



Appeal Decisions

Site visit made on 25 July 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Appeal A Ref: APP/X1545/W/22/3304513

The Barn, Braxted Park Road, Great Braxted CO5 0QB

- 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 C Burrows against the decision of Maldon District Council.
 - The application Ref FUL/MAL/21/01338, dated 30 November 2021, was refused by notice dated 10 June 2022.
 - The development proposed is the erection of four 3-bedroom new build dwellings.
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Appeal B Ref: APP/X1545/W/22/3306175

The Barn, Braxted Park Road, Great Braxted, Essex CO5 0QB

- 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 Mrs C Burrows against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/00764, dated 27 June 2022, was refused by notice dated 22 August 2022.
 - The development proposed is the erection of four new build dwellings.
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Decisions

1. The appeals are dismissed.

Procedural Matters

2. There are two appeals on this site. They differ in respect of the sizes and shapes of the garden areas for proposed plots 1 to 3, and the number of bedrooms in the proposed dwellings on plots 1 and 2. I have considered each proposal on its individual merits, however, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated in this decision.
3. The descriptions of the developments on the planning application forms include superfluous details regarding a previous approval, with Appeal B being described as a resubmission. Therefore, I have used shortened descriptions for the banner headings above, which satisfactorily describe the developments. I have had regard to the longer descriptions in determining the appeals.

Background and Main Issues

4. The Council granted Prior Approval¹ for the change of use of the existing agricultural buildings on the appeal site to create 4 dwellings (2 x 2 bedroom and 2 x 3 bedroom) under Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). I have had regard to this in formulating my main issues.

¹ Reference number COUPA/MAL/20/01316.

5. The main issues are:

- Whether the proposed development would affect the integrity of the Blackwater Estuary Special Protection Area (SPA) and Ramsar site, and the Dengie SPA and Ramsar site, which are designated European sites of nature conservation importance.
- Whether the proposed dwellings would be in an appropriate location for new housing, with particular regard to the Council's settlement strategy and accessibility to local facilities and services.
- The effect on the character and appearance of the area.
- If there is any harm, whether this is outweighed by other considerations, particularly whether there is a fallback position for an alternative proposed development.

Reasons

Protected European sites of nature conservation importance.

6. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy, Supplementary Planning Document (the SPD), shows that the appeal sites lie within the Zones of Influence (ZoI) of both the Blackwater Estuary SPA and Ramsar site and the Dengie SPA and Ramsar site, which are European sites of nature conservation importance.
7. The Essex coast European sites, including those referred to above, are recognised for their value as coastal habitats. They support internationally important populations of bird species. The main threat to the integrity of the European sites is disturbance to the internationally important bird species by recreational activities. The coast is a major destination for walking, sailing, birdwatching, jet skiing, dog walking and fishing. The evidence suggests that most of this activity is undertaken by people who live in Essex.
8. New housing development and increased numbers of households within the ZoIs have the potential to increase the negative effects of recreational disturbance to the qualifying bird species, thus resulting in the decline in their numbers and threatening the integrity of the SPAs. The conservation objectives of the SPAs are to ensure that their integrity is maintained. Natural England has confirmed that additional residential development and associated recreational pressure is likely to have a significant adverse effect on the integrity of the SPAs and their qualifying features.
9. The appeal developments would increase the number of households within the ZoIs of the SPAs and are therefore likely to increase disturbance to the qualifying bird species in the SPAs, through increased recreational pressure. They are therefore likely to have a significant adverse effect on the integrity of the SPAs, both in isolation and cumulatively with other housing development within the ZoIs. As the competent authority, I must undertake an Appropriate Assessment (AA) for each appeal proposal and consider whether measures could be put in place to avoid or mitigate the impacts of the recreational pressure arising from the proposed developments on the SPAs, with the aim of maintaining or restoring, at favourable conservation status, the natural habitats and species of the SPAs.

