



Appeal Decision

Site visit made on 13 July 2021

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 10th September 2021

Appeal Ref: APP/X1545/W/20/3261241

Land south of The Old Dairy, Southminster Road, Burnham-on-Crouch, CM0 8QB.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr K J Dymott and Ms Carol Young against the decision of the Maldon District Council.
 - The application Ref. OUT/MAL/20/00309 dated 10 March 2020, was refused by notice dated 8 June 2020.
 - The development proposed is the erection of a detached dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a detached dwelling on land south of The Old Dairy, Southminster Road, Burnham-on-Crouch, CM0 8QB, in accordance with the terms of the application, Ref OUT/MAL/20/00309, dated 10 March 2020, and the plans submitted with it, subject to the conditions set out in the schedule attached at the end of this decision.

Preliminary matters

2. The application is in outline with access and scale for consideration now as shown on the submitted plans. The submitted plans identify scale by way of elevational treatment and floor plans as an indication of the proposed dwelling.
3. The site falls within the Zone of Influence for one or more European designated sites scoped into the emerging Essex Coast Recreational Disturbance Avoidance Mitigation Strategy (RAMS). It is the council's duty as a competent authority to undertake a Habitats Regulations Assessment (HRA) to secure any necessary mitigation and record this decision within the planning documentation. Any new residential development has the potential to cause disturbance to European designated sites and therefore the development must provide appropriate mitigation. This is necessary to meet the requirements of the Conservation of Habitats and Species Regulations 2017.
4. The RAMS SPD requires that a tariff of £127.30 (index linked) is paid per dwelling unit, to be transferred to the RAMS accountable body in accordance with the RAMS Partnership Agreement. At the time the council refused planning permission, this fee had not been paid, hence the second reason for refusal. That remained the case when the appeal was submitted. However, I have been advised that the required £207.30 has now been paid to the council, which

includes a £30 checking fee and £50 monitoring fee. Thus as the competent authority in this matter, I am satisfied that the necessary mitigation can take place, and the second reason for refusal has been overcome.

Main issue

5. There is now one main issue in this case: the suitability of the appeal site for a dwelling taking into account the location outside of the defined settlement boundary and the adjacent grade II* listed church.

Reasons

Site and surroundings

6. The appeal site is situated on the edge of Burnham-on-Crouch, but beyond the settlement boundary, the nearest point of which, at the junction of Southminster Road with Church Road and Marsh Road, is some 80m away. At the front of the site, to the west is the substantial complex of Ormiston Rivers Academy, which is also outside the settlement boundary. At the rear of the site, to the east, is the Parish Church of St Mary the Virgin, which is listed as grade II*. To the front of the church, to the south, is a metalled access and parking area with an open grassed area on either side, notated on the Maldon Local Development Plan (LDP) Policies Map as an Amenity Green Space. The western half of this abuts the southern boundary of the appeal site. To the north of the appeal site is 'The Old Dairy', from within the curtilage of which the appeal site is taken. The Old Dairy is the appellants' dwelling; it also has within its grounds old farm buildings. North of this, abutting the curtilage of The Old Dairy, is the access to Hall Farm, beyond which is open farmland, with a width of some 130m or so, before the southern settlement boundary of a detached part of Burnham-on-Crouch is reached.
7. In connection with the setting of the appeal site, it is relevant to note that there are allocations of Strategic Growth Areas under policy S2 of the LDP. One is for a minimum of 90 dwelling with its western boundary abutting the grounds of St Mary's Church and Hall Farm. In addition, there is a further Strategic Growth Area, for 180 dwellings, that runs to the west from Southminster Road, beginning opposite the entrance to Hall Farm.

The suitability of the appeal site for a dwelling taking into account the location outside of the defined settlement boundary and the adjacent grade II* listed church

8. It will be seen from the description that I have given in paragraph 6 above that the appeal site effectively adjoins the built up area, taking into account the complex of Ormiston Rivers Academy opposite and the built up area on both sides of Marsh Road, with only the amenity green space between. Burnham-on-Crouch is one of the main settlements in the district with all the usual facilities and services of such a town, and linkages with other settlements. As a location, the site is as sustainable as the allocated Strategic Growth Areas that I have referred to in paragraph 7 above. An officer's report has been referred to, dealing with a planning application for the development of Strategic Growth Area S2k, just to the east, which recommends permission, subject to a s106 agreement. I am told that this permission has not yet been issued, but it seems inevitable, and highly desirable, that this allocation will be developed within a reasonable timeframe. The fact that the allocation has come through

the development plan process, rather than a planning application, to my mind only increases the importance of its eventual effect on the immediate area, and is a recognition of its sustainability.

