



Appeal Decisions

Site visit made on 14 July 2023

by Mark Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2023

Appeal A Ref: APP/X1545/W/22/3304219

Grove Hall, Blind Lane, Tolleshunt Knights CM9 8EP

- 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 Browning against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/00337, dated 17 February 2022, was refused by notice dated 3 May 2022.
 - The development proposed was originally described as 'conversion of annex to private two bedroomed dwelling'.
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Appeal B Ref: APP/X1545/Y/22/3304801

Grove Hall, Blind Lane, Tolleshunt Knights CM9 8EP

- 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 R Browning against the decision of Maldon District Council.
 - The application Ref LBC/MAL/22/00338, dated 17 February 2022, was refused by notice dated 3 May 2022.
 - The works proposed were originally described as 'conversion of annex to private two bedroomed dwelling'.
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Decisions

1. Appeal A is allowed and planning permission is granted for conversion of outbuilding to private two bedroomed dwelling at Grove Hall, Blind Lane, Tolleshunt Knights CM9 8EP in accordance with the terms of the application, Ref FUL/MAL/22/00337, dated 17 February 2022, subject to the conditions set out in Schedule 1.
2. Appeal B is allowed and listed building consent is granted for conversion of outbuilding to private two bedroom dwelling at Grove Hall, Blind Lane, Tolleshunt Knights CM9 8EP in accordance with the terms of the application Ref LBC/MAL/22/00338, dated 17 February 2022, and the plans submitted with it, subject to the conditions set out in Schedule 2.

Preliminary Matters

3. The site and the proposed scheme are the same for both the planning appeal (Appeal A) and the listed building consent appeal (Appeal B), although the legal regimes for each are different. I have dealt with both appeals together in this decision letter to avoid repetition.
4. The site includes a detached outbuilding and land within the curtilage of Grove Hall Farmhouse¹, which is a grade II listed building. The outbuilding was constructed before 1 July 1948 and thus is covered by the same statutory

¹ List Entry Number: 1121933

protection as the listed building. In reaching my decisions, I have been mindful of my statutory duties in respect of sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

5. The outbuilding benefits from planning permission and listed building consent which enable it to be used as an annex². It was in use as living accommodation when I visited. However, there are differences between the layout and elevations as approved³ and constructed. For example, in contrast with the approved scheme, it currently has separate kitchen and living rooms, no rooflights, and no windows facing the public footpath alongside the site's boundary. It is unclear when the alterations occurred. In the interests of fairness, I have based my decisions on the drawings, but taken the 'existing' drawing⁴ to show the lawful condition of the outbuilding, as the Council determined the applications and interested parties' views were sought on that basis. To account for this matter in the formal decisions, I have amended the descriptions of the proposed development and works to make clear that the outbuilding, rather than the annex, would be converted into a dwelling.
6. The Council is concerned that in the absence of mitigation the scheme would adversely affect the integrity of the Blackwater Estuary Special Protection Area and Ramsar, which is a 'habitats site' in the terms of the National Planning Policy Framework (Framework). A unilateral undertaking (UU) dated 8 April 2022 was submitted in order to secure mitigation for the scheme. Both main parties were given an opportunity to comment on various queries I had regarding the effectiveness of that UU. In response, a further UU dated 26 July 2023 has been provided. The Council has confirmed that the latter UU is satisfactory. I have taken the UUs and the main parties' commentary regarding this matter into account in making my decision on Appeal A.

Main Issues

7. The main issues are:
 - (i) whether or not the site is a suitable location for housing, with particular regard to the Council's spatial strategy and accessibility to services, facilities and sustainable transport options;
 - (ii) whether or not the proposed scheme would preserve the listed building, its setting, or any features of special architectural or historic interest that it possesses;
 - (iii) the effect of the proposed scheme on the character and appearance of the site and the surrounding area;
 - (iv) the effect of the proposed scheme on the integrity of the habitats site; and
 - (v) whether or not there are other considerations that may indicate for or against the proposed scheme.
8. The second main issue is common to both Appeal A and Appeal B, whereas the others relate to Appeal A only.

