



Appeal Decision

Site visit made on 23 January 2024

by R Catchpole BSc (hons) PhD MCIEEM IHBC

an Inspector appointed by the Secretary of State

Decision date: 6th February 2024

Appeal Ref: APP/A1530/W/23/3325996

Forresters Lamberts Lane, Earls Colne, COLCHESTER, CO6 2LE

- 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 Rudd (James Rudd and Seabreeze Developments Limited) against the decision of Colchester Borough Council.
- The application (Ref: 222358), dated 15 September 2022, was refused by notice dated 4 April 2023.
- The development proposed is described as the “re-use of agricultural buildings to create 2 no. dwellings and garage/studio, along with the demolition of former piggery building”.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal has been identified as having a likely significant effect on a number of European protected areas. A mitigation payment, in accordance with the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS), has been secured via a Unilateral Undertaking (UU). The Council has indicated that its third reason for refusal would be overcome if such a payment were to be secured. However, I do not consider this matter further or undertake an appropriate assessment because I am dismissing this appeal for other reasons.
3. The Council identified an error in the wording of its decision notice in its statement of case which relates to its first reason for refusal. It intended to highlight policy SG1 rather than SP1 of the development plan. The appellants had an opportunity to respond in their rebuttal statement and I also invited further comments on this matter. I have determined the appeal on the basis of this amendment and I am satisfied that the appellants’ interests have not been prejudiced as a result.
4. The Council has indicated that the second reason for refusal would be overcome in the event that contributions towards community and sport/recreation projects were secured. A completed UU has been submitted to this effect and I have determined this appeal accordingly.
5. On the 19 December 2023, the Government published a revised National Planning Policy Framework (the Framework) which was further updated on the 20 December 2023. This is a material consideration that took effect from the

day of publication which applies to all subsequent decision-making. Bearing in mind the facts of this case, I am satisfied that none of these changes, or those introduced on 5 September 2023, prejudice the interests of the main parties.

Main Issues

6. The main issues are the effect of the proposal on rural character and biodiversity and whether it would be in a sustainable location.

Reasons

7. The appeal site is situated in the open countryside, beyond any settlement boundary. The nearest settlement, Great Tey, is situated approximately 1.5 km away and the parties agree that the appeal site is consequently in an isolated location and that the development would lead to isolated homes in the countryside. Access to the site is via Lamberts Lane which is a narrow, unlit, single track road without any walkways. The degree of isolation and characteristics of this road are such that future occupants would be reliant on the use of private motor vehicles.
8. The proposal would lead to the reuse of two existing agricultural buildings, a steel frame barn and a piggery, that are situated immediately to the south of an existing residential building and its curtilage. The barn would provide parking for 4 cars and a first floor office or studio space for each of the two dwellings that would be created in the piggery. External materials would be retained or replaced with similar agricultural materials, such as black painted timber boarding, insulated black metal sheeting and blockwork.
9. The appellants highlight the fact that the agricultural buildings are now redundant and I saw nothing during my site visit to contradict this fact. Both the buildings and surrounding area have fallen into a state of disrepair and the site has an unkempt appearance. A further, single story building is located to the southeast of the piggery, on the same concrete apron but outside the red line boundary, which I observed to be in a parlous condition. The appellants state that this building would be removed and that landscaping would also improve the general setting of the appeal site. The appellants highlight a lapsed prior approval for the retained buildings, under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), which was granted on appeal in March 2016.
10. Planning law¹ requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The most relevant policies in this appeal are policies SG1 and OV2, as set out in Section 2 of the Colchester Borough Local Plan 2017-2033 and policy SP3, as set out in Section 1 of that plan (the LP). The appellants have highlighted what has since become paragraph 84(c) of the Framework.
11. Policy SG1 requires that growth is located at the most accessible and sustainable locations in accordance with the settlement hierarchy, as set out in policy SP3 and a table in SG1. It goes on to state, among other things, that new development in the countryside beyond the settlement hierarchy is only acceptable where it accords with policies OV1 and OV2 and respects the

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 (as amended)

character and appearance of landscapes and the built environment whilst preserving or enhancing biodiversity in order to safeguard the rural character of the Borough.

