



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: 5th October 2021

Appeal Ref: APP/X1545/W/20/3262027

Gorwell Hall, Tollesbury Road, Tollesbury, Maldon, CM9 8RP

- 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 and Mrs Wyatt against the decision of the Maldon District Council.
 - The application Ref. FUL/MAL/20/00060 dated 15 January 2020, was refused by notice dated 1 May 2020.
 - The development proposed is the conversion of former cartlodge to form a dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of former cartlodge to form a dwelling at Gorwell Hall, Tollesbury Road, Tollesbury, Maldon, CM9 8RP in accordance with the terms of the application, Ref FUL/MAL/20/00060, dated 15 January 2020, subject to the conditions set out in the Schedule at the end of this decision.

Preliminary matters

2. The second reason for refusal refers to the absence of a necessary financial contribution towards the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy or an appropriate mitigation strategy to overcome the impacts of the development on the European designated nature conservation sites. Without such mitigation the proposed development would have an adverse impact on those European sites. However, I have been provided with evidence that the fee of £127.30 required to ensure that satisfactory mitigation takes place was paid on 29 September 2021. This satisfies the obligation of the competent authority to ensure that the required mitigation has been provided for. Thus the second reason for refusal falls away.
3. The appeal documents predate the recent revision to the National Planning Policy Framework (the Framework) that was published on 27 March 2021. As a result, the paragraph numbers quoted in the representations and this decision refer to the 2019 version of the Framework. I have not gone back to the parties because, while some paragraph and footnote numbers have changed, the meaning of those that I refer to remains the same. To enable easy comparison, where they are first mentioned, I have put in brackets the 2021 paragraph numbers following the 2019 numbers.

Main Issue

4. The main issue in the case is the suitability of the appeal site for a dwelling taking into account the 'tilted balance' of paragraph 11 of the Framework, the countryside location, and whether the value of the cartlodge as a heritage asset justifies its conversion as a means of securing its future.

Reasons

5. Gorwell Hall is a Grade II listed house dating from the 17th Century with extensions in the 18th Century. It is timber framed partly plastered and boarded, with a roof of handmade red clay tiles. Immediately alongside is a traditional timber Essex barn that was restored and converted into residential use. The cartlodge, subject of this appeal, is located within a field some 70m to the south of the Hall and Barn. As only the Hall is listed, which is within its own clear and identifiable curtilage, it is a moot point whether the cartlodge is actually curtilage listed. Other than being a contemporary structure to the Hall and adjoining Essex barn, there appears to be no other formal link between the two. There is no listed building consent application associated with the appeal proposal.
6. The cartlodge is of timber frame construction clad partly with horizontal and, in some places, vertical timber boarding. The roof is of corrugated sheeting. It is of five bays, of which two are open to the front and rear. The appeal documentation includes a structural condition report demonstrating the integrity of the building as sound, although subject to ongoing deterioration due to its exposure to the elements. The appeal site is about 0.2ha in extent and has well established hedgerows on the southern and eastern boundaries. The site is open towards Gorwell Hall and Barn, although enclosed by stock fencing.
7. Gorwell Hall, Gorwell Barn and the cartlodge lie at the end of an unmade track some 500 metres long, to the north of Tollesbury Road. This track also serves residential properties 'Gorwell Lodge' and 'Midlands'. The surroundings consist of agricultural land and open countryside. About 1 mile away, to the south east, is the settlement of Tollesbury and 1.3 miles to the north west is Tolleshunt D'Arcy, both with a range of facilities and services.
8. My attention has been drawn to a previous appeal decision of October 2018, reference APP/X1545/W/18/3196869, in respect of a proposal to repair and extend this cartlodge to form a single dwellinghouse and curtilage. The Inspector described the extension as being 'large and bulky, diminishing the rural character of the building'. That appeal was dismissed. I have not been supplied with the drawings that illustrated the previous proposal, and have little more than the description of the proposed development and the previous Inspector's comments. However, I regard the current appeal proposal as significantly different, and I am taking an unconstrained approach in my assessment of the merits of the current scheme.
9. The principal development plan policies, which are the starting point against which this appeal proposal should be judged, are S1 and S8 of the Maldon District Local Development Plan (MDDP). Policy S1 carries the presumption in favour of sustainable development, in line with the Framework. This policy covers a range of matters, the most relevant in this case being: "2) *Deliver a sustainable level of housing growth that will meet local needs and deliver a*

wide choice of high quality homes in the most sustainable locations; 10) Conserve and enhance the historic environment by identifying the importance of local heritage, and providing protection to heritage assets in accordance with their significance;".

