



Appeal Decision

Site visit made on 9 March 2022

By Terrence Kemmann-Lane JP DipTP FRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 24th March 2022

Appeal Ref: APP/X1545/W/21/3277485

Oak Farm, Oak Farm Road, Woodham Walter, Maldon, CM9 6RH

- 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 Parsons against the decision of Maldon District Council.
 - The application Ref. FUL/MAL/20/01230 dated 18 November 2020, was refused by notice dated 16 February 2021.
 - The development proposed is a new three bedroom dwelling in accordance with Planning Permission ref 65/00293/FUL with a slight increase in footprint (retrospective).
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The officer's report states that the council's planning records reveal that the appeal site was granted planning permission to be used as domestic garden land in association with Oak Farm (to the south of the site). Under the same application, an area of land to the east of the application site was granted permission to be used as domestic garden land in association with Woodham Walter Hall, where a swimming pool and outbuilding are now located. It is the council's view that the lawful use of the site is therefore domestic land relating to Oak Farm.
3. Further, the officer's report acknowledges that application 65/00293/FUL granted planning permission for two agricultural workers' dwellings, one of which was built within the required timeframe, which would, at first glance, indicate that the permission was extant. However, a revocation order had been issued under the terms of approved application 81/00902/FUL. This order confirmed the revocation of planning permission 65/00293/MAR, 'so far as it relates to the erection of one agricultural dwelling at, part O.S. field 353, Oak Farm, Woodham Walter, Maldon, Essex'. This meant that the permission for the second dwelling was revoked, in order for another dwelling to be built to the south of the site, now known as Milestone Barn. Due to this revocation order, it is not considered that an extant permission exists at the site and therefore the development has been assessed as a new dwelling.
4. It is clear that work has commenced on the site as part of the erection of the dwelling the subject of the appeal. A Temporary Stop Notice was served by the

council taking effect on 6 November 2020. The appeal application is therefore intended to regularise the development that has occurred.

Main Issues

5. The main issues in this case are: i) the suitability of the location of the site for the proposed development having regard to the visual impact of the development on the character of the area and the countryside and its location in relation to accessibility to services by sustainable means; ii) the suitability of the access to the site in terms of highway safety; and iii) the lack of mitigation to overcome the impacts of the development on European designated nature conservation sites.

Reasons

The suitability of the location of the site for the proposed development

6. The appeal site is located on the eastern side of Oak Farm Road, within the parish of Woodham Walter but outside of any defined settlement boundary. The site shows the beginning of the appeal development. Immediately to the south is a 2 storey house known as Oak Farm. There are agricultural buildings further south. One of these has been granted permission to be converted into dwellings through the prior approval procedure. To the east of the site is Woodham Walter Hall, which is a grade II listed building, set in a large plot with a swimming pool and outbuilding. To the southeast of the site is a dwelling named Milestone Barn. The surrounding area consists of agricultural fields.
7. Woodham Walter is classed as a small village which the Local Development Plan describes as containing few or no services and facilities, with little access to public transport and very limited or no employment opportunities. The built development of the village is rather scattered having a central core consisting of 109 dwellings lying approximately 1 kilometre to the north of the appeal site with outlying small clusters of dwellings dispersed throughout the Parish. Therefore, it is likely that any future occupiers of the dwelling would be required to travel to access day to day facilities, work and education. Any such travel would be likely to involve the use of private motor vehicles.
8. The National Planning Policy Framework (the Framework) has at its heart a presumption in favour of sustainable development. Paragraph 11 d) states: *"where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: (as applicable here) 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"*. This presumption comes into play where the planning authority cannot demonstrate a 5-year supply of deliverable housing sites. That is the case in this district.
9. There are three dimensions to sustainable development as defined in the Framework. These are the economic, social and environmental roles. As far as this appeal is concerned, the economic benefit would be a degree of employment during construction and the possibility that the vitality of the rural community may be improved. The social benefit would include the delivery of 1 additional dwelling, adding to the housing stock in the district, and potentially a small addition to the social life of the nearest villages. It is difficult to see a benefit to the environment: rather the lack of mitigation in respect of the

impacts of the development on the European designated nature conservation sites, deal with under issue iii), clearly outweighs any possible benefit. In any event, the benefits of the proposal, including the additional dwelling in the district's supply are marginal.

