



Appeal Decision

Site visit made on 17 October 2023

by J Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2023

Appeal Ref: APP/A1530/W/22/3311217

Fiddlers Farm, Fiddlers Hill, Fordham Heath, Essex CO3 9TU

- 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 Pat Flower against the decision of Colchester Borough Council.
 - The application Ref 221685, dated 5 July 2022, was refused by notice dated 21 October 2022.
 - The development proposed is described on the application form as 'Demolition of barn and erection of a dwellinghouse.'
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposal is consistent with the objectives of local and national policy with regards to location of housing;
 - the effect of the proposal on the character and appearance of the area, including its effect on designated heritage assets;
 - the effect of the proposal on the Ancient Woodland, known as Fiddlers Wood;
 - the effect of the proposal on protected habitats; and
 - whether the proposal would make a sufficient contribution toward infrastructure provision.

Reasons

Spatial strategy

3. The appeal site is located to the rear of Fiddlers Farm and is accessed via a short private access track, which also serves a number of commercial units, agricultural buildings and a small number of residential properties.
4. Although the appeal site is currently occupied by a building, and there are properties located nearby, it is physically separated from the village of Eight Ash Green. There is open countryside to the north and north east and woodland to the west. Taking these factors into consideration, together with what I saw on my site visit, it is clear to me that the site is not located within the built-up area of the village, nor does it adjoin the village, as suggested by the appellant. Moreover, it is outside the village boundary, as indicated within

the Eight Ash Green Neighbourhood Plan (NP)¹. As a result, it is located within the countryside for planning policy purposes.

5. Policies SG1 and SP3 of the Colchester Borough Local Plan 2017 -2033² (LP) provide the Council's spatial strategy for its district and seek to protect the countryside from unacceptable development which would harm its intrinsic value and rural character. Moreover, Policy SS5 indicates that proposals for development within the Eight Ash Green parish should be in accordance with the policies contained within the NP.
6. The NP has similar aims to the LP, and whilst supporting new housing, makes it clear that such housing should be developed on identified sites within the NP (Policy VSB1 relates). On land outside the Village Settlement Boundary, there is a general presumption against new development, unless it accords with the special circumstances set out in the Development Plan or the National Planning Policy Framework.
7. The LP indicates that developments in 'Countryside' locations will only be acceptable where they accord with Policies OV1 and OV2. Policy OV2 identifies exceptions to the presumption against new development, which includes agriculture, horticulture, forestry, equestrian use, infrastructure, renewable energy generation, and minerals or waste operations. The appeal proposal does not fall into any of the exceptions listed.
8. On my site visit I saw that 'Fiddlers Field,' a major housing development, was at an advanced stage and lay only a short distance to the south of the appeal site. The infrastructure provided by that development, including footpath and road connections would, when complete, improve accessibility from the appeal site to services and facilities available within Eight Ash Green. That said, future occupiers of the appeal site would still be required to walk along a short length of Fiddlers Hill, which has no footpath or street lighting.
9. I acknowledge that the occupiers of the new dwelling would be likely to support local services and facilities. Moreover, the proposal would make a contribution to the Government's objective of significantly boosting the supply of homes, utilising previously developed land. However, given the quantum of development proposed, such matters carry limited weight in favour of the proposal.
10. Against these benefits is the clear conflict with the adopted development plan, and the neighbourhood plan, which taken as a whole do not support new housing on this site; a matter which I give significant weight.
11. In light of the foregoing, and in the absence of substantive evidence to demonstrate otherwise, I conclude, on this main issue, that the appeal site is not in a suitable location for new housing. Accordingly, the proposal conflicts with Policies SG1, SP3, OV2 and SS5 of the Colchester Borough Local Plan 2017 -2033 and Policy VSB1 of the Eight Ash Green Neighbourhood Plan which jointly seek to protect the countryside from unacceptable development which would harm its intrinsic value and rural character. Given this conflict, the proposal would not comprise sustainable development.

