposes of applying the policies in the development plan.
9. Policies, including S1, S2 and S8 of the Maldon District Approved Local Development Plan 2014–2029, adopted in 2017 (the Development Plan), set out the Council's spatial strategy. Together these policies seek to concentrate housing development on suitable sites in towns and villages where housing, employment and other facilities can be provided close together with the aim of minimising the length and number of trips by motor vehicles and to protect the countryside from unsuitable development, seeking to locate development within identified settlement boundaries.
10. However, whilst seeking to protect the countryside for its landscape, natural resources and ecological value as well as its intrinsic beauty, Policy S8 allows for the development of essential workers' accommodation (in accordance with Policy H7).
11. Policy H7 of the Development Plan allows permanent accommodation to be developed in the countryside related to and located in the immediate vicinity of a rural enterprise. Acceptability is subject to evidence being submitted to demonstrate that there is an existing business-related functional need for a full-time worker in that location; that there are no suitable alternative dwellings available, or which could be made available in the area to serve the identified functional need; and, it can be demonstrated that the enterprise is a viable business with secure future prospects.

12. This policy further requires that the size and nature of the proposed structure is commensurate with the needs of the enterprise concerned and that the development is not intrusive to the countryside, minimising adverse impact upon the character and appearance of the area, and is acceptable when considered against other planning requirements.
13. The greyhound rescue centre, in addition to caring for the greyhounds for which it was principally established, has expanded to receive stray dogs gathered by the police, local authority and others. These strays can be brought to the rescue centre at very short notice and at all times of the day and night, throughout the year and could be of any size, temperament and emotional state.
14. The greyhound rescue centre would also have a responsibility to ensure that the needs of the dogs within its care, both the greyhounds and strays, would be catered for by suitably qualified staff and we heard that care includes medical care, such as post-operative care carried out at the premises.
15. Notwithstanding that the frequency of need is somewhat more unpredictable and less seasonal than, say, a traditional farming operation such as lambing, I am satisfied that there is an essential functional need for the presence of a suitably qualified member of staff to be at or near the business at all times to cater for the needs of the dogs and that, in the absence of such provision suffering and distress may result to the dogs.
16. Oakbury is occupied by the appellant and his partner, and its occupancy is tied to the greyhound rescue operation by a planning condition. The appellant confirmed at the Hearing that he has become elderly and his health is deteriorating, making it difficult for him to fulfil the more physical demands associated with the operation of the business.
17. Mr Cobb would, however, still be associated with the business, by carrying on with bookwork and administration, and thus the condition on Oakbury, requiring occupancy in association with the business would still be fulfilled.
18. There is no substantive evidence before me to demonstrate that the need established to justify the building of Oakbury has gone and that a presence on site is no longer necessary. Given the deterioration in Mr Cobb's health it is not possible for him to continue to carry out the more physically demanding jobs.
19. Oakbury is a modest chalet bungalow with three bedrooms. The appellant and his partner live alone, but occasionally have their grandchildren to stay. Given the modest accommodation provided by Oakbury the use of the building by anyone not a close family member, possibly even a small family, would be unacceptably intrusive. Thus co-use by an additional occupier would be unacceptable. Similarly, requiring the Cobbs to leave their family home to allow occupancy would be disproportionate given that they are not in breach of any planning condition.
20. No other suitable living accommodation within the site for staff was identified, other than that proposed by the appeal scheme. Whilst there was no clear evidence to demonstrate whether accommodation could be bought or rented in the immediate vicinity, the site lies within an area of only sporadic development and, at the Hearing, I heard that there is limited access to modes of transport other than the private car. Further, the roads linking the proposal

to nearby settlements are narrow and constrained in width and reliant upon passing places to allow two-way flow. They also lack footways and street lighting and are subject to 60MPH speed limits. Given these constraints, it is unlikely that anyone living further afield would be able to access the site quickly to take in stray dogs or deal with a medical emergency.

