



Appeal Decisions

Site visit made on 14 February 2023

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2023

Appeal A: APP/A1530/W/21/3283834

Rewsalls Farm Barn, Rewsalls Lane, East Mersea CO5 8SX

- 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 Ben Woodcraft against the decision of Colchester Borough Council.
 - The application Ref 211693, dated 11 June 2021, was refused by notice dated 10 August 2021.
 - The development proposed is conversion of barns to 3x residential units.
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Appeal B: APP/A1530/Y/21/3283131

Rewsalls Farm Barn, Rewsalls Lane, East Mersea CO5 8SX

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Ben Woodcraft against the decision of Colchester Borough Council.
 - The application Ref 211694, dated 11 June 2021, was refused by notice dated 10 August 2021.
 - The works proposed are conversion of barns to 3x residential units.
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Decision

1. Appeals A and B are dismissed.

Procedural Matters

2. Despite the description of development set out in banner headings, I consider the description found on the Decision Notices and the Appeal Forms better reflects the scheme which the Council considered, the development proposed is therefore for 'Conversion of barns to 4x residential units' and I have dealt with the appeals on this basis. Furthermore, the appeals concern the same scheme under different, complementary legislation. Where relevant, I have dealt with both appeals together in my reasoning.
3. In February 2021, the Council adopted its Section 1 Local Plan (S1LP), prior to the determination of the applications relevant to both appeals, but it did not refer to adopted policies of the S1LP in either its Officer Report or the Decision Notices. While it subsequently referred to the S1LP in its Statement of Case, there was no mention of which policies applied to the proposal or how they should be interpreted. During determination of the appeals, I became aware the Council had also adopted Section 2 of its Local Plan (S2LP) in July 2022. Appeal decisions must be based on the policies from the development plan prevailing at the time of determination. In the case of the appeals, the Council has suggested S1LP Policies SP3 and SP7, and S2LP Policies SG1, OV2, DM16 and ENV2 are relevant to the appeals. The appellant has also referred to S2LP

Policy ENV1. The main parties have had opportunity to comment upon the relevance of these policies to the appeals and I have had regard to the responses received.

4. The main parties have been in discussion and the appellant has subsequently paid a tariff-based contribution to the Council to address the requirement referred to in the third reason for refusal relevant to Appeal A. While the Council therefore no longer wishes to defend that reason for refusal, I am mindful of my responsibilities outlined in the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations'), which transpose the Habitats Directive and the Birds Directive into English law. The aim of the Directives is to conserve key habitats and species across the European Union by creating and maintaining a network of sites known as the Natura 2000 network. They require competent authorities before granting consent for a plan or project, to carry out an appropriate assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects. I have therefore continued to deal with this matter as a main issue as set out below.
5. Similarly, in its Statement of Case, the Council has confirmed it no longer seeks to defend its fourth and fifth reasons for refusal relevant to Appeal A regarding developer contributions, protected species and contaminated land. It requests a planning condition be imposed to deal with the latter. My decision for Appeal A therefore centres on the remaining refusal reasons on the Decision Notice.

Main Issues

6. The main issues are:
 - whether the proposed development would preserve a Grade II listed building, known as 'Barn to the East of Rewsalls Farmhouse', and any of the features of special architectural or historic interest that it possesses, including its setting (Both Appeals);
 - whether the appeal site would be a suitable location for the proposed development with reference to the spatial strategy in the development plan, and its accessibility to local services and facilities (Appeal A only); and
 - the effect of the proposed development on the integrity of the features of European nature conservation sites along the Essex coast (Appeal A only).

Reasons

Special Interest and Setting

7. The Barn to the East of Rewsalls Farmhouse (Barn 2) is a Grade II listed building that likely originates from the 18th Century. It was formerly associated with the farmhouse, which is also Grade II listed, and sited within a larger configuration of buildings, but a second courtyard, further south, was removed at some point between the mid-1950s and the barn being listed.
8. The listing description refers to the building prior to extensive repairs and alterations carried out in 2006 to facilitate its use by the appellant's fishmonger