² Council references: 20/00775/FUL; 20/00776/LBC

³ Drawing number: 22/1602/05

⁴ Drawing number: 22/1602/04

Reasons

Location for housing

9. The site is located outside the settlement boundaries identified by the Council's Local Plan⁵ (LP) and therefore in the countryside. LP Policy S8 states that planning permission for development in the countryside will only be granted in specific circumstances and where its intrinsic character and beauty is not adversely impacted. It has not been expressly advanced that any of the potentially permissible circumstances within LP Policy S8 apply, and thus the scheme is in conflict with it. Otherwise, and amongst other things, LP policies S1, S2, D1, H4 and T2 seek that housing is delivered in the most sustainable locations, land use is optimised having regard to accessibility, connectivity is maximised, the need to travel is minimised, and safe and direct walking and cycling routes are provided.
10. The nearest designated settlement in the LP is Tolleshunt Knights. According to the appellant, it is around a 20 minute walk from the site; however, it lacks the amenities needed to satisfy the requirements of daily living. Tiptree is a considerably larger settlement which features a variety of services, facilities and sustainable transport options, but it is further from the site beyond Tolleshunt Knights.
11. The settlements are most logically reached via Blind Lane and then either Rectory Road or Oxley Hill, or via the public footpath beside the site. The routes along the roads are subject to 60 miles per hour speed limits and feature no footpaths, cycle lanes or street lighting. Additionally, although Blind Lane was lightly trafficked when I visited, it is fairly narrow and meandering, and often features vegetation tight to the carriageway and thus limited space for pedestrians to stand clear of vehicles. The public footpath route is also unlit and requires traversal across a field. Due to these characteristics and the distances between the site and the settlements, it is likely that the occupiers of the proposed dwelling would be discouraged from making trips on foot or by cycling, especially outside daylight hours or during inclement weather.
12. It is undisputed that there are bus stops on Top Road and near the Blind Lane and Oxley Hill junction, albeit I could not see any bus stop signage in the locations identified and no timetables have been provided. The former bus stop is in Tolleshunt Knights and, whilst the latter is a short walk from the site, access to it is gained from Blind Lane and there is little verge for pedestrians to await buses. Consequently, the occupiers would be discouraged from using buses too. Instead of using sustainable transport modes, the occupiers would predominantly rely on private motor vehicles to make journeys to satisfy their needs for day-to-day living. This would result in a small amount of environmental harm, which would not be overcome through the potential use of electric vehicles.
13. Paragraph 80 of the Framework sets out five exceptions to its general policy against creating new residential development in isolated rural locations. It has been advanced that the site is isolated and thus that paragraph 80(d) of the Framework, which refers to development involving the subdivision of existing residential buildings, is applicable. I have been referred to an appeal decision

⁵ Maldon District Approved Local Development Plan 2014–2029

relating to land in another district that purportedly supports that claim⁶, as well as another for a similar conversion scheme off Rectory Road⁷. However, there are several properties in the vicinity of the site, and further residential development was being constructed on adjacent land during my visit. For these reasons, the site is not isolated and paragraph 80 of the Framework is irrelevant. Moreover, despite the small distance between the site and the Rectory Road scheme, the characteristics of their locations differ, as the site is comparatively near residential properties and a bus stop. The appeal schemes do not lead me to alter my findings.

14. Paragraph 79 of the Framework sets out that housing should be located where it will enhance or maintain the vitality of rural communities. Further, paragraph 105 of the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. I note that Tolleshunt Knights and Tiptree are only a few minutes' drive from the site and that there is some prospect that sustainable transport modes would be used. Additionally, the occupiers of the proposed dwelling could make a small contribution to the vitality of both settlements through spending on local services and facilities and engaging with the community, irrespective of their method of travel.
15. Nevertheless, a small amount of harm would arise from the occupier's dependence chiefly on private motor vehicles. In that context, the site is not a suitable location for housing, with particular regard to the Council's spatial strategy and access to services, facilities and sustainable transport options. The scheme is therefore in conflict with LP policies S1, S2, S8, D1, H4 and T2.

