



Appeal Decision

Site visit made on 5 December 2022

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 5 January 2023

Appeal Ref: APP/X1545/W/22/3298163

Dengie Manor Barn, Keelings Road, Dengie, CM0 7US

- 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 R Levy against the decision of Maldon District Council.
 - The application Ref. FUL/MAL/21/01159 dated 1 November 2021, was refused by notice dated 29 December 2021.
 - The development proposed is demolition of existing barn and erection of a new bungalow.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing barn and erection of a new bungalow at Dengie Manor Barn, Keelings Road, Dengie, CM0 7US in accordance with the terms of the application, Ref FUL/MAL/21/01159, dated 1 November 2021, subject to the conditions set out in the schedule at the end of this decision.

Main Issue

2. The main issue in this case is the effect of the proposed development on the character and appearance of the site and surrounding area.

Reasons

3. The site is located within the countryside, on the southern side of Keelings Road to the south east of St James Church. To the east is another barn, beyond which, and to the south and west, are open fields.
4. To the north, Tillingham, a 'smaller village', is 2.75km (to The Fox and Hounds PH) by road from the site, providing community facilities which include a primary school, doctor's surgery, post office and village stores, a public house, St Nicholas Church and a recreation ground with football pitches and pavilion. To the southwest is the 'larger village' of Southminster and the town of Burnham-on-Crouch, which are located 4.8km and 8km away respectively. These settlements provide access to a wider range of services and facilities, whilst Burnham-on-Crouch provides further access to education, employment, shopping, community and public transport. The routes to the facilities in Tillingham and Southminster are unlit, and footpaths are intermittent, but the roads are lightly trafficked. Therefore these settlements, and associated services, would be accessible by bicycle. There are also bus stops outside the Parish Hall, 310m to the north-west, and at the northern end of Manor Road, but in my judgement, travel for daily needs is likely to be by private motor vehicle.

5. The site contains the subject barn which is of brick, concrete block and timber cladding, roofed in corrugated asbestos sheeting. It is set within a roughly rectangular parcel of land. The barn formed part of a wider agricultural unit but is now redundant. It is of limited architectural value. Its curtilage comprises a mix of hardstanding and vegetation set within boundaries clearly defined by hedges and fencing, which physically and visually separates the site from adjacent arable fields. Access is taken directly from Keelings Road which abuts the northern boundary of the site.
6. This location is not one where planning permission would normally be given for new residential development without a special justification such as a need related to agriculture. Policy S8 of the Maldon District Local Development Plan 2014 – 2029 allows for the re-use of redundant or disused buildings that would lead to an enhancement to the immediate setting (in accordance with Policies E4 and D3) but does not make provision for the construction of new dwellings in the countryside. Therefore, the proposal is not consistent with this Policy.
7. The appeal application follows a prior approval for the conversion of the barn to a dwelling under Class Q permitted development rights (reference 21/00566/COUPA). For the appellant it is stated that the existing approval is a fallback position and that the architect continues to work-up the conversion drawings. However, the appellant wishes to make the dwelling as energy efficient as possible and fully wheelchair friendly but this is limited if the existing building were converted. Therefore it is proposed to recast the whole floor lower into the ground to provide high levels of insulation, construct new walls capable of higher thermal efficiency, which would require new foundations, and provide a warm, rather than cold, deck roof incorporating slate style solar panels. The additional weight of the panels could impact on the structural performance of the current roof.
8. The current extant approval under Class Q is for a two/three-bedroom dwelling, but there would have been an element of the building at its northern end (which measures approximately 33sq.m.) that was not included in the proposed conversion and was to remain in use for agricultural storage. This would be demolished as part of the appeal proposal. The approved dwelling was to have a footprint of a maximum of 12.2m in depth x 40m in length and a maximum of 5.2m in height at its southern end and would incorporate four integral parking spaces.
9. The proposed dwelling would also have two/three bedrooms and would sit within the footprint of the existing barn. The design of the proposed building would also include similar elements to the existing building, including brick piers with panels in between. The garage/car port area currently proposed would be the same size and position as that approved. The curtilage of the proposed dwelling would increase from 225 m² to over 1400 m², which the council considers to be contrary to the policies referred to above.
10. As I have already mentioned at paragraph 6 above, the appeal site is in a location where new residential development would normally be refused, and its relationship with nearby settlements that provide a range of services and facilities means that future occupiers would largely rely on private motor vehicles to access everyday needs. Furthermore, in terms of meeting the objectives of sustainable development, 1 dwelling would provide very limited benefits in social and economic terms. But there would be considerable gain in

respect of the environment objective, over the current Class Q permission, by the ability of a new-build dwelling to have a high level of energy efficiency as set out in paragraph 7 above.