- business. Its façades were reclad in plywood, battens and modern machine-cut weatherboarding and its corrugated iron roof replaced with pantiles.
9. An enclosed mezzanine floor has been added to the northern end of the building to accommodate an office. This is served by both external and internal staircases to enable separate access, with that internally set against the western side of the building, thereby retaining visibility of the timber frame in this location. However, most of the remainder of the timber frame has been covered over at this end of the building.
 10. The office sits above a flat-roofed structure housing cold storage and working areas that set inward from most of the timber frame. Accordingly, it is possible to experience what remains of the openness of the barn up to the underside of its roof and the inner side of the timber frame.
 11. The original double doors to either side of the barn remain, but new door and window openings have been added to all but the southern end of the building. The proportions and distribution of new windows added to the building has resulted in a somewhat domestic appearance to the openings. These have also affected the interior of the building. For example, while the horizontal window above the large west opening of the barn was inserted in new timberwork, the eastern window appears to cut historic timber framing.
 12. The roof has been strengthened and most of the rafters appear to be of more contemporary origin. The upper part of the south gable has been replaced with modern timbers and supporting elements, but the lower half contains historic timberwork. Nevertheless, a great deal of the historic timber frame, particularly below roof level, and parts of the plinth wall remain.
 13. The building to the southern side of the courtyard (Barn 3) is not referred to in the listing description but is attached to the barn, so I have considered it to be part of the listed building. It is of similar construction to the barn and the internal fabric has been overclad as part of its use for storage for the business. It also appears to have a new roof. Despite these alterations, it still makes an important contribution to the grouping of buildings that enclose the courtyard associated with the listed barn. Evidence of its likely former timber-framed construction and appearance remains in the building immediately west, which is not included in the appeals.
 14. The building to the northwest of the courtyard (Barn 1) is included in the appeal and was most recently used as a cooking school. It is a single-storey building, constructed in a similar form to the barn, but has been altered with a series of windows and doors to the inner side of the courtyard and rooflights to either side of the roof of a lower building at its western end. The building has also been partially altered in connection with the appeal scheme, with the proposed internal partition inserted. Much of the internal fabric has been covered over, including most of the roof timbers, but they remain evident. There is also a loft, the roof timbers, partial enclosures and hatch for which are still visible above the partition. Like the building south, this is also not referred to in the listing description but, due to its association with the courtyard around the barn, I have considered it to be part of the listed building.
 15. None of the evidence before leads me the conclusion that Barns 1 and 3 should not be considered anything other than as part of the listed building.

16. As far as it is relevant to the appeals before me, the special interest of the listed building is to be found in its architectural and historic interest as an 18th Century timber-framed barn, with modern alterations. Those works enabled the building to continue to be used and ensured its preservation through repairs and strengthening of the fabric of the building, but they affected the external appearance of the building and reduced the openness that would have been experienced within the barn. Despite this, the integrity of the timber frame and exterior remain generally evident within and from outside the building, and the openness up to the underside of its roof can be experienced beyond the mezzanine floor. Furthermore, some of the windows introduced retain the timber framing behind them and the structure below the mezzanine is detached from most of the framing, which renders these largely reversible alterations.
17. The listed barn also draws special interest from its setting, which is defined in the National Planning Policy Framework (the Framework), as being the surroundings in which a heritage asset is experienced. This includes the land surrounding the barn to its north and east, where it is visible from the public right of way over adjacent fields, the access to the building from Rewsalls Lane and the remainder of the courtyard and buildings to its west. The courtyard is open between the buildings, the majority of which is bound in loose hard surfacing materials, with a smaller concrete apron found to the set of double doors. There is a similar apron outside the doors to the east of the building. These simple visual characteristics contribute to the understanding of Barn 2 and the former agricultural use of it and Barns 1 and 3.

The Proposal

18. The listed barn would be subdivided horizontally through the insertion of a floor across the remainder of the building, and vertically to provide two larger family dwellings, with various rooms on each floor. Additional windows would be inserted in both long sides of the barn and windows and glazed doors into the double door openings. Barns 1 and 3 would be subdivided vertically to provide further dwellings, that could be used as short- or long-term lettings, and the courtyard would be hard landscaped at its perimeter with a planted square.

Effect of the Proposal

19. Subdivision of Barn 2 is perhaps an expected consequence of the proposal for separate units of accommodation within its volume, but the portioning of the barn would be unsympathetic with and remove the ability to appreciate the scale and detailing evident on horizontal and vertical planes within the large open space remaining inside. While the party walls would be of lightweight construction, the possibility of the subdivision being reversed would be limited, especially given that the units would be likely to be in separate ownership.
20. The existing windows in Barn 2 are varied in form and design and exhibit domestic proportions and distribution that is not in-keeping with the building's appearance. The proposal would add to this impression and exacerbate the harm caused to the external character and appearance of the barn. These would be the most prominent of alterations, as they would be visible from some distance along the right of way to the east. I am mindful that the cookery school has windows, but I do not consider this would justify the harm that would result from these alterations.