Listed building

16. According to the statutory list description, Grove Hall Farmhouse is an early 17th century two storey house (hereafter 'the house') with later alterations that is timber framed, roughcast rendered and features a tiled roof. Amongst other things, it is described as having sash windows, a central half-glazed door in a gable porch, jowled posts and axial beams. Notably, it has been subject to a substantial modern extension that is attached via a single storey link and clad in black weatherboarding under a plain tiled roof.
17. The outbuilding is relatively small, two storey and timber framed, with a half-hipped roof that is finished in similar materials to the aforementioned extension. Internally, its timber frame is partially exposed, with its principal posts, beams and braces appearing historic, but much of the studwork is modern. The main parties agree that it was likely built in the early 19th century as an open-sided cart shed with a granary on its upper storey, and I see no reason to find otherwise. The Council indicates that it was a 'roofless ruin' in 2005 and rebuilt using parts salvaged from the original structure. Prior to the most recent alterations, it was used as a games room and a store with a mostly open layout. The existing drawing also indicates that it featured several openings of modern proportions. When I visited, the living accommodation retained a relatively open layout, and the openings were clearly modern. Obviously the outbuilding has been altered considerably in the past.

⁶ Appeal reference: APP/U1105/W/17/3191044

⁷ Appeal reference: APP/X1545/W/22/3306604

18. A sizeable garage and a small shed are also located within the curtilage of the listed building and have a similar appearance to the outbuilding. The remainder of the house's substantial curtilage is primarily grassed but also includes a high proportion of trees and vegetation. The access driveway and the parking area it leads to in front of the house are hard surfaced. Additionally, a pathway connecting the parking area to the outbuilding cuts across the garden. Otherwise, the site is located in a rural area characterised by occasional buildings and open fields and country lanes.
19. I consider that the special interest and significance of the listed building is derived largely from its architectural and historic interest as a traditionally constructed former farmhouse that reflects the rural vernacular of this part of Essex. Although the outbuilding was built long after the house and despite its alterations over time, its traditional construction, materials and vernacular form, and its likely historic association with farming practices, add authenticity to the rural origins of the house. Similarly, the spacious and verdant curtilage and its wider surroundings contribute positively to the listed building's rural setting and thus special interest and significance.
20. The proposed scheme would include the insertion of similar windows to the modern ones indicated on the existing drawing and in situ. The proposed rooflights would result in the creation of small openings facing the house and the public footpath, but the outbuilding's roof form would remain clearly appreciable. Furthermore, the openings would be located between the principal elements of the timber frame and the loss of fabric would be limited. Overall, the changes to the outbuilding would be slight, and the resulting fenestration arrangement would not compromise or detract from the form, proportions, or integrity of the outbuilding, such that its rural character would prevail. The legibility of the historic relationship between the house and the outbuilding, and the special interest and significance of the listed building, would be preserved in respect of these aspects of the scheme.
21. Internally at ground floor level, the proposed staircase, kitchen area, and the installation of walls to provide for a cupboard and toilet room, would mostly entail alterations to one end of the outbuilding. The open character of the interior would endure as a result, which would reflect the likely open format of the cart shed historically. The installation of walls at first floor level would be more extensive so as to create a hallway, bedrooms and a bathroom. However, due to the modest size of the outbuilding and the uncompromised ground floor layout, the legibility of its historic form would not be adversely affected.
22. The appellant has indicated that the site could be subdivided through the use of boundary treatments which, depending on their format and extent, could adversely affect the historic association between the house and the outbuilding. However, I see no reason why a formalised boundary treatment would be needed, and planting could be used to sympathetically create a discrete and loose sense of separation, which would be in keeping with the remainder of the listed building's extensive and verdant curtilage. Accordingly, harm to the setting, special interest and significance of the listed building could be avoided by a landscaping condition, which could secure details of any boundary treatments to be submitted for approval.
23. The scheme also includes the creation of a new access from Blind Lane and a parking area adjacent to the existing driveway. Vehicles would thus also park