11. The essential fact in this case is that there is a realistic fallback position of lawful development which has a real prospect of taking place in the alternative. The appellants could achieve residential development value from the site by way of the Class Q permission, and that fact alone is a clear indicator that, in the event of this appeal failing, this residential development value would be a powerful incentive to take up the permitted development opportunity already approved.
12. The appeal proposal provides a larger curtilage to the new dwelling than was associated with the conversion of the barn. The Class Q approval plan showed the eastern boundary of the curtilage following along the line of the building's flank wall, and then extending some 7m or so to the inner face of the hedge that is on the southern boundary of the appeal site. The current proposal is to take the boundary to the outside of the boundary hedge. The western boundary of the Class Q plan was set approximately 3.5m from the building's side wall. The appeal plan shows the curtilage extending to the outside of the hedge, which separates the site from the adjoining arable field. The Class Q plan had the curtilage drawn on the line of the northern wall of the building, with no part of the curtilage extending towards Keelings Road. The appeal plan takes in the entrance from Keelings Road and widens the curtilage east of the building to allow vehicles to enter and leave the double garage and separate car port that are provided in the north-eastern part of the building. It would seem that the Class Q plan made similar provision for double garage and car port, but there was no in-curtilage area for access and manoeuvre provided.
13. The council criticises the extent of the proposed curtilage as not being a small or unobtrusive change of use of land, which is contrary to policies, in particular Policy H4 which seeks to restrict the enlargement of domestic gardens into the countryside. The council accepts that a condition could be imposed removing permitted development rights for extensions and outbuildings, but considers that, notwithstanding such a condition, the domestic use of this substantially larger residential curtilage would inevitably increase the incongruity of the development in the site's rural setting. Furthermore, it is not possible to secure the permanent retention of the hedging which would partially obscure the visual impacts of the proposed enlarged residential curtilage. As a result, the council considers that the development would have a materially greater adverse impact on the character and appearance of the site and the surrounding rural area than the approved scheme.

Conclusions

14. Drawing these matters together, for the reasons that I have given in paragraph 11 above, I regard the fallback position of the Class Q permission as of considerable importance and highly likely to be exercised if the appeal proposal is refused. The new dwelling would retain many of the characteristics of the existing building, and would have an appearance similar to a converted barn. It would also have a similar occupancy capacity, and would have the same degree of reliance on private motor vehicles. However, I consider that the resulting appearance would be more satisfactory in design terms and, more importantly,

would be built to standards that would not be possible in a conversion, in the way described in paragraph 7 above and also referred to in paragraph 10.

15. As to the increased curtilage in the appeal proposal, it appears to me that the Class Q permission curtilage was lacking in providing proper access to the garaging facilities within the building and lacked any manoeuvring or visitor parking space. There would inevitably be a change in character of the curtilage whichever scheme was built, although the scope for this would be greater with the appeal scheme. Much of this additional impact could be mitigated by the condition that the council mentioned, of removing permitted development rights for extensions and outbuildings.
16. There are other matters raised that do not go to the fundamental issue in the case, and that I need not set out here. However there is the matter of the council's housing land supply that I ought to address. It is common ground that the council does not have a 5-year housing land supply, the council conceding that it stands at 3.66 years, 0.74 years higher than the appellant's figure. This means that the 'Tilted Balance' set out in paragraph 11d, together with its footnote 8, of the National Planning Policy Framework, becomes a consideration. I consider that this must add some weight to the appellant's case, although this is limited by the fact that the site itself is not in a sustainable location, and the social and economic objectives of sustainable development are not significantly met, although there would be advantage through the environmental objective (paragraph 10 above).
17. My overall conclusion is that the effect of the proposed development on the character and appearance of the site and surrounding area would only be marginally different to the fallback Class Q permission, whilst the appeal proposal would have advantages in terms of achieving a better design and environmental solution. The council's housing land supply position adds a little weight to these considerations: added together this means that the appeal should be upheld.