21. The application and appeal documents fail to explain how the proposal would relate to the fabric of the listed barn. This includes the proposed floors and partitioning and their relationship to the timber frame; and how the building would be insulated, heated, cooled and services added. Furthermore, some of the existing windows have timber framing retained across them internally and it is unclear whether this would be retained, or a similar approach adopted for new or altered openings. There could therefore also be an unknown quantum of harm caused to historic fabric from such works within Barn 2.
22. I appreciate that the domestic use of barns is commonplace, including those designated as heritage assets. However, the open configuration of the courtyard would be harmed through the presence of domestic paraphernalia and the proposed landscaped space, which would erode its legibility and understanding as a former courtyard of agricultural buildings and present a wholly domestic character.
23. The Council has granted permission for residential conversion of listed buildings at the nearby Bromans Farm¹. Although there are no details before me as to whether there would have been a similar effect on the historic fabric of those buildings, I have considered the effect of the individual scheme before me on the special interest of the subject listed building and identified it would be harmful for the above reasons.
24. Notwithstanding these considerations, the proposed alterations to Barns 1 and 3 would preserve the contribution they make to the special interest of the listed building, as the internal configuration and detailing that remains would still be evident within those buildings. Furthermore, there is already parking to the north of the listed barn so new parking here would not harm its setting.

Public Benefits and Conclusion on the First Main Issue

25. The statutory duties in Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) are matters of considerable importance and weight, as are the aims of paragraphs 197, 199 and 200 of the Framework.
26. The proposed external alterations to introduce new windows and create a hard and soft landscaped space within the courtyard of the listed building, together with its subdivision and the resultant loss of openness of the space within the barn, and the potential harm to historic fabric required to accommodate, amongst other things, insulation and services, would fail to preserve the listed building or its features of special architectural or historic interest, including its setting. The harm that I have identified therefore equates to less than substantial harm to the significance of this designated heritage asset. In such circumstances, Framework paragraph 202 identifies this harm should be weighed against the public benefits of proposals, where appropriate, securing its optimum viable use.
27. The proposal would also add to the magnitude and overall mix of housing stock in the Borough on a small site, which the Framework recognises can be built relatively quickly. Nevertheless, the magnitude of the scheme would be modest, so this social benefit would attract limited weight in this regard.

¹ Planning Reference: 202438.

28. There would be short-term benefits to the local and wider economy through direct and indirect employment associated with construction works and maintenance; future occupants would also be likely to support local services through spending and participation. These would both constitute benefits in social and economic terms but would be limited in scale and kind due to the magnitude of the proposal.

Optimum Viable Use

29. The appellant's business and that of the tenant for the cooking school both appear to have quite legitimately been casualties of the Covid-19 pandemic. The appellant's representatives have confirmed that they explored other alternative uses for the barns and retaining the current business uses, but have not provided any evidence of the steps undertaken to explore whether residential use and, specifically the proposal before me, would represent the optimum viable use (OVU) for the buildings within the site.
30. Aside from statements as to the site's rural location and the likelihood of other businesses being willing to carry out alterations to the buildings to use them for alternative uses, there is no evidence as to how other uses were considered. The appellant states other uses would be more likely to result in greater harm to the listed building and continued business use of the premises could lead to harm to nearby residential occupiers but neither of these claims is supported by any substantive evidence. In particular, I would have expected the former to include explanation as to the nature of such works in comparison to the appeal scheme and why these would be prohibitive.
31. The appellant also states the proposal would ensure continued conservation of the building is viable but has equally accepted the building is in good condition. The original fabric has been retained and supported where necessary and there is no substantive evidence before me that further works are required to sustain the building, at least in the short term. I accept some works would be required to facilitate alternative uses, including residential, but there is an absence of evidence to demonstrate that this could only be achieved through the appeal scheme and that the same public benefits could not be delivered by housing with fewer alterations to the fabric of the listed barn.
32. Taking the above together, the public benefits I have outlined would not justify allowing a proposal that would fail to preserve the special interest of the listed building. In accordance with paragraphs 199 and 202 of the Framework, considered together, I am therefore not persuaded that there would be wider public benefits of sufficient magnitude to outweigh the great weight to be given to the less than substantial harm that I have identified to the significance of the heritage asset.
33. In light of the above, I conclude that the proposal would fail to preserve the special historic interest of the Grade II listed building. Hence, the appeal scheme would fail to satisfy the requirements of the Act, paragraphs 197, 199 and 200 of the Framework and would conflict with the heritage aims of S1LP Policy SP7 and S2LP Policies DM16, ENV1, OV2 and SG1.

Location and Accessibility

34. The appeal site is some distance from a settlement so is situated within the Countryside and is also in the Coastal Protection Belt (CPB). The Council's

current spatial strategy was introduced in S1LP Policy SP3, but expanded upon with S2LP Policy SG1. This states development within the countryside will only be acceptable where it accords with Policies OV1 and OV2. SG1 reiterates the aim of SP3 that development should be focused in accessible locations, with the aim to reduce the need to travel and the former expects sustainable travel for different purposes is promoted throughout the day. S2LP Policy ENV2 also states development within the CPB requires a coastal location and should be located within the developed area of the coast.