9. The appeal site cannot reasonably be described as being in open countryside, although I appreciate that LDP policy S8 indicates that outside defined settlement boundaries housing will not normally be allowed, because the countryside will be protected for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. I am clear that the appeal proposal would not be harmful to the countryside landscape, its natural resources and ecological value, or its intrinsic value and beauty.
10. Turning to the effect on the heritage asset, which is the grade II* listed church, the appeal site is separated from this and its cemetery by an area of garden land belonging to the host dwelling, and an accessway that runs along the western boundary of the church. There is screening between the site and the church which could be retained and if necessary enhanced by way of a condition. The officer's report suggests that there would be less than substantial harm to the listed building, simply on the basis of insufficient screening between the proposed bungalow and the church, apparently ignoring the specialist conservation and heritage officer's advice.
11. The conservation and heritage officer concluded that *"this proposal will cause no harm to the significance of the heritage asset. It is therefore compliant with the policies set out in Chapter 16 of the NPPF and Policy D3 of the Maldon LDP."*; and *"In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Council must have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. For the reasons outlined above, I advise that the proposal poses no conflict with this objective"*. In my judgement this officer's conclusions are correct, and there would be no harm to the significance of the heritage asset, and the s66(1) obligation is met.

Conclusion

12. In the light of the considerations that I have dealt with above, I conclude that the appeal site is suitable as the location for a dwelling, having taken into account the fact that it is outside the defined settlement boundary, that it will not be harmful to the landscape, natural resources and ecological value of the countryside, as well as its intrinsic character and beauty, and that it would not harm the significance of the adjacent grade II* listed church of St Mary the Virgin. Therefore I will allow the appeal.

Conditions

13. The council has suggested a number of conditions that it considers should be imposed on any planning permission. I have considered these in the light of Planning Practice Guidance (PPG). To ensure compliance with PPG I have amended some of the text.
14. I am imposing the following conditions. Conditions 1, 2 and 3 are required because the application was in outline and to comply with the statutory requirements. Condition 4 requires a construction method statement and is a pre-commencement condition. This is necessary to ensure that the development is carried out without obstructing or causing safety hazards on

the adjacent highway, and is necessary before any work begins. The appellant has agreed to the imposition of this condition. Condition 5 is required to ensure that adequate screening of the development takes place for the benefit of the living conditions of the occupiers and for those in adjoining premises. Whilst screening might be included in landscaping, I consider that it should be included at this stage for certainty. Condition 6 is to provide clarity as to the car parking provision that will be required in the reserved matters submission, to ensure that adequate provision is made so that the scheme does not lead to on-street parking that would lead to inconvenience and safety concerns. Condition 7 is to ensure that no raising of ground levels takes place without full consideration of any possible harmful effect on the setting of the adjacent grade II* listed church. Conditions 8 and 9 are necessary to protect the setting of the listed church and to safeguard the living conditions of neighbouring occupiers.

15. In addition to the conditions suggested by the council, I am imposing a condition requiring that the reserved matter of landscaping includes details of screening, including on the boundary of the appellants own boundary with the accessway between the site and the church, to ensure that the setting of the church is safeguarded. The appellant has made reference to such a condition.
16. There are conditions that the council has suggested that I consider are not necessary. The reserved matters include appearance, which will include the details of the external materials to be used in the development, and therefore a separate condition is not necessary; nor is there any clear justification in this case for the submission of a condition relating to a surface water drainage scheme since this will be dealt with under building regulations.

Terrence Kemmann-Lane

INSPECTOR

SCHEDULE of CONDITIONS

1. The development shall be carried out in accordance with plans and particulars relating to the appearance, landscaping, and layout (hereinafter called "the reserved matters"), for which approval shall be obtained from the local planning authority in writing before any development is begun. The development shall be carried out fully in accordance with the details as approved.
2. Application(s) for the approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
3. The development hereby permitted shall be begun within two years from the date of the final approval of the reserved matters. The development shall be carried out as approved.
4. No development shall take place, including any ground works or works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials
 - iii. storage of plant and materials used in constructing the development
 - iv. wheel washing facilities
5. No works above ground level shall take place until details of the siting, height, design and materials of the treatment of all boundaries including existing hedging, gates, fences, walls, railings and piers have been submitted to and approved in writing by the local planning authority. The screening as approved shall be constructed prior to the first occupation of the development to which it relates and be retained as such thereafter.
6. The scheme to be submitted pursuant to the reserved matters shall make provision for car parking within the site in accordance with the Council's adopted car parking standards. Prior to the occupation of the development the parking areas shall be constructed, surfaced, laid out and made available for such purposes in accordance with the approved scheme and retained as such thereafter.
7. There shall be no raising of existing ground levels of the site without details being submitted to and approved in writing by the local planning authority.
8. 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.
9. 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 dormer window or other form of addition or opening shall be constructed in the roof of the building hereby permitted without planning permission having been obtained from the local planning authority.

10. The scheme to be submitted pursuant to the reserved matter relating to landscaping shall make provision for the continued screening of the site, including on a sufficient length of the boundary of the Old Dairy with the accessway that lies between that boundary and the church graveyard, so that the setting of St Mary's Church is safeguarded.