



Appeal Decision

Site visit made on 11 January 2024

by D Wallis MRTPI, BSc (Hons), PGDip (Environmental Planning)

an Inspector appointed by the Secretary of State

Decision date: 23rd January 2024

Appeal A Ref: APP/A1530/W/23/3318059

Rows Farm, Church Road, Layer-de-la-Haye, CO2 0EU

- 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 Courtenay Building Contractors against the decision of Colchester Borough Council.
 - The application Ref 222654, dated 19 October 2022, was refused by notice dated 14 December 2022.
 - The development proposed is the erection of two self-build bespoke designed dwellings in lieu of application 221450 for the conversion of three agricultural buildings into two dwellings.
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Appeal B Ref: APP/A1530/W/23/3324967

Rows Farm, Church Road, Layer-de-la-Haye, CO2 0EU

- 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 Courtenay Building Contractors against the decision of Colchester Borough Council.
 - The application Ref 230522, dated 24 February 2023, was refused by notice dated 20 April 2023.
 - The development proposed is the erection of two self-build bespoke designed dwellings in lieu of application 221450 for the conversion of three agricultural buildings into two dwellings.
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Decisions

1. Appeal A and Appeal B are both dismissed.

Preliminary Matters

2. During the course of the appeals, the National Planning Policy Framework was revised and published in December 2023 (the Framework). Consultation has been undertaken with the main parties and I have taken the responses into account in my decision.

Main Issues

3. Upon my reading of the documents, the main issues common to both appeals are the effect of the development upon:
 - the character and appearance of the area;
 - potential non-designated heritage assets; and

- the Colne Estuary Special Protection Area (SPA) and Ramsar, the Blackwater Estuary SPA and Ramsar, the Dengie SPA and Ramsar, the Stour and Orwell Estuaries SPA and Ramsar and the Essex Estuaries Special Area of Conservation (SAC).

Reasons

Character and appearance

4. The appeal site constitutes a group of agricultural buildings and associated grounds pertaining to Rows Farm, which sits to the north and west of Abberton Reservoir. The appeal site is surrounded by expansive fields in an undulating landscape, with the appeal site itself on higher ground. The appeal site is accessed from a long track off the B1026, which also forms part of the local public right of way referred to as footpath No.24. The footpath continues through Rows Farm and wraps around the boundaries of the appeal site.
5. The appeal development comprises the demolition of three agricultural barns and the erection of two new dwellings in their place. The proposed properties would sit atop the position of the barns to be demolished, with broadly the same alignment and orientation.
6. For appeal A, the proposed dwellings would occupy a larger footprint than the existing barns and would be around 3 metres higher. The proposed increased height would be accompanied by larger, broader proportions and ground to roof glazing within two storey projections. For appeal B, a similar design approach is adopted though with a reduced roof height.
7. I observed from my site visit that long distance views to the appeal site are evident on the B1026, with the appeal site elevated above any field hedgerows and boundaries. The open nature of the surrounding land does allow easy viewing towards the existing barns on the appeal site, with both clear and unobstructed views from footpath No.24 as it approaches, enters and crosses the farmyard. I noted pylons within the landscape, although these were more recessive than the buildings comprising Rows Farm.
8. In both appeals, the proposed new dwellings would be larger in proportion and scale than the barns they would replace, further breaking the skyline and becoming more prominent in public views as a result. The modern materials would take some time to weather down to a muted state, thus amplifying the obvious domestic characteristics of the proposed dwellings in the landscape. Cumulatively, these design changes and proportion increases compared to the existing barns would make the proposal more incongruous in the rural area. I consider the prominence of evidently residential buildings would starkly contrast with the open, agricultural and rural context of the local area. The proposal would be unduly assertive in the landscape and thus harmful to the character and appearance of the locality.
9. I acknowledge my site visit was undertaken in the winter months whereby trees were not in leaf, but I saw little in the way of vegetation coverage that would obscure or reduce the views to the appeal site. The appellant has offered a landscaping scheme could come forward, but it is unclear how this would overcome the concerns raised given the need to provide domestic curtilage for each dwelling. The proximity of plot 2 to the outward facing appeal site

boundary and the proximity of the dwelling on plot 1 to footpath No.24 would leave no opportunity to screen or subdue the appearance of these dwellings.