10. In the light of the above, I consider that the proposed dwelling does not amount to sustainable development, since it is not readily accessible to services by sustainable means, and therefore the 'tilted balance' of Framework paragraph 11 d ii is not overriding. Nor do any of the policies of the Local Development Plan provide support for the proposal. In reaching this conclusion I have taken account of what is said about the facility for home working and the gradual shift to electric vehicles with a consequent reduction of carbon emissions.
11. The site adjoins an area of limited development, which includes the listed Woodham Walter Hall and buildings that have or had their origin in agriculture. An additional building would consolidate this small existing enclave of development, most of which has obvious associations with the open countryside. The fact that there was previously a permission for a house on the land, particularly bearing in mind the Revocation Order, is of no consequence, and nor is the fact that it is currently garden land – or was prior to the commencement of building on the site. I therefore consider that the proposed dwelling would be intrusive and harmful to the character of the immediate area and the countryside

The suitability of the access to the site in terms of highway safety

12. Oak Farm Road is subject to the national speed limit for a single carriageway road of 60 mph. There are no measured average speeds for this road in the vicinity of the site, but due to the nature of the road and the junction with Old London Road a short distance to the south of the site, I would not expect actual vehicle speeds to be close to the limit.
13. For a speed limit of 60mph the highways authority has visibility requirements of 2.4m by 215m in each direction. The appellant submitted a plan demonstrating visibility splays from the access. It is not disputed that visibility to the south, which carries across the junction, is adequate. As to the visibility to the north, from my site inspection I am satisfied that a splay approaching the required length is achievable and that, bearing in mind what I have said about vehicle speeds, this issue does not amount to a reason for refusal.

The lack of mitigation to overcome the impacts of the development on the European designated nature conservation sites

14. The application site falls within the 'Zone of Influence' for one or more of the European designated sites scoped into the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This means that residential developments could potentially have a significant effect on the sensitive interest features of these coastal European designated sites, through increased recreational pressure.
15. To accord with NE's requirements and standard advice, an Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS), Habitat Regulation Assessment (HRA) Record has been completed by the council to consider if the development would constitute a 'Likely Significant Effect' (LSE)

to a European site in terms of increased recreational disturbance. The findings from HRA Stage 1: Screening Assessment were that a proportionate financial contribution should be secured in line with the Essex Coast RAMS requirements. If this mitigation is secured, it can be concluded that this development would not have an adverse effect on the integrity of the European sites from recreational disturbance, when considered 'in combination' with other development.

16. In determining this appeal, I am now the competent authority, and have a duty to ensure that there is no impact on the Special Protection Area. The Essex Coastal Recreational Avoidance and Mitigation Strategy document has been adopted. This document states that the flat rate for each new dwelling has been calculated at £125.58 and thus the developer contribution should be calculated using this figure. However, in the absence of a signed legal agreement to secure such contribution, the impact of the development would not be able to be mitigated. The appellant has confirmed that he is willing to pay the requested financial contribution, but points out that the cost of preparing a Section 106 Agreement would be far greater than the actual requested financial contribution. It is suggested that the small contribution linked to an emerging strategy could be secured by a condition in any permission that may be granted.
17. I do not agree that it would be appropriate to require a financial contribution to be provided by way of a condition on a planning permission. Nor do I consider that a 'Grampian' type of condition could be used because its purpose would still be the payment of a sum of money. Without such an agreement in place, there can be no assurance that there would be not be a detrimental effect on the ecological importance of a European designated nature conservation site and the proposed development cannot be permitted.

Conclusions

18. I have found that the proposed dwelling would not be sustainable development, since it is not readily accessible to services by sustainable means, and the 'tilted balance' of Framework paragraph 11 d ii is not overriding in this case. An additional building would consolidate the small existing enclave of Woodham Walter Hall and buildings that have or had their origin in agriculture with associations with the open countryside. I consider that the proposed dwelling would be intrusive and harmful to the character of the immediate area and the countryside. In any event, the lack of mitigation to overcome the impacts of the development on European designated nature conservation sites means that the appeal will be dismissed.

Terrence Kemmann-Lane

INSPECTOR