10. Policy S8: 'Settlement Boundaries and the Countryside' sets out the hierarchy of settlements and provides clarification in terms of the types of development that may be more suitably located in the countryside with reference to other relevant policies within the MDDP. Within this, Tollesbury is identified as a 'Larger Village', whilst Tolleshunt D'Arcy is a 'Smaller village'. The main thrust of this policy, as far as development outside of settlement boundaries is concerned, is to protect the countryside for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. Outside of the defined settlements and allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided it is for - there then follows a list, of which the only relevant item is e) *"The re-use of a redundant or disused building that would lead to an enhancement to the immediate setting (in accordance with Policies E4 and D3);"*. I have not been given any indication of the terms of policies E4 and D3.
11. Of the other policies mentioned in the refusal reason, policy D1 deals with design quality, which is not an issue in this appeal, policy H4 concerns the effective use of land encompassing such matters as density, replacement dwellings, backland and extensions of residential curtilages into the countryside; but it also includes a section on 'Alterations, Extensions and Additions' which encourages maintenance of character and sustainability of the original building, keeping to an appropriate scale, and not losing important landscape, heritage features or ecology interests. Policy T2 is a general policy seeking to create and maintain an accessible environment, none of which is particularly pertinent to the issue in this case.
12. At the time that the appeal application was refused the council had undertaken a full assessment of the 5-Year Housing Land Supply in the district and it concluded that such supply was demonstrated. However, since then the supply has fallen. The council says the latest figure is at 4.9 years.
13. A housing land supply figure of under 5-years brings the 'tilted balance' set out in the presumption in favour of sustainable development at Framework paragraph 11, which for decision making means (at d) *"where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, (my emphasis) granting permission unless:*
 - i. not applicable here; or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole"*. (Footnote 8 refers to the 5 year land supply.)¹
14. A housing land supply of 4.9 years is obviously close to a 5 year supply, but the meaning of Framework paragraph 11 d) and footnote 8 is clear, where a 5 year supply of deliverable housing sites cannot be demonstrated, planning permission should be granted, subject to the provisos item ii. Of the policies

¹ Here I quote from the revised version of the Framework that was published 20 July 2021. The footnote has been renumbered, but apart from this renumbering, paragraph 11 is unchanged from the 2019 version.

that I have mentioned above, it is only policy S8 that I consider comes within the bounds of the tilted balance. Therefore planning permission should be given unless the benefits are outweighed by any adverse impacts.