10. The SPD provides a strategy to avoid and mitigate the potential in-combination effects of new housing development on the integrity of the SPAs and is endorsed by Natural England. The mitigation strategy incorporates measures including enhancing habitat, diverting activities away from the most vulnerable locations through access management and the promotion of alternative walking and cycling routes, interpretation and signage, education and direct engagement with the public, a Ranger's service, and enforcement. In addition, there would be monitoring and surveys of the SPAs, particularly visitors and bird numbers. To mitigate the potential adverse in-combination effects of new housing development and visitor pressure on the qualifying bird species within SPAs, the SPD requires new residential development to make a tariff-based financial contribution towards the delivery of the SPD's mitigation strategy.
11. The appellant has submitted signed Unilateral Undertakings (UU) for both appeals dated 4 August 2022, to obligate payment to the Council of £137.71 per dwelling towards the delivery of the SPD's mitigation. The wording of the appellant's submitted UU for Appeal B, refers to the term "development" (within Section 1 'Definitions') as meaning the development proposed in a prior approval application. The term "Dwelling" is defined in the UUs for both appeals as a residential unit of accommodation built pursuant to the "Permitted Development Right", which itself is defined as the right to carry out the development having been granted prior approval. The appeals seek planning permissions for the proposed developments and if granted they would not be approved under the GPDO. Therefore, I find that the terminology in the submitted UUs is inconsistent with the planning permissions being sought.
12. Furthermore, Natural England has confirmed that the contributions secured by each UU falls short of the current contribution for the financial year of 2023-2024 of £156.76 per dwelling. I invited the parties' comments on Natural England's consultation response and the wording of the UUs. The appellant has advised that the submitted UUs follow the Council's standard template and had no comment to make on Natural England's consultation response. Based on the evidence before me, I find that the submitted UUs would not be effective in mitigating the recreational impacts of the proposed developments on the SPAs, and therefore would not avoid adverse effects on their integrity.
13. Consequently, on this issue I conclude through my AA that the appeal proposals would have adverse effects on the integrity of the SPAs. Therefore, the proposals would conflict with Policy S1 and Policy I1 of the Maldon District Approved Local Development Plan 2014 – 2029, Adopted July 2017, (the LDP), insofar as they seek to ensure that development conserves and enhances the natural environment, protects biodiversity, and mitigates environmental issues through developer contributions.
14. The appeal proposals would also conflict with Paragraphs 174.a) and 180.a) of the National Planning Policy Framework (the Framework), insofar as they require decisions to protect sites of biodiversity value in a manner consistent with their statutory status, and if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated for, then planning permission should be refused.

Whether an appropriate location for new housing

15. The appeal site is located outside of any defined settlement boundary and therefore lies within the countryside. The proposed dwellings are for general

needs market housing and are not presented as meeting the criteria set out in Policy S8 of the LDP, which includes housing to meet the accommodation needs of rural workers in the countryside. As such, the appeal proposals conflict with Policy S8.

16. In terms of accessibility to facilities and services to meet the every-day needs of the intended future occupiers of the proposed developments, the evidence indicates that the closest settlement of Great Totham is approximately 1.4km away from the site and has a limited range of services. Closer to the site is a farm shop at the junction of Braxted Park Road and the B1022, and bus stops providing services to larger settlements, including Maldon and Colchester.
17. Walking or cycling journeys from the appeal site to the closest settlements, or to the farm shop and bus stops, would be along a stretch of Braxted Park Road with narrow verges, no footpaths or streetlights, and which is subject to the national speed limit of 60mph. At the time of my visit traffic conditions were relatively busy with a regular flow of traffic in both directions and at relatively high speeds. Traffic included some agricultural vehicles and heavy goods vehicles. My observations, although only a snapshot in time, are not contradicted by any substantive alternative evidence.
18. Based on the traffic conditions and the nature of the route between the appeal site and the destinations identified above, I find that journeys for pedestrians and most cyclists, including more vulnerable groups such as children and younger children in pushchairs, would be particularly unattractive. This would be especially so during inclement weather or hours of darkness. For these reasons, the future intended occupiers of the proposed dwellings would be heavily reliant upon private vehicles to meet most, if not all, of their everyday travel needs. Even if the proposed residential use of the site was to reduce the number of vehicle trips in comparison to the existing agricultural use, the pattern of regular vehicle journeys by the intended future residential occupiers would be materially different, and it would not alter my conclusion on this main issue.
19. For these reasons, I conclude on this issue that the proposed dwellings would not be in an appropriate location for new housing, with particular regard to the Council's settlement strategy and accessibility to local facilities and services. Consequently, the appeal proposals would be contrary to Policies S1, S8, T1 and T2 of the LDP, insofar as they seek to ensure that housing growth in meets local needs in the most sustainable locations that minimise the need for travel, with safe and direct walking and cycling routes to nearby services, facilities and public transport.