at the front of the site. However, the proposed dwelling would be set back a significant distance from the access, offset from the parking area due to its more southerly position, and vegetation would reduce intervisibility between it and the hard surfacing. Consequently, it would not be readily apparent that the access or parking area, or any parked vehicles, would be directly associated with the proposed dwelling. In addition, a substantial proportion of the listed building's spacious and verdant curtilage would be retained and the historic association with the house would be unaffected. Moreover, 19th century mapping suggests that the outbuilding was once served by a track within the curtilage of the house, which befits its historic use. The landscaping condition would also provide control regarding the extent of the hard surfacing and ensure that the materials used would be compatible with the rural setting of the listed building.

24. The proposed scheme may result in an increase in residential paraphernalia within the site, such as waste and recycling bins and outdoor furniture. However, the paraphernalia associated with the house and the proposed dwelling would likely be dispersed given the size of the curtilage and the separation distance between the buildings. Furthermore, residential paraphernalia would not be incongruous within the setting of the listed building given its historic and current use as residential accommodation.
25. Overall, the proposed scheme would preserve the listed building, its setting and the features of special architectural and historic interest that it possesses, in alignment with sections 16 and 66 of the Act. Accordingly, the significance of the listed building would also be preserved. The scheme therefore complies with the heritage protection policies in section 16 of the Framework. It also accords with LP policies D1, D3 and S1, insofar as these echo the Framework's approach to designated heritage assets and set out that the historic environment should be conserved and enhanced.

Character and appearance

26. The rural qualities of the house, its outbuildings and garden contribute positively to the character and appearance of the site and the surrounding area. The internal alterations would not be readily perceptible when viewed from outside the proposed dwelling or therefore be harmful. Whilst the external alterations and the new access and parking area would be visible within the site, from Blind Lane and the public footpath, the qualities of the outbuilding and the character of the house, its curtilage and the wider countryside, would not be compromised for the reasons set out above.
27. Therefore, the scheme would not harm the character or appearance of the site and the surrounding area. In that respect, it accords with LP policies S1, S8, D1 and H4, which seek to protect local context, the character of original buildings, and the intrinsic character and beauty of the countryside. The Council also refers to LP Policy S2 in respect of this main issue; however, it has no direct relevance to character and appearance matters and thus I find no conflict with it either.

Habitats site

28. The site is within the zone of influence of the habitats site, which provides estuarine habitat that supports internationally and nationally important flora and fauna, including wetlands and breeding and wintering birds. The Essex

Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) sets out strategic measures that are intended to mitigate the effects of residential development on Essex coastal habitats sites. The RAMS also provides costings for the measures and devises a tariff that should be paid for each dwelling created in a habitat site's zone of influence.

29. Although the outbuilding can be used as an annex, the scheme would nevertheless result in the creation of a separate and thus additional planning unit of residential accommodation. While the scheme would result in a very small increase in visitors and thus recreational disturbance to the habitats site, this would nevertheless adversely impact the integrity of the habitats site in combination with other plans and projects, unless mitigation is provided.
30. The latest UU secures a payment to the Council in line with the RAMS tariff for 2023/2024. There are no compelling reasons to doubt that the Council would use the contribution in accordance with the programme of mitigation measures set out in the RAMS. Subject to the mitigation being carried out, the scheme would not adversely affect the integrity of the habitats site.
17. Accordingly, the scheme complies with LP policies D1, I1, N1, N2 and S1, which seek to conserve and enhance the natural environment and acknowledge that mitigation may be secured through legal agreements.