¹ NP made November 2019

² Adopted July 2022

Character and appearance

12. The properties in the immediate vicinity of the appeal site have a wide range of designs and have evolved over a period of time resulting in a varied pattern of buildings in terms of location, scale, and design. They utilise a varied palette of materials.
13. The building that currently occupies the appeal site comprises of a barn of modest scale and mass and has painted corrugated sheet walls. It has 4 large openings at ground floor level in the front elevation and 4 smaller window/door openings at first floor level. There are small window openings in the two end elevations at first floor level. Two small windows are located at first floor level in the rear elevation. Fiddlers Wood provides a verdant backdrop to the building.
14. The barn fronts onto an open courtyard, which provides access to the Hen House, and an agricultural building. The Hen House is a detached low level building, set within its own curtilage. It is clad in dark stained timber, with patio style openings to its front elevation, and a low pitch roof. The agricultural building has a more modern appearance, being constructed of a dark corrugated metal material with large roller shutter openings. A mature tree provides a focal point to the courtyard.
15. The appellant asserts that the proposal would represent a visual enhancement of the site, through the removal of an unsympathetic building and its replacement with a building of a more traditional design, drawing on its rural setting with the use of traditional weatherboarding and red brick finishing.
16. I do not accept the appellants view that the existing building is unsympathetic to its surroundings. In my judgement it is representative of agricultural buildings normally found within rural areas and, despite its condition, fits comfortably within its setting. Whilst I acknowledge that the proposal would comprise of a traditional form of development, it would nevertheless introduce a building that is significantly larger than the existing barn in terms of its depth, width and height, further adding to the urbanisation of this part of the countryside. Furthermore, it would incorporate extensive areas of glazing, that are not typical of the more restrained forms of buildings that are found in the immediate locality. As a result, the proposed development would appear as a discordant feature that would be out of keeping and detrimental to the rural character of the area in which it is located.
17. I have also considered my statutory duties³ with regards to the setting of Fiddlers Farmhouse, a Grade II listed building. Fiddlers Farmhouse lies in a prominent location on Fiddlers Hill, a short distance to the east of the appeal site. It dates from around 1900 and comprises of a single storey timber framed and plastered property with rooms in the roofspace. It's significance derives from its historical and architectural attributes, along with its association with its rural surroundings. A number of developments have occurred, in the vicinity of the farmhouse, which has indicated that its setting has changed over time.
18. I saw on my site visit that the proposed dwelling would be visible, from Fiddlers Hill, in association with Fiddlers Farmhouse. I also noted that there would be views from the public footpath that passes through Fiddlers Wood, which would

³ Sections 66(1) Planning (Listed Buildings and Conservation Areas) Act 1990

be obscured in the event that the proposal was to proceed. As a result, the significance of the heritage asset would be reduced. I accept that any views would be limited and localised, due to the distance between the respective properties and the presence of intervening buildings.

19. I do not accept the appellant's assertion that proposal would result in a significant enhancement of the setting of the listed building. On the contrary, given the design of the proposed dwelling, with its modern appearance and extensive areas of glazing, the proposal would jar with the traditional form of Fiddlers Farmhouse and compete with it for prominence, thereby having a harmful effect on the setting of the heritage asset. That said, I accept that any harm would be limited given the juxtaposition of the respective building. Whilst the harm that is caused to the designated heritage asset would be less than substantial, paragraph 202 of the Framework makes it clear that this harm should be weighed against the public benefits of the proposal.
20. The proposal would result in the provision of one additional dwelling. There would be benefits to the local economy during the construction of the dwelling, and it is likely that local facilities and services would also benefit following the occupation of the property. However, these benefits would be limited and would not outweigh the harm to the setting of the listed building.
21. The main parties disagree over whether the permission, granted under reference F/COL/06/0601 for the conversion and alteration of redundant agricultural buildings to form holiday accommodation, provides a fall-back position that would enable the appeal building to be converted into residential accommodation. In this regard, it is clear to me that the Hen House is now being occupied as residential accommodation, and a lawful development certificate has been issued with respect of that use. I also accept planning permission referenced F/COL/06/0601, granted consent for the conversion and alteration of the appeal building, and included extensive areas of glazing at the ground floor level. However, whether a permission exists for the conversion and alteration of the barn is not a matter before me for consideration.
22. Even if a fall-back position did exist, I am not persuaded that the conversion and alteration of the barn is directly comparable with the proposal before me, which is for a new build development, that incorporates extensive areas of glazing at both ground and first floor levels. Consequently, I have considered the appeal proposal on its own merits.
23. For all of the above reasons, I conclude, on this main issue, that the proposal would be harmful to the character and appearance of the surrounding area including the setting of the Grade II listed Fiddlers Farmhouse. Accordingly, the proposal is contrary to Policies DM16 of the LP, and the Framework which jointly, amongst other matters, seek to conserve and enhance the significance of heritage assets.

Ancient woodland

24. The proposed dwelling would be sited a short distance from the edge of the ancient woodland known as Fiddlers Wood, with garden space being provided in the intervening space and to the side of the proposed building. It would have rear facing windows serving a kitchen and living room at ground floor level and a living room, bedroom and ensuite at first floor level.