35. The site could not be said to be isolated in the language of the Framework or the Braintree Judgement², as it is situated near to several dwellings, but would do little more than add to existing development in the countryside. I have not been referred to the availability of public transport from the site and the services and facilities required to meet the day-to-day needs of future occupiers of the site are some distance away. They would therefore be highly likely to need to travel regularly by private motorised transport to access these. The cumulative effect of allowing developments in such locations would therefore be likely to increase the amount of unsustainable journeys made.
36. I appreciate that buildings within the site were previously used for business purposes, but there is no evidence before me to explain how the proposal would relate to their operations, particularly in respect of the vehicle movements to and from the site. Furthermore, while the location of the site at Bromans Farm may be further from services and facilities, this would not justify the harm that would be caused by allowing the proposal. There is also no substantive evidence before me to suggest a coastal location is required. Furthermore, I have already addressed Policies SG1 and OV2 in respect of harms to the historic environment in the first main issue. Given this conflict, the proposal could not satisfy the spatial strategy.
37. For these reasons, I conclude that the appeal site would not be a suitable location for the proposed development, having regard to the Council's spatial strategy and its accessibility to services and facilities. Hence, it would conflict with S1LP Policy SP3 and S2LP Policies ENV2, SG1 and OV2. This would therefore be harmful to the consistency and relative certainty that should flow from the plan led system.

European Nature Conservation Sites

38. The appeal site falls within the recreational disturbance Zone of Influence (ZOI) for a number of European nature conservation sites situated along the Essex coast. All residential proposals contained within the ZOI for these sites covered by the Essex Coast Recreational Disturbance Avoidance & Mitigation Strategy (RAMS) are required to have regard to the potential adverse effects from increased recreational disturbance. The Council's third reason for refusal refers to this matter and the appellant has provided a financial contribution to ensure that appropriate mitigation is implemented as part of the requirements of the RAMS. I am mindful that Regulation 63(1) of the Habitat Regulations indicates that the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposed development. Therefore, given my conclusion on the other main issues, it is not necessary for me to consider this matter in any further detail.

² Citation Number [2018] EWCA Civ 610, Case No C1/2017/3292.

Other Matters

39. The appellant has referred to the conduct of the Council in the determination of the applications, including the absence of discussion with the appellant. While I acknowledge the appellant's concerns, in reaching my decision I have been concerned only with the individual merits of the appeal scheme in relation to the relevant policies and evidence before me. The appellant has referred to paragraphs 147, 148 and 149 of the Framework, which are relevant to the Green Belt. However, there is no evidence to suggest the site is situated within the Green Belt. I have therefore disregarded these paragraphs as they are not relevant to my determination of the appeals. As I referred to above, the courtyard of buildings subject of the appeals is adjacent to Rewsalls Farmhouse, I have therefore had regard to the statutory duty referred to in the Act. Despite my concerns regarding the effect of the proposal upon the fabric and setting of the subject listed building, given the physical relationship of the proposal with this designated asset, its settings would be preserved and the proposal would not detract from it.

Planning Balance and Conclusion

40. The development plan for the area includes the S1LP. While this predates the current Framework, it is clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to its publication. Due weight should be given to policies according to their consistency with the Framework. The S2LP was adopted following the current Framework.
41. I am satisfied that all the policies relevant to the consideration of the appeals are consistent with the Framework. Moreover, S1LP Policy SP3 concerning the Council's spatial strategy should be read together with S2LP Policies ENV2, SG1 and OV2 to understand the approach to development in the Borough, which is consistent with the Framework's aim to locate development in locations where it will support local services. The heritage aims of these policies and S1LP Policy SP7 and S2LP Policies DM16 and ENV1 are also consistent with aims of the Framework to conserve and enhance the historic environment. Accordingly, I afford considerable weight to the conflict of the proposal with these policies.
42. I have already identified the benefits of the appeal scheme in the assessment of public benefits in undertaking the necessary balancing exercise for heritage assets. In terms of harm, the proposal would not comply with development plan policy in respect of the harm to the listed building, including its setting, and its location and accessibility in relation to the Council's spatial strategy.
43. This leads me to an overall conclusion that the appeal scheme would not accord with the development plan, when considered as a whole, and I find that the adverse impacts of the proposal are matters of great weight against the grant of planning permission that outweigh the stated benefits.
44. The proposal would be contrary to the development plan and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Accordingly, for the reasons given, I conclude that both appeals should be dismissed.

Paul Thompson

INSPECTOR