Other considerations

31. The Highway Authority raises concerns regarding visibility at the proposed access and encroachment of highway land including the public footway, which the Council considers may be resolved by conditions. Drivers exiting the site would have clear views of approaching vehicles from Blind Lane via Oxley Hill and the adjacent accesses. Views down Blind Lane to the right of the access would be very slightly obscured by vegetation within the curtilage of the house, but less so than is the case with the current access. Moreover, due to curves in the carriageway, vehicles approaching from that direction are likely to travel below the speed limit, and drivers would nonetheless be able to view vehicles emerging from the access. Additionally, based on my observations, any encroachment would be limited to where the access meets Blind Lane. Nonetheless, a pre-commencement condition to require an amended access scheme to be approved would be appropriate and necessary to secure safe access and egress without encroaching highway land.
32. While the outbuilding has not been altered in accordance with the approved scheme, there is nothing before me which indicates that this cannot be done. Given that the outbuilding is currently used as living accommodation, there is a realistic prospect that alterations would be undertaken to make the outbuilding reconcile with the approved scheme if these appeals are dismissed.
33. The annex would feature all the facilities required for independent living and, as the outbuilding is located quite a distance from the house, it does not lend itself to occupation by dependent relatives. Furthermore, there is no evidence that the approved scheme prevents the occupiers of the annex from owning vehicles or making journeys independent of the occupiers of the house. Although two bedrooms are proposed and the approved scheme would feature just one, the difference in the amount of private vehicle movements to and from the site as a result of the scheme would be slight. In addition, there is nothing before me which suggests that the occupiers of the proposed dwelling

would be less likely to use sustainable transport modes than the occupiers of the annex. In that context, the harm arising from the occupiers of the proposed dwelling relying primarily on private motor vehicles would be negligible.

34. The Council confirmed that it could not demonstrate a 5 year supply of deliverable housing sites at the time it made its decisions, but now contends that 6.35 years supply can be demonstrated. However, this is disputed by the appellant, and the evidence either way is limited. In any case, the scheme would result in the provision of an additional dwelling in the district, which is a matter indicating in favour of the development. Furthermore, it is uncontested that the scheme would contribute to meeting a need for 2-bed dwellings and make use of previously developed land. It has also been highlighted that the alterations to the outbuilding would be small, such that the environmental impacts associated with the construction process would be limited relative to building a new dwelling. There would also be some slight, short term economic benefits arising from that process, and some benefits from the occupiers contributing to the vitality of the nearby settlements, as previously indicated.
35. Paragraph 79 of the Framework sets out a balanced approach to housing in rural areas. Policies S1, S2, D1, H4 and T2 of the LP generally align with the Framework insofar as they encourage development in accessible locations. However, in contrast, LP Policy S8 is prohibitive in offering support for prescribed forms of development outside settlement boundaries only. Whilst the LP policies including Policy S8 also make clear that the intrinsic character and beauty of the countryside should be recognised, in alignment with paragraph 174 of the Framework, I have not identified any harm in respect of character and appearance matters, or thus conflict with the LP policies in those respects.
36. Having regard to my above findings, including the limited consistency of LP Policy S8 with the Framework and that negligible adverse impacts would occur in comparison with the approved scheme, the conflict with the spatial strategy, the harm arising from the location of the proposed development, and the associated policy conflicts, attract negligible weight. Conversely, even if I were to concur with the Council's purported housing supply figure and though the benefits of the scheme are modest, those benefits outweigh the adverse impacts and the conflict with the development plan as a whole. Therefore, for the purposes of Appeal A, material considerations indicate that a decision should be taken which is not in accordance with the development plan.