Conditions

18. The Council has suggested a number of conditions in the event that the appeal is upheld. I have considered these in the light of Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG I have amended some of the text.
19. I consider that the conditions should be imposed for the following reasons: condition 2 is required for certainty and avoidance of doubt as to the development permitted; conditions 3, 4, 5, 6, and 7 are to ensure that the appearance of the development permitted, and its boundary treatment and hard and soft landscaping, integrate with the locality in a visually satisfactory manner; condition 8 is to ensure that appropriate parking and means of access are provided for reasons of highway safety and the convenience of highway users; condition 9 is to conserve and enhance protected and Priority species, and allow the Local Planning Authority to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species); condition 10 is to ensure any contaminated land is dealt with to safeguard the inhabitants of the dwelling hereby approved and others nearby, together with ground water, watercourses and ecosystems;

condition 11 is for the reasons referred to in paragraph 12 above, to give the council control over any curtilage building or extension that might otherwise harm the character and appearance of the development and the surrounding area; condition 12 is to ensure satisfactory surface water and foul drainage from the site; and condition 13 is to ensure the dwelling hereby approved is constructed as proposed and provides a high quality and flexible internal layout to meet the needs of an ageing population.

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 in complete accordance with the approved drawings Nos.18/20/03 rev A; 18/20/06 rev A and 18/20/10.
- 3) No development above slab level shall take place until written details or samples of all materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out using the materials and details as approved.
- 4) Prior to their installation, 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 Authority. The details as approved shall be constructed prior to the first use / occupation of the development and be retained as such thereafter.
- 5) Prior to the occupation of the dwelling hereby permitted, full details and specifications of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. The landscaping details shall include the layout of the hard landscaped areas with the materials and finishes to be used. All of the existing trees, hedgerows and vegetation shall be retained and maintained at all times thereafter unless otherwise agreed in writing with the Local Planning Authority. The details of the soft landscape works shall include schedules of shrubs and trees to be planted, noting the species, stock size, proposed numbers / densities and details of the planting scheme's implementation, aftercare and maintenance programme.
- 6) The hard landscape works shall be carried out as approved prior to the beneficial occupation of the development unless otherwise first agreed in writing by the Local Planning Authority.
- 7) The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the commencement of the development, unless otherwise first 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, destroyed, dies, or becomes 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.
- 8) The parking spaces and means of access proposed shall be constructed, surfaced, laid out and made available for use in accordance with the approved scheme along with the provision of an electric vehicle charging

point prior to the occupation of the dwelling and shall be retained as such thereafter.

- 9) No development above slab level shall take place until a Biodiversity Enhancement Layout, providing the finalised details and locations of enhancement measures, has been submitted to and approved in writing by the Local Planning Authority following the recommendations made within the Bat Survey (Essex Mammal Surveys, September 2021). The enhancement measures shall be implemented prior to the first occupation of the dwelling in accordance with the approved details and all features shall be retained in that manner thereafter.
- 10) Should the existence of any contaminated ground or groundwater and/or hazardous soil gases be found, it shall be reported to the Local Planning Authority in writing immediately, a risk assessment of the site undertaken and a scheme to bring the site to a suitable condition submitted to and agreed in writing with the Local Planning Authority. A "suitable condition" means one that represents an acceptable risk to human health, the water environment, property and ecosystems and scheduled ancient monuments and cannot be determined as contaminated land under Part 2A of the Environmental Protection Act 1990 now or in the future. The work will be undertaken by a competent person in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination (CLR 11), the Essex Contaminated Land Consortium's Land Contamination Technical Guidance for Applicants and Developers and current UK best-practice guidance and policy, and completed before the development is first occupied.
- 11) 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 first been obtained from the Local Planning Authority.
- 12) The dwelling shall not be occupied until foul and surface water drainage schemes for the site have been installed in accordance with details which have been submitted to and approved in writing by the Local Planning Authority. The drainage schemes shall be managed and maintained as approved thereafter.
- 13) The dwelling shall be constructed to meet standard M4(3) 'Category 3: Wheelchair user dwellings' of the Building Regulations 2010 (as amended).

End of Schedule