Character and appearance

20. The appeal site fronts Braxted Park Road and consists of 2 relatively large agricultural storage buildings with external walls constructed from a mixture of different coloured masonry, timber cladding and corrugated sheets. With relatively tall roof eaves and large door openings, they have a functional appearance and are somewhat akin to industrial storage buildings. The size and utilitarian appearance of the buildings are emphasised by the openness of the site frontage, particularly the building closest to the road, which is a rather imposing building.

21. Although of a type found commonly in rural areas and not intrinsically harmful to the character and appearance of the countryside, the existing buildings on the appeal site are nonetheless considerably larger than the residential bungalows on either side and the two-storey dwelling to the rear. Together the existing buildings and the land around them, which is roughly surfaced in stone and has a harsh appearance, contrast noticeably with the modest residential bungalows on either side, which are generally set amongst plots containing trees and hedgerows.
22. Public views of the appeal site are generally limited to relatively localised views from Braxted Park Road, due to a combination of topography and the partial screening effect of the existing dwellings and boundary planting on the approaches to the site. The appeal site is therefore experienced as part of a small group of properties set within a wider green and spacious rural landscape, with open fields and intermittent blocks of a woodland, and a scattered pattern of buildings.
23. The front elevation of the proposed dwellings on Plots 1 and 2, would be noticeably wider than the façade of the existing agricultural building that it would replace. However, it would not be significantly wider than the adjacent bungalow (known as 'Lee Moor') and its single garage combined. Set on the building line established by Lee Moor, and with space around it, the proposed building would not appear cramped in the plot. The proposed building's low roof eaves level, combined with the pitched sloping roof, would break up the building's massing and achieve roof-to-wall proportions similar to the bungalows in the locality. For these reasons the proposed dwellings on Plots 1 and 2, would not dominate their surroundings.
24. The elongated form, simple symmetrical pattern of windows to the front elevation and the high proportion of walling, along with window shutter details and black cladding, would give the proposed building a traditional agricultural aesthetic. This would be diluted somewhat by the domestic pattern of window openings in the flank walls. However, these walls would not be seen across long distances and would be partly screened by the flanking properties.
25. The proposed dwellings on plots 3 and 4, would be set well back into the site and substantially screened by the surrounding buildings including proposed plots 1 and 2. In glimpsed views along the site access and across the car parking area, the blank flank wall of this building would contribute to disguising its residential use.
26. The external materials of the proposed dwellings, particularly the dark tone of the black coloured clad walls, would subdue their appearances and be sympathetic to the site's surroundings. The materials would be similar to those of the existing dwelling at the rear of the site and the nearby farm shop. Replacing the harsh area of stone hardstanding that currently exists on the site frontage with soft landscaping would relate to the front gardens of the flanking properties, and result in a visual enhancement to the appeal site.
27. Domestic paraphernalia could accumulate within the garden area on the site frontage between the road and the building on Plots 1 and 2. However, given the availability of a quieter rear garden away from the busy road, with greater privacy, future occupiers are unlikely to use the site frontage in this way. This would be especially unlikely in the case of Appeal A, in which plots 1 and 2 would have larger rear gardens.

28. Even if paraphernalia were to accumulate on the appeal site frontage, I am aware that the existing agricultural use would likely have seen parked vehicles, including farm machinery and associated paraphernalia being stored on the site frontage and to the side of the buildings. Furthermore, paraphernalia could accumulate in the front gardens of the existing flanking dwellings and therefore signs of domestic activity would not be out of place. In this context, normal residential paraphernalia and parked vehicles in the proposed car park would not be unacceptably visually harmful. The width of the proposed building on plots 1 and 2, would also help partly screen the car parking area in views from the road and along the site access. Planting along the site frontage would, in time, assist in screening or filtering views of the front gardens of these plots.
29. The rear gardens of plots 1 and 2, would be set back from the road, enclosed by boundary treatments and partly screened by the bungalow Lee Moor. The gardens would also be adjacent to the residential garden of the dwelling to the rear, where paraphernalia could also accumulate. Viewed in this context and across these distances, domestic paraphernalia and boundary enclosures would not be visually harmful or out of place in this residential setting. The garden to plot 3 is larger in Appeal A, than Appeal B, however paraphernalia would not be readily visible or inconsistent with its residential surroundings.
30. Taking account of the above, and particularly the scale, position and appearance of the building on plots 1 and 2, including the larger rear gardens proposed in Appeal A, I find that the appeal proposals would be consistent with their surroundings. Although the appearance of the appeal site 'as existing' is not incongruous having regard to its agricultural use, I find that the appeal proposals would bring modest visual benefits to the character and appearance of the area.
31. For these reasons I conclude on this issue that the appeal proposals would not harm the character and appearance of the area and would therefore be consistent with the Policies S1, S8, D1 and H4 of the LDP, insofar as they require high quality design which respects and maintains the rural character of the District, and does not adversely affect the character and beauty of the countryside. The appeal proposals would also be consistent with Paragraphs 130 and 174.b) insofar as they require development to be visually attractive and sympathetic to landscape setting, and to recognise the intrinsic character and beauty of the countryside.