Conditions

37. Further to the aforementioned conditions, the standard time ones are needed for certainty. An approved plans condition is needed for the same reason for Appeal A.
38. In order to preserve the setting, special interest and significance of the listed building, and safeguard the character and appearance of the area, conditions are needed to require the approval of the external surfacing materials for the proposed dwelling and clarify the detailed specifications of the new and altered windows and rooflights. For the same reasons, a condition is needed to clarify the methods to be used in making and altering the openings and making good the adjacent fabric. Further, there is clear justification for a condition to restrict the use of permitted development rights conferred by classes A, E and F of Part

1 and Class A of Part 2 of Schedule 2 of the GPDO⁸, as additions and alterations to the proposed dwelling, the creation of outbuildings, the installation of hard surfaces and the erection of means of enclosure within the site may, if not undertaken sensitively, harm the listed building's setting, special interest and significance.

39. Given that the scheme would give rise to very limited changes to the outbuilding, there is a need for a drainage scheme condition only in respect of the access and parking area in terms of surface water, in order to limit discharge onto the highway in the interests of safety. The Council has recommended a condition to require the approval of details regarding the extent of the proposed dwelling's curtilage. However, this is sufficiently clear from the drawings and thus a condition to that effect is unnecessary.

Conclusions

40. For the reasons given and subject to the conditions identified, I conclude that both Appeal A and Appeal B should be allowed.

Mark Philpott

INSPECTOR

⁸ The Town and Country Planning (General Permitted Development) (England) Order 2015

Schedule 1 – Conditions for Appeal A

- 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 accordance with the following approved plans: 22/1602/01; 22/1602/02; 22/1602/03; 22/1602/04; 22/1602/06.
- 3) Notwithstanding the approved plans, no development shall commence until details of the vehicular access and parking arrangement within the site have been submitted to and approved in writing by the local planning authority. The development shall be carried out and thereafter retained in accordance with the approved details and ensure that the public's right and ease of passage over Public Footpath No 8 (Tolleshunt Knights) is unobstructed at all times.
- 4) Prior to the construction of the access and parking area within the site, surface water drainage works for the development shall be carried out in accordance with details that shall have been submitted to and approved in writing by the local planning authority.
- 5) Prior to undertaking any alterations to the outbuilding, details of the materials to be used for the external surfaces of the dwelling hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
- 6) Prior to undertaking any alterations to the outbuilding, details of the windows and rooflights hereby permitted shall be submitted to and approved in writing by the local planning authority. These shall include section and elevation plans and details of the method of opening, glazing, frame, furniture and materials of each window and rooflight. The development shall thereafter be carried out in accordance with the approved details.
- 7) Notwithstanding the approved plans, prior to undertaking any alterations to the outbuilding, a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The scheme shall identify all existing trees and hedgerows on the land, those to be retained and measures for their protection throughout the course of development, and include details of any boundary treatments and a timetable for implementation. The development shall be carried out in accordance with the approved scheme.
- 8) Any trees or plants comprised within the scheme of landscaping approved by condition 7 which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 9) Notwithstanding the provisions of classes A, E and F of Part 1, Schedule 2, and Class A of Part 2, Schedule 2, and Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions or alterations shall be made to the dwelling hereby permitted, nor shall any hard surfaces, buildings, swimming or

other pools or means of enclosure be laid, constructed or installed within the site, other than where expressly authorised by this permission.

Schedule 2 – Conditions for Appeal B

- 1) The works authorised by this consent shall begin no later than 3 years from the date of this consent.
- 2) Prior to the commencement of works to the outbuilding, details of the materials to be used for the external surfaces of the dwelling hereby permitted shall be submitted to and approved in writing by the local planning authority. The works shall thereafter be carried out in accordance with the approved details.
- 3) Prior to the commencement of works to the outbuilding, details of the windows and rooflights hereby permitted shall be submitted to and approved in writing by the local planning authority. These shall include section and elevation plans and details of the method of opening, glazing, frame, furniture and materials of each window and rooflight. The works shall thereafter be carried out in accordance with the approved details.
- 4) Prior to the commencement of works to the outbuilding, a schedule and methodology for the alterations to the existing openings, the insertion of the door, windows and rooflights hereby permitted, and works of making good, shall be submitted to and approved in writing by the local planning authority. The works shall thereafter be carried out in accordance with the approved details.