25. The wood lies to the south of the appeal site and comprises of many tall trees, including deciduous varieties. Given the close proximity of the trees to the proposed dwelling, the height and variety of the trees, and the path of the sun, it is likely habitable rooms, and the garden space, would receive little sunlight and only limited daylight. I note the appellants view that the level of light within habitable rooms could be improved, by the provision of additional openings on the northern elevation. However, in the absence of substantive evidence, in accordance with an accepted methodology for assessing matters relating to sunlight and daylight, I am not persuaded that this would address my concerns.
26. I am satisfied that the rear wall of the proposed building is no closer to the trees than the existing barn, and there is unlikely to be a significant adverse effect on the root protection zones of the trees arising from the construction of the dwelling. That said, I am not convinced that there would not be further pressure on the retained trees in the future. Such demands could arise as a result of future occupiers wanting to carry out tree works to allow more light into the shaded parts of the appeal site, from the laying out of paved areas or construction of outbuildings, or through the provision of services.
27. Whilst noting the Council's concern that the proposal could also result in dumping of garden waste into the woodland, I have no evidence to support this assertion. Moreover, I am persuaded by the appellants view that facilities are available for the collection of garden waste, and in any event even if garden waste were to be deposited in the woodland any impact on biodiversity would be very limited.
28. I have given consideration to the appellants view that any threat to the woodland from the development would be minimal and would be significantly less than that posed by the new development that is taking place at Fiddlers Field. However, I have been provided with no evidence relating to what matters were taken into account when the Fiddlers Field development was considered, or any impacts that might arise to the woodlands therefrom. Nor have I been made aware of any mitigation measures that might have been imposed when the development was permitted. Consequently, this matter is not determinative in my assessment.
29. I have also note reference to the appellants desire to live in the proposed dwelling and enjoy the peace and tranquillity that the woodland offers. However, the application form indicates that the proposal is for market housing, and I have nothing before me to indicate that occupancy of the proposed dwelling would be restricted to the appellant. As a result, I give this matter neutral weight.
30. Accordingly, on this main issue, the proposal would conflict with paragraph 180 c) of the Framework. This policy, amongst other matters, seeks to prevent the loss or deterioration of irreplaceable habitats such as ancient woodlands. No exceptional reasons have been cited to indicate that there is a public benefit that would clearly outweigh any loss or deterioration of the habitat that might occur, and no suitable compensation strategy has been presented for consideration.

Protected habitats

31. The development site falls within the Zone of Influence for the Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS). I am mindful that as a competent authority I am required by the Habitats and Species Regulations 2017 to consider the impact of the proposed development on the European Sites (Colne Estuary SPA and Ramsar site, Blackwater Estuary SPA and Ramsar site, Dengie SPA and Ramsar site, Stour and Orwell Estuaries SPA and Ramsar site (south shore) and Essex Estuaries SAC).
32. Natural England anticipate that, without mitigation, new residential development in this area is likely to have a significant effect on the sensitive interest features of these coastal European designated sites, through increased recreational pressure when considered 'in combination' with other plans and projects. They have advised the Council to consider if the proposal falls within the scope of RAMS as relevant development. In this regard the Council has confirmed that the proposed development for one additional residential unit falls below the threshold for likely significance effect. That said, they have indicated that a proportionate financial contribution in line with the Essex Coast RAMS would be required. I have no reason to disagree with the conclusions that the Council has reached.
33. The appellant has indicated that he would be willing to make a financial contribution to mitigate the effects of the proposed development on the European Sites, and a draft unilateral undertaking (UU) has been presented to me for consideration. Subject to some redrafting to include relevant references, and confirmation regarding title, this would appear to adequately address the matter referred to in reason for refusal 4. However, given that the proposal would fail on other substantive matters, as identified above, I have not taken this matter further.

Infrastructure, services and facilities

34. Policies SP6 and DM2 of the LP require all developments to help deliver more sustainable communities by making contributions to infrastructure, services and facilities, including community facilities, green spaces and safe places for play. Based on the standard methodology used by the Council, a financial contribution of £1641.62 would be required towards the upgrade of Fordham Village Hall, or a proposed café project at the All Saint's Church. A further contribution of £3749.02 would be required towards playground surfacing improvements being undertaken by Eight Ash Green Parish Council.
35. The appellant has indicated that he would be willing to make a financial contribution towards community and leisure provisions in accordance with the wishes of the Council. The draft UU submitted with the appeal includes reference to these matters. As a result, I am satisfied that subject to appropriate redrafting, as indicated above, and inclusion of full details of the title to the land, the issue referred to in reason for refusal 5 would be adequately addressed. However, given that the proposal would fail on other substantive matters, as identified above, I have not taken this matter further.

Other Matter

36. I note the support for the proposal from the occupiers of Fiddlers Farm, The Hen House and The Cottage. I recognise the benefits of utilising 'redundant'

buildings and previously developed land for development. However, for the reasons set out above, I am not persuaded, that the form and design of the proposed building relative to its rural setting, in close proximity to a grade II listed building, and an ancient woodland, is acceptable. Insofar as the new development at Fiddlers Field is concerned, I acknowledge that development has occurred on 'greenfield' land, but I am also conscious that it has proceeded on the basis of an adopted development plan and a made neighbourhood plan, in accordance with laid down procedures. Consequently, I consider that the support for the proposal does not outweigh the harm that I have identified above.

Conclusion

37. Subject to the completion of an appropriately worded and evidenced unilateral undertaking I find that there would be no conflict with the development plan with regards to protected habitats or with regards to local infrastructure, services and facilities. However, the proposal would be inconsistent with the objectives of local and national policy with regards to location of housing. It would also be harmful to the character and appearance of the area, including the setting of the nearby listed building and would be likely to have a harmful impact on the nearby ancient woodland. There are no other considerations or public benefits that would outweigh this harm. The proposal would therefore fail to satisfy the requirements of the Act, the Framework and the development plan.
38. There are no other relevant material considerations worthy of sufficient weight that indicate the application should be determined other than in accordance with the development plan as a whole. For the reasons given above, I therefore conclude that the appeal should be dismissed.

J Gunn

INSPECTOR