10. Whilst efforts have been made to imitate an agricultural aesthetic, I do not agree that this would restore or provide an agricultural farmstead character because of the modern domestic design, featuring numerous windows and large glazed elements. Plans submitted with appeal B do show a reduced height compared to the appeal A scheme, but I am not persuaded that this measure overcomes all the concerns raised above. I consider that whilst appeal B may represent an improved design solution compared to appeal A, it would still be harmful to landscape character.
11. I conclude the proposal would harmfully impact the character and appearance of the rural area, including the landscape character. The proposal would conflict with policies DM15 and ENV1 of the Colchester Borough Local Plan 2013-2033 (the Local Plan), that seek development to be of a high quality and compatible with local character and setting.

Potential non-designated heritage assets

12. My attention is drawn to the character and quality of the existing barns, which the Council are considering to be non-designated heritage assets (NDHA). I note in this instance that the barns are not identified in any policy documents nor on any specific lists relating to the historic environment, but the Council have determined the barns to be NDHA during the course of the planning application. Such a process is allowed for in the national planning practice guidance¹ (PPG) provided there is sound evidence to support the decision.
13. The Council has set out in the officer's report that the existing timber-framed barns were likely to have been constructed prior to 1876, retain a good degree of their original external and internal form, and are fine examples of traditional Essex barns. Whilst the appellant has suggested the Council's assessment to consider the barns as NDHA was flawed and not based on sound evidence, no contrary heritage evidence has been provided. An opportunity was available to the appellant in the timeframe between submitting appeal A and appeal B, but no heritage information has been forthcoming, thus I only have the Council's evidence in this regard.
14. From the Council's submissions, I am given enough insight to understand the type, age, architectural and historic interest in the barns. Whilst I acknowledge the Council may have made their determination on heritage value in the absence of certain information, the appellant has not provided any substantive evidence to prove the buildings are not worth NDHA status.
15. I observed some modern alterations and repairs to the barns on my site visit, though the barns themselves appeared reasonably intact and retained most of their original fabric, charm and character. I consider the barns to have both historical and cultural significance in this area, typical of an agricultural landscape and are key to understanding historic land use. Consequently, I find the existing barns are worthy of being described as a NDHA.
16. The Framework states the effect on the significance of a non-designated heritage asset should be taken into account, and a balanced judgement will be required having regard to the scale of any harm or loss of the significance. By

¹ Paragraph 040 Reference ID: 18a-040-20190723

way of the proposal, the significance of this NDHA would be entirely lost through complete demolition and I consider that the loss would not be favourable for future generations. This view is further amplified when the proposed dwellings would be modern and residential interpretations of a barn structure, displaying domestic character alien to the rural area. In my view this would distract and distort any remaining visual cues to the historic farmstead.

17. I am mindful that the appellant is relying upon an earlier permission² to demonstrate that the existing barns could be stripped of their historic interest through a conversion under Schedule 2 Part 3 Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Whilst the full details of that scheme are not before me, I am aware that there are restrictions on the amount of building works capable of being undertaken under Class Q. I do accept that damage could be done to the fabric of the NDHA via the granted Class Q prior approval application, but I consider it unlikely that such would result in a total loss of the NDHA as is proposed in this appeal.
18. Whilst appeal B highlights that the Council has not initiated emergency procedures to locally list the buildings, this does not prove to me that the existing barns deserve any less respect for their value. The PPG does not require a Council to obtain consent from Historic England before considering a building to have NDHA status³. Appeal B can only be deemed in the same light as appeal A in this instance, with both causing harm to heritage interests at the appeal site.
19. Having regard to the Framework, I conclude the proposal would cause irreversible heritage harm and loss of a NDHA. The proposal would conflict with policies SP7, DM15 and DM16 of the Local Plan, which together seek to conserve and enhance the historic environment.