12. Policy SP3 states, among other things, that existing settlements should be the principal focus for additional growth across the North Essex Authorities area and that development should be accommodated within or adjoining settlements according to the identified hierarchy. It highlights the re-use of previously developed land within settlements as an important objective. It goes on to state that development beyond the main settlements should support diversification of the rural economy as well as the conservation and enhancement of the natural environment. The parties agree that the proposal would conflict with this policy.
13. Policy OV2 states, among other things, that all residential development in the countryside, outside defined settlement boundaries, needs to demonstrate that it respects the character and appearance of landscapes and the built environment as well as preserving or enhancing biodiversity. Small scale rural exception sites are considered favourably but only if they meet local affordable housing needs, as demonstrated by the relevant Parish Council.
14. The characteristics of Lamberts Lane and the isolated nature of the site are such that it would be both unsafe and impractical to rely upon walking or cycling to support daily activities. No bus service would be readily accessible and it is likely that there would be a significant reliance on private motor vehicles. Consequently, it cannot be considered either the most accessible or sustainable location. Beyond the temporary construction benefits, the scheme would also not make any significant contribution to the rural economy.
15. Turning to rural character, I observed that Lamberts Lane and Swanscomb Road, to the north, are characterised by sporadic residential development. This influences the immediate context of the appeal site with residential properties located immediately to the south, west and north, with open countryside located to the east. A public footpath running from Lamberts Lane abuts the southern site boundary and appeared to continue in an easterly direction. The nature of the boundary vegetation is such that clear views of the existing buildings are present at multiple locations along this footpath. Whilst unkempt and derelict, the site nevertheless conforms to the rural character of the wider landscape.
16. I accept that the proposed materials would be in keeping with the agricultural style of the existing buildings and that there would be no significant change in their massing. I also accept that the derelict appearance of the site would be improved by the proposal. However, the domestication of the buildings and their immediate surroundings would lead to a prominent increase in the density of residential development at this location which would be at odds with its rural context. It would also be inconsistent with the low density of dwellings that typifies the pattern of residential development along Lamberts Lane and Swanscomb Road and consequently lead to localised overdevelopment. The domestic fenestration, paraphernalia and use of the site would be such that it would be clearly read as a residential plot rather than an agricultural plot, despite the use of sympathetic materials.
17. Turning to the potential benefits to biodiversity, I note that a bat and tree condition survey have been undertaken and that a number of 'biodiversity

enhancements' have been suggested. Given the limited scope of the surveys, it is unclear whether the proposal would affect a broader range of animal and plant species that might be present and what measures might consequently be needed to realistically conserve and enhance the wider biodiversity that may already be present on the site. Whilst its visual appearance would be improved, the transformation of semi-natural habitats to more domesticated ones would not necessarily benefit biodiversity. Whilst I accept that the enhancements would deliver some benefit, they are generic measures that would only benefit a very narrow range of species.

18. Given the above, I find that the proposal would not be in a sustainable location, that it would be harmful to the character and appearance of the countryside and that insufficient evidence is present to determine if it would preserve or enhance on-site biodiversity. This would be contrary to policies SG1, SP3 and OV2 of the LP.
19. The appellants highlight paragraph 12 of the Framework which states that local planning authorities can take decisions that depart from an up-to-date development plan if material considerations indicate that the plan should not be followed. I accept that the Framework is one such material consideration and note the suggested exception in paragraph 84(c) that the appellant relies upon. Whilst I accept that the proposal would re-use redundant and disused buildings, the Framework is silent concerning what might be considered an enhancement to an 'immediate setting'.
20. On the one hand, the unkempt and derelict appearance of the site would be remedied whilst on the other, it would be domesticated and the rural character of its setting would be eroded. Bearing in mind the proximity of other residential dwellings, I find that, on balance, the immediate setting would be harmed by the increased density of residential development at this location and the concomitant suburbanisation of the countryside. As such, the tests for this exception would not be met and there are insufficient grounds to determine this appeal other than in accordance with the development plan.
21. The appellants make the point that two new homes would be delivered in a relatively short period of time and that the Framework supports the reuse of existing buildings to significantly boost the housing supply. The reuse of these buildings on previously developed land would attract moderate weight in favour of the development. However, the contribution it would make to housing supply would only carry negligible weight given the limited number of dwellings that would be created and the presence of a deliverable 5-year housing land supply. Improvements to the visual appearance of the appeal site could be achieved through simple vegetation management and the clearance of agricultural detritus. As such, this benefit only carries limited weight.
22. On the opposite side of the balance, the adverse impacts of the proposal include harm to the rural character of the countryside, the development of an unsustainable location and potential negative impacts to on-site biodiversity, all of which conflict with the LP. For the above reasons, I attach significant weight to the harm that would be caused to rural character and the unsustainable location which would undermine a plan-led system that seeks to focus development within an established settlement hierarchy. I attach limited weight to the potential harm to biodiversity given that some enhancements would be delivered.

23. Having regard to the above considerations and the development plan as a whole, I conclude that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. Overall, I do not find that the benefits would outweigh the harm that would be caused. There are no other material considerations that indicate that planning permission should be granted.

Other Matter

24. As previously set out, a UU has been provided which has overcome two of the Council's reasons for refusal. As I am dismissing for other reasons, I do not consider this matter in any further detail.

Conclusion

25. For the above reasons and considering all other matters, I conclude that the appeal should be dismissed.

R Catchpole

INSPECTOR