Interim conclusion

32. The appeal proposals would lead to a visual enhancement of the appeal site in its current state. The weight to be given to this is tempered by the fact that I do not find the appearance of the site in its current state to be visually harmful. I therefore give modest weight to the appeal proposals' enhancement of the character and appearance of the area. However, this is outweighed by the appeal proposals' adverse effects on the integrity of the designated European sites and conflict with the district settlement strategy in terms of accessibility to local facilities and services.
33. For these reasons, I find that the appeal proposals conflict with the development plan as a whole. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission be determined in accordance with the development plan, unless material considerations

indicate otherwise. My attention therefore turns to those material considerations.

Whether the harm is outweighed by other considerations, including any fallback position.

34. The decision of the court in *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314, sets out that for a development to be a fallback position there must be a real prospect of the development being implemented. In this context a "real prospect" means one that is more than merely theoretical. There is nothing in the evidence before me, including in *Mansell*, that places an explicit burden on a developer to demonstrate why a fallback development is not being pursued. In fact, *Mansell* states that there is no legal requirement in every case for a fallback to depend on a planning permission having been granted or a developer stating precisely how any permitted development rights available under the GPDO would be made use of. The evidence needed in each will be a matter of planning judgement for the decision maker.
35. I have very limited evidence to support the assertion that the existing agricultural building furthest from the road might not be structurally secure and capable of conversion. Although not open for inspection at my visit, it appeared to be of substantial construction and in any case benefits from prior approval for conversion. It is unclear what the horizontal lines on the walls of the approved elevations of the Class Q scheme for Plots 2A and 2B represent. However, I see no reason why any new materials for the Class Q scheme could not match those used in the existing building and thus comply with the prior approval, which is said to require matching materials. Therefore, the Council's concerns over compliance with the prior approval are of limited relevance to my considerations in these appeals and hold very limited weight against them.
36. There is nothing in appeal decision APP/X1545/W/18/3194812, particularly paragraph 11, that confines a realistic fallback position to schemes where there are minor differences between the approved scheme and the proposed development. Several prior approval schemes may have been found by the Council to be undeliverable, but that does not mean that the Class Q scheme at the appeal site is undeliverable. The appellant's intention to deliver a higher specification scheme for the same cost as the Class Q scheme, does not prove it to be an unviable scheme.
37. I find that on the evidence before me, there is a realistic prospect of the Class Q scheme being implemented at the appeal site. As such, it constitutes a clear fallback position against which to assess the appeal proposals. While it will not automatically guarantee that planning permissions will be granted for residential development on the appeal site, it is nonetheless a material consideration of considerable weight.
38. In Appeal B, the Council treated the rooms labelled as 'Home Office' on the submitted floor plans in plots 1 and 2 as bedrooms. I have no substantive evidence to support the Council's position that treating rooms that could readily accommodate a bed space as bedrooms is accepted as good practice and not uncommon. Therefore, I have treated the accommodation within the appeal proposals based on the submitted drawings.