Effects on SPA and SAC

20. In 2018 the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site⁴, must consider mitigation within the Framework of an Appropriate Assessment rather than at the screening stage. This responsibility now falls to me within this appeal site.
21. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European sites.
22. The appeal site falls within the zone of influence of multiple SPAs as identified by the Council in the officer's report. The sites are designated at European level for their environmental importance, providing habitats for wintering birds, wildfowl and wading birds. The sites form part of the Essex Coast for which the Council has adopted a Recreational disturbance Avoidance and Mitigation Strategy (RAMS) to ensure mitigation for public recreation activities. The proposal, when considered alone or in-combination with other schemes, could have significant effects on the quality features of interest of the SPAs due to the increased recreational use.

² Prior approval application 221450

³ Paragraph 040 Reference ID: 18a-040-20190723

⁴ Now the National Site Network following the UK's withdrawal from the EU

23. When concluding that the scheme, either alone or in combination with other schemes, would have a significant effect on the quality features of interest of the identified European sites, it is incumbent upon me to undertake an Appropriate Assessment.
24. The main parties agree that mitigation should be provided in the form of a financial contribution. I have been provided with email receipts dated 10 August 2023 from the appellant confirming that payments have been made to the Council. Whilst I do not have written confirmation from the Council on either appeal A or appeal B that the concerns regarding impacts on the SPAs or the SAC have been overcome, it would appear the requisite contributions would have been secure had I been allowing the appeal.
25. Since I am dismissing on other grounds, I do not need to undergo the task of Appropriate Assessment in this instance. Nonetheless, on the evidence before me I can conclude that, the proposal would be unlikely to have an adverse effect on the integrity of the designated sites. This would be in accordance with policies SP2 and ENV1 of the Local Plan, that provide protection for internationally designated sites of biodiversity interest.

Other Matters

26. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that my determination must be in accordance with the development plan unless material considerations indicate otherwise. For the reasons set out above, the development proposed is contrary to the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
27. The appellant relies heavily on the prior approval granted under Class Q⁵ in justifying the proposed development. Aside from my considerations above, I do acknowledge that there is a fallback position available to the appellant that establishes the principle of residential use on this site. However, the Class Q proposals would, at least, retain a proportion of the historic and cultural heritage associated with the barns, putting them to an alternate use. This represents a much different prospect to the appeal development which would see the barns lost entirely. To this extent, the fallback position would be a preferable design solution.
28. I note the description of development refers to the proposed dwellings as being self-build properties, repeated in paragraph 3.5 of the appellant's statement of case. However, I have nothing before me to assess whether the Council is or is not meeting the demands and needs of the Borough in this regard. The submissions state that the design of the proposed dwellings has been undertaken by an architect closely following the prior approval scheme, which implies no personal design input from an individual as is normally the case with self-build properties. On a related matter, I observe that the application form notifies that the appellant is a building contractor company rather than an individual. Cumulatively, and in the absence of further evidence, these aspects undermine my confidence that the principles of the Self-Build and Custom Housebuilding Act 2015 (as amended) would be followed in this instance. Thus,

⁵ Application 221450

the appellant's stated intention in this regard is not substantiated and only carries limited weight in my deliberations.

29. My attention is drawn to areas where there is common ground with the Council on certain parameters, effects and planning matters. The absence of an objection on other planning grounds from the Council would not outweigh the harms of identified non-compliance with the Local Plan.
30. I have considered whether planning conditions could be used to make the appeal development acceptable but am not persuaded they could be applied effectively to reduce the harms identified.
31. Overall, whilst the proposal would have some benefits and could boost the supply of self-build housing in the Borough, I do not consider that these matters would outweigh the conflict with the Development Plan.

Conclusion

32. For the reasons given above I conclude that both appeals A and B should be dismissed.

David Wallis

INSPECTOR