21. The proposal would provide a modest bungalow, with two bedrooms and would be suitable for occupancy by a small family. There is nothing before me to demonstrate that such a modest building is excessive in terms of the level of accommodation.
22. It was agreed at the Hearing that the physical appearance of the dwelling has already been altered by works and what I saw during my site visit would reflect the final form of the building. The existing building has a rural appearance and exists within the street scene. The works would not, therefore change this. The proposal would re-use an existing, permanent building, meaning that no new building would be required to meet the aspirations of the appellant.
23. The garden for the dwelling would be screened from Wash Lane by a close boarded fence, some 2.2 metres high. There are no examples of such fences nearby. However, such a structure, in the semi-rural setting of farm buildings, the greyhound rescue centre and bungalows, which is of mixed appearance, would not of itself be so incongruous as to engender material harm.
24. The use of the building would change from business to residential, introducing the paraphernalia of living accommodation. However, this would be, for the most part, concealed by the fence. Further, the proposal would be accessed only through, and in association with, the existing greyhound rescue centre. The site is screened from the wider area by existing planting and built form and so views from the wider area are severely limited. Thus, the perception of the use of the site by passers-by on Wash Lane would not be altered to any appreciable degree.
25. The appellant has provided financial information relating to the operation of the greyhound rescue centre, including a financial projection for an ongoing 12 month period prepared by his accountant, who appeared at the Hearing to take me through that document.
26. The Council expressed concerns regarding the accuracy and the clarity of the evidence provided by the appellant. However, during the Hearing I was able to get some clarification and additional detail on the information provided from the appellant's accountant.
27. The business operates as a charity, and so its income is dependent, in significant part, upon donations which are of infrequent and unpredictable nature and any point of assessment represents a snapshot in time. The business also relies significantly on the willingness and dedication of staff and the operators, who would not receive the financial recompense and returns that would usually be expected from an enterprise run on a fully commercial basis. This notwithstanding, the income and expenditure predictions demonstrated to my satisfaction that, even taking into account the increase in staffing levels with commensurate salaries and the need to provide an income for the appellants, there is a reasonable expectation of the continuance of operation of the greyhound rescue centre.

28. Bringing these matters together, the proposal would, given the appellant's failing health, provide accommodation for an employee of the greyhound rescue operation whose physical presence is necessary at all times to provide for essential needs and comfort of the dogs kennelled there and brought in as strays. Further, without this presence, the health and wellbeing of the animals would be at risk and the longevity of the charity could be in jeopardy without the permanent on-site presence of a suitable member of staff. Other means of accommodating such a member of staff are impractical or would result in the loss of the appellant's family home or severe disruption of his family life.
29. The proposal would not have an unacceptable impact upon the character and appearance of the site and the surrounding area. The operation of the site as a greyhound rescue centre has, on the balance of the evidence before me, a reasonable certainty of continuance.
30. The site lies in an area of sporadic development, with very limited services within the small groups of buildings or settlements and future occupiers of the site would, in all likelihood, have a heavy dependency on the private car to satisfy their day-to-day needs. The established planning use of the building would attract a level of daily need to travel by employees and, as the veterinary practice was available to the wider public, visiting customers. Notwithstanding that the occupier would be directly employed at their place of abode, they and any family associated with them would generate day-to day travel needs. Given the likely level of occupation, the existing number of trips associated with the building would decrease overall. There would, therefore, on the basis of the evidence before me, be no overall harm resultant from the transport needs of the occupation of the building for residential purposes when compared to the existing use.
31. In any case Policies S8 and H7 of the Development Plan allow the development of housing in support of rural businesses where it would not otherwise be allowed and so such concerns, in the face of demonstrable need, fall away.
32. I therefore conclude that the proposal is a suitable location for a dwelling for a rural worker to live permanently at their place of work as it complies with Policies S1, S8 and H7 of the Development Plan. The proposal also complies with Policies T1 and T2 of the Development Plan which seek to ensure that development is provided with safe and sustainable transport. The relevance of Policies T1 and T2, would, in any case, diminish in face of the support for the proposal as a rural exception site.

Local Economy

33. The existing use of the building, as a veterinary medical centre, provides employment in the local area. Policy E1 of the Development Plan requires the retention of existing employment uses unless certain circumstances apply.
34. Whilst the policy would allow the use to change if the present use and activity on site significantly harms the character and amenity of the adjacent area, there is no evidence before me to demonstrate that this would be the case.
35. The policy seeks to resist conversion to other uses unless the site has been marketed effectively at a rate which is comparable to local market value for its existing use, or as a redevelopment opportunity for other Class B Uses or Sui Generis Uses of an employment nature, and it can be demonstrated that the