39. The total gross floorspace of the Class Q scheme would not be exceeded by the appeal proposals. The 3 bed dwellings on plots 1 and 2 in Appeal A are likely to be occupied more intensively than the Class Q scheme due to the 2 additional bed spaces. There is, however, limited evidence before me to quantify the increase in private car journeys associated with the occupation of the Appeal A development. The occupiers would likely reside as a family unit, providing at least some opportunity to car share for certain journeys.
40. I am not persuaded, on the evidence before me, that the scale of the likely increase in private car journeys, over and above the Class Q scheme, would be anything other than insignificant. Therefore, the reliance of future occupiers of the appeal developments upon private car travel to access services and facilities would be substantially the same as for the Class Q fallback scheme. I therefore find that the appeal proposals' conflict with the settlement strategy in Policies S1, S8, T1 and T2 of the LDP, is outweighed by the Class Q scheme having substantially the same level of harm in this regard.
41. The Class Q scheme would result in a development of a different form to that proposed in these appeals. The Class Q scheme would have involved external changes to the buildings that would have resulted in appearances that would not be typical of an agricultural building, or consistent with the domestic and somewhat suburban style of the dwellings in the locality. They would have displayed a commercial/industrial aesthetic, emphasised by the appearance of the surfacing of the site frontage. Collectively, the converted Class Q buildings would be neither agricultural nor residential in character or appearance.
42. The proposed building containing plots 1 and 2 in the appeal before me would have a larger footprint than the dwellings in building 1 in the Class Q scheme. However, the scale of the proposed building would not be dominant in its setting. Compared to the Class Q scheme, the appeal proposals would, for the reasons given above, be reflective of the appearance of traditional agricultural buildings, and generally consistent with the scale and character of the dwellings in the group. Soft landscaping along the site frontage would replace the stone surfaced hardstanding and soften the appearance of the site. It would assist in filtering views of the slightly larger car parking area and any paraphernalia in the gardens of plots 3 and 4. Given that these plots and their gardens are broadly comparable with the layout of the Class Q scheme, the visual effect of paraphernalia in gardens would not be materially more harmful.
43. The rear gardens of plots 1 and 2 in Appeal B, would largely be contained between the rear projecting wings of the building, thus having a substantial screening effect that would limit views of stored paraphernalia. Although the rear gardens of those plots in Appeal A would be larger and would extend further beyond the rear walls of the proposed dwellings onto generally open land, the position and scale of the gardens are broadly comparable to those in the Class Q scheme on plots 1A and 1B. As paraphernalia in these gardens would be set back from the road, enclosed by boundary treatments, and partly screened by the dwelling Lee Moor, it would not be materially more harmful than the Class Q scheme.
44. Compared to the Class Q scheme, the appeal proposals could result in paraphernalia being stored on the landscaped site frontage, and highly visible from the road. However, the Class Q scheme could also have resulted in vehicles being parked on the site frontage. As such, I find that stored

paraphernalia associated with the appeal proposal would not be materially more harmful than the Class Q scheme. Taking account of the above, I find that the appeal proposals would represent an enhancement to the character and appearance of the site and the wider area, when compared to the Class Q fallback development, which weighs modestly in its favour.

45. I have no reasons to doubt that the Class Q fallback would have adequately mitigated its impact on the SPAs and avoided adverse effects on the integrity of those designated European sites. By comparison, I have found that the appeal proposals would harm the designated European sites of nature conservation importance. This results in conflict with the requirements of Policy S1 and Policy I1 of the LDP, which are set out above. The policy conflict carries very significant weight against the appeal proposals and outweighs the appeal proposals' enhancement to the character and appearance of the site and the wider area.
46. The Council cannot currently demonstrate a 5-year supply of deliverable housing sites. However, under Footnote 7 to Paragraph 11.d)i. of the Framework, the appeal proposals' adverse effects on the integrity of the protected European sites of nature conservation importance provide a clear reason for refusing the appeals. Consequently, the appeal proposals do not benefit from the Framework's presumption in favour of sustainable development. The harm they would cause is not outweighed by other considerations, particularly the Class Q fallback development and the Framework.

Other matters

47. I acknowledge the appellant's concerns over the Council's processing of the planning applications in the appeals before me. However, these fall outside the scope of my considerations and have not influenced my determination of the appeals.

Conclusions

48. The proposed developments would not cause harm to the character and appearance of the area. However, for the reasons given above, they would adversely affect the integrity of the designated European sites and would not be in an appropriate location for new housing, with particular regard to the settlement strategy and accessibility to local facilities and services. These adverse impacts bring the proposed developments into conflict with the development plan as a whole.
49. The Class Q fallback development would outweigh the proposals' conflicts with the Council's settlement strategy. However, it would not outweigh their adverse effects on the integrity of the designated European sites. There are no material considerations of sufficient weight, including the modest benefits to the character and appearance of the area, to indicate that decisions on these appeals should be made other than in accordance with the development plan. Having considered all matters raised, I therefore conclude that the appeals should be dismissed.

G Sylvester

INSPECTOR