15. Beginning with the benefits of the appeal proposal, it would produce a single dwelling, but one that, as a single bedroom unit, would meet the need identified in the Strategic Housing Market Assessment for a higher proportion of 1 and 2 bedroom units. It would bring a small short term economic benefit during the conversion/construction phase. Due to its location, I consider that its occupiers would very largely rely on private motor vehicles for most everyday travel for shopping, services and entertainment etc, but its close proximity by car to Tollesbury and Tolleshunt D'Arcy means that there would be a small benefit to the businesses in those villages. In respect of these villages it would also be likely that there would be a small social benefit. There would also be an environmental benefit in as much as it would be a means of retaining an historic building, which I turn to next, but at the environmental cost of the use mainly of motorised transport that I have already mentioned.
16. As mentioned previously, it is a moot point whether the cartlodge is curtilage listed by virtue of its proximity to the listed Gorwell Hall. Its distance away, and the fact that it is outside the domestic curtilage of the Hall as it stands now, suggests that it is not. On the other hand, it is said to be contemporary with the Hall and may well have had a formal connection with it in the past. I note that the previous application that went to appeal treated the cartlodge as being a curtilage building that required listed building consent for the works.
17. The decision on whether it is curtilage listed is a matter for the council in the first instance: the council's present stance seems to be that it should continue to be treated as curtilage listed, unless additional information about past ownership and function of the building reveals a need to reappraise its status – see paragraph 2.1.8 of the officer's report. For this appeal, I will treat the cartlodge as being an historic building worthy of retention for its historic character and the contribution it makes to the countryside within which it sits, and the fact that I consider that it adds to the setting of the Hall. In this I agree with the council's conservation officer, who states that *"Without a future use the building will continue to deteriorate and collapse. It is not of an importance where preservation is essential, but it is desirable"*. This officer also states *"The proposed conversion is sympathetically designed, involving minimal alteration, and would secure the long-term preservation of an attractive old farm building. The proposal would cause no harm to the setting and significance of Gorwell Hall as a listed building"*.
18. Drawing these threads together, Policy S1 carries the presumption in favour of development in sustainable locations, but also carries the aim of *"Conserve and enhance the historic environment by identifying the importance of local heritage, and providing protection to heritage assets in accordance with their significance"*. Policy S8 resists development in the countryside, within which permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided it is for (among other things) *"The re-use of a redundant or disused building that would lead to an enhancement to the immediate setting"*. Since I take the proposal to lead to such enhancement, it can be seen that policy S8 provides some support for it. Further, policy H4 includes a section on 'Alterations, Extensions and Additions' which encourages maintenance of character and

sustainability of the original building, keeping to an appropriate scale, and not losing important landscape, heritage features or ecology interests: again supportive of the proposal.

19. The Framework policies of most relevance, beside paragraph 11 that I have dealt with, include paragraphs 78-79 (79-80) which promote sustainable development in rural areas, and paragraph 110 (112) that supports sustainable transport modes and gives priority to pedestrian and cycle movements. These cannot be said to give support to this development. However, paragraph 79, whilst requiring policies and decisions to avoid isolated homes in the countryside, has exceptions, two of which are supportive of such homes: "*b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; c) the development would re-use redundant or disused buildings and enhance its immediate setting*". I do not consider the proposed home to be fully isolated, in view of the proximity of the Hall and the traditional Essex barn that has been converted to residential use, but what holds good for an isolated home, it seems to me, should be applicable to one better placed in relation to nearby development.
20. Paragraph 184 (189) is of specific relevance: "*Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations*". Whilst the cartlodge is at the 'local historic value' end of the spectrum, in my opinion its conservation, in a manner appropriate to its significance, could be achieved by the appeal proposal.
21. Quite clearly there would be changes to its appearance, but the scheme is sympathetically designed, involving minimal alteration, and it would remain a feature in the countryside that could be enjoyed for what it is – a 17/18 century modest agricultural building which, it seems to me, represents a diminishing resource if only because they eventually decay away without a viable use. The introduction of elements that go with a dwelling, such as cars, would be inevitable, but arising from a 1 bedroom dwelling this would probably be minimal.
22. In terms of other possible viable uses for the building, none have been pressed for consideration, although the appellant's case is that there is no demand for any commercial use. In the absence of any persuasive evidence that the building could be retained in the long term through some other use, the conversion to a home seems the most appropriate. Beyond the Framework policies, I also note the appellant's point that the government's favourable approach to re-use of rural buildings is also suggested by the provisions for the conversion of farm buildings as set out within Part Q of the General Permitted Development Order.

Overall conclusion

23. Unsurprisingly, the development plan has policies that pull in different directions. Here, the tilted balance applies, although the shortfall in the 5-year housing land supply is minimal, as is 1 extra dwelling. I therefore afford limited weight to this. The appeal site is not sufficiently close to the nearby villages of

Tollesbury and Tollshunt D'Arcy to mean that private cars would not be the main means of transport, and the site is not in a location that accords with the main thrust of policies S1 and S8 of the MDDP. However, these policies have elements that provide protection for heritage assets and support the re-use of redundant or disused buildings.