- continuous use of the site for employment purposes is no longer viable, taking into account the site's existing and potential long-term market demand for an employment use.
36. The appellant explained that attempts have been made to attract other veterinary practices but has not managed to attract an occupier due to the location of the building and changes in business practice amongst veterinary businesses. Similarly he has contacted local estate agents, but they have expressed no interest in marketing the business. There are, however, no supporting details of this correspondence before me to demonstrate that what was being put forward was a comparable offer on the market to the existing use.
37. This lack of evidence notwithstanding, the proposal lies in a sparsely settled area, accessed by narrow roads. It is reasonable to assume that the site is unlikely to prove a desirable location for many businesses.
38. Conversion would be allowed if the site would have a greater benefit to the local community if an alternative use were permitted. The proposal would provide a small residential property of a type that would meet an identified need and demand in the District. Whilst there is no evidence before me of a specific identified need for market housing in the immediate locality of the proposal, and the new dwelling would only be available to an employee of the greyhound rescue centre, the development would have potential to free up accommodation of a similar scale elsewhere in the wider District.
39. The greyhound rescue operation provides employment in the local area. Similarly the operation of the site provides ongoing economic support to nearby businesses, such as veterinary surgeries and suppliers. Further, the greyhound rescue centre provides a service to the Council by taking in stray dogs, allowing them to fulfil their legal obligations in this regard, and also provides dogs for use in education at Writtle College. These are benefits to the local economy which, were the greyhound rescue operation to fail, would be lost. Whilst the development would provide no absolute certainty of the continuation or failure of the greyhound rescue operation the proposal would support the continued operation of the existing wider site and make its future more certain.
40. As discussed above, there would be minor benefits to the community resultant from a likely reduction in the overall number of traffic movements associated with the site. There would, however, be disbenefits resultant from the permanent loss of the existing veterinary medical facility and the employment and economic activity associated with it, albeit that the facility closed some time ago and there is doubt that a future business occupier could be found.
41. The location does not, by virtue of its poor transport connectivity, provide an obviously attractive employment site and, taken in the round, the proposal would have a greater benefit to the local community than its current or putative employment use.
42. I therefore conclude that the proposal would not have a harmful effect on the local economy and would accord with the requirements of Policy E1 of the Development Plan in as much as this requires proposals to have a greater benefit to the local community.

Conditions

43. I have had regard to the planning conditions suggested by the Council and these were discussed at the Hearing. Whilst works have been carried out on site, occupancy resulting in a change of use has not occurred. In the interests of certainty I have retained the standard condition stipulating time limits and I have also placed a condition upon the development requiring that it be built in accordance with the approved plans.
44. I have also included conditions requiring the submission of soft and hard landscaping details, and boundary treatments. These are necessary for the avoidance of doubt, in the interest of certainty, and to ensure that the development will be appropriate to the character of the area.
45. The Council has proposed a condition limiting occupation of the dwelling to a person solely working in connection with the keeping of greyhounds on the site or a widow or widower of such a person, and to any resident dependents. However, whilst a condition limiting occupancy is necessary to ensure that the proposal fulfils its intended purpose in providing accommodation for a worker and this function provided justification for the development within the countryside, the Council's wording, as proposed, is unnecessarily restrictive, and would have required vacation of the premises were the employee to lose their job for any reason. The loss of home would have been a severe and unfair result of such circumstances. I note that the corresponding condition governing the occupation of Oakbury does not allow its occupiers to stay after retirement and so allowing persons last employed by the greyhound rescue centre to occupy the new dwelling will introduce a degree of flexibility into the site to cater for such circumstances, whilst retaining overall control of occupancy.
46. I have included a condition restricting permitted development on the site. This is necessary to restrict the scale of buildings within the site to protect the character and appearance of the site and the surrounding area.
47. These conditions correspond to conditions suggested by the Council. However, I have amended the wording for clarity.

Conclusion

48. For the reasons given above I conclude that the proposal would adhere to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, this appeal has succeeded.

I Dyer

INSPECTOR

FOR THE APPELLANT:

Mr S Cobb	Appellant
Mr Raymond Stemp	Raymond Stemp Associates Ltd
Ms Julie Lawless	Raymond Stemp Associates Ltd
Ms Emily Bailey	Raymond Stemp Associates Ltd
Mr Shun Chong	Wilson Devenish

FOR THE LOCAL PLANNING AUTHORITY:

Hannah Bowles	Development Management Maldon District Council
Matt Leigh	Lead Specialist, Place, Maldon District Council

INTERESTED PERSON

Cllr Robert J S Long MBE	Parish Councillor, Tolleshunt Knights
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Documents submitted at the Hearing:

- 49. CLARKS FARM GREYHOUND RESCUE CENTRE FINANCIAL PROJECTION FOR ONGOING 12 MONTH PERIOD (12 November 2020).
- 50. Staff qualifications: Hannah Marco.
- 51. Bus services Tollesbury-Maldon Route 95 Route maps and timetables.