24. Similarly, it is necessary to look at the policies of the Framework as a whole and make a judgement as to where the balance comes down. I have dealt with paragraph 11 d) above and decided that it gives favour to the appeal proposal, but in the circumstances, of limited weight. Paragraphs 78, 79 and 110 do not favour the development, except the reference in 79 about isolated homes and the 2 exceptions which, by corollary, point in the direction of support. That is supported with clarity by paragraph 184 which refers to heritage assets, including those of local importance, and requires them to be conserved in a manner appropriate to their significance.
25. A theme that runs through these development plan policies, and those of the Framework that have been raised in the representations, is the importance of heritage assets, including a rather humble one such as the cartlodge, and their conservation. Their importance is picked out in policies that are otherwise resistive of development. I conclude that, on balance, these policies give a value to the cartlodge as a heritage asset sufficient to support the suitability of the appeal site and its countryside location for a dwelling, and that the appeal should be allowed.

Conditions

26. 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), and to ensure compliance with PPG I have amended some of the text.
27. However, a number of these have been questioned by the appellant and have been scrutinised by me. Conditions 8, 9 and 12 (using the council's numbering) relate to investigation for contamination and any necessary remediation. Since the site is agricultural land with no indication of having anything in the form of mechanical equipment maintenance or storage or other possible source of contamination, and no particular justification has been put forward, I do not consider these conditions pass the test of necessity. Conditions 10 and 11, that deal with surface and foul water drainage, are also unnecessary: the existing building is being retained, and no additional surface water run off should occur, the condition dealing with hard landscaping being able to deal with permeable surfacing to the extent needed; and the foul drainage scheme is a package treatment plant as specified on the application form, and this will be controlled by building regulations. Condition 15 seeks to ensure that plant and building materials, etc, are kept clear of the public highway: since the site is some 500m from the public highway, it also fails the test of necessity.
28. The conditions that I will impose (using the numbers in the Schedule of Conditions below) are required for the following reasons: No.2 is for clarity and to avoid uncertainty as to what is permitted; Nos. 3, 4 and 5 are to ensure that the tiling, weatherboarding, rainwater goods, and windows and doors are appropriate to the heritage asset, the character and appearance of which will be safeguarded as far as possible; Nos.6 and 7 are necessary to ensure that

soft and hard landscaping and boundary treatment is specified appropriately for the rural location and in relation to the heritage asset, and that it is retained and maintained in the future; No.8 is to ensure that suitable refuse and waste storage is provided; and No.9, removing permitted development rights for garages, extensions, etc, is necessary because of the nature of the heritage asset and the rural location means that any such additional structures should be carefully controlled.

Terrence Kemmann-Lane

INSPECTOR

SCHEDULE of CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out and retained in accordance with the following approved plans and documents: GWH 02 Rev A, Site Plan, 050 Rev P0, GWH 03, GWH 04, GWH 05 and GWH 10.
- 3) Prior to their inclusion in the development hereby permitted, samples of the roof tiles and weatherboarding to be used in the development shall be submitted to, and approved in writing, by the local planning authority.
- 4) Rainwater goods fitted to the building shall be of cast metal material and finished in black paint and permanently retained as such.
- 5) Prior to their installation, large-scale drawings of the windows and doors shall be provided illustrating elevations at 1:20 and information on the materials and colour finishes to be used shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) Prior to the occupation of the dwelling hereby approved, full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include, for example:
 - i. Proposes finished levels contours;
 - ii. Hard surface materials
 - iii. Planting details

The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the occupation of the development 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.

The hard landscape works shall be carried out as approved prior to the first use/occupation of the development hereby approved and retained and maintained as such thereafter.
- 7) Prior to the occupation of the development hereby approved details of the siting, height, design and materials of the treatment of all boundaries including existing hedging, gates, fences, walls, and railings have been submitted to and approved in writing by the local planning authority. The screening as approved shall be put in place prior to the first occupation of the development, and be retained as such thereafter.
- 8) Prior to the occupation of the development hereby approved, details in relation to the storage of refuse and waste shall be provided and approved in writing by the local planning authority and be put in place

prior to the occupation of the development hereby approved and be retained as such in perpetuity thereafter.

- 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 garages, extensions or separate buildings (other than ancillary 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.