



Appeal Decisions

Site visit made on 13 May 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st July 2024

Appeal A Ref: APP/W1525/W/23/3324658

The Dutch Barn North of Bury Farm, Bury Road, Pleshey, Chelmsford CM3 1HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Naomi & David Sheppard against the decision of Chelmsford City Council.
 - The application Ref is 22/01686/FUL was refused by notice dated 23 December 2022.
 - The development proposed is described as the replacement of 3.no dwellings (consented by application 20/00066/CUPAQ) with the erection of 1.no dwelling, access gates ancillary shed, solar PV array and an associated landscaping scheme, along the partial change of use from agricultural to residential.
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Appeal B Ref: APP/W1525/W/23/3325747

Barn North of Bury Farm, Bury Road, Pleshey, Chelmsford, Essex CM3 1HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Naomi & David Sheppard against the decision of Chelmsford City Council.
 - The application Ref is 23/00540/FUL was refused by notice dated 1 June 2023.
 - The development proposed is the conversion of existing barn to 1no. dwelling, with associated works including access gates, solar PV array and an associated landscaping scheme, along with partial change of use of land from agricultural to residential.
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Decisions

1. Appeals A and B are dismissed.

Applications for costs

2. Applications for costs awards were made by Mr & Mrs Naomi & David Sheppard against the decisions of Chelmsford City Council and are the subject of separate decisions.

Procedural Matters

3. The two appeals differ principally in that Appeal B proposes to convert the existing agricultural building to a dwellinghouse, whereas Appeal A proposes to replace it with a new build dwelling. I have considered each proposal on its individual merits based on the evidence before me. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

4. The Council granted Prior Approval¹ by notice dated 28 March 2023, ref. 23/00159/CUPAQ, for the change of use of the agricultural building on the site of these appeals to 3 dwellinghouses ("the Class Q scheme"). This followed an earlier Class Q approval. This is reflected in my main issues below.
5. The evidence indicates that the site of these appeals lies within the zone of influence (ZoI) of the Blackwater Estuary Special Protection Area (SPA) and Ramsar site. The appeal proposals have the potential to adversely affect the nature conservation interests of the SPA, which is protected as a European site of nature conservation importance and subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 as amended ("the Regulations").
6. The Council has confirmed receipt of the SPA mitigation contribution and is not defending refusal reason number 4 in Appeal A. However, I, as Competent Authority as set out in the Regulations, must consider the effects of the proposals in these appeals on the nature conservation interests of the SPA as part of my decision. In doing so, I must be satisfied beyond all reasonable doubt that they would not have significant adverse effects on the integrity of the SPA. This is reflected in my main issues below.

Main Issues

7. In having regard to the procedural matters above, the main issues in these appeals are:
 - Whether the proposed developments would affect the integrity of the SPA as a protected European site of nature conservation importance.
 - The effects of the proposed developments on the character and appearance of the existing building and area, with particular regard to their location in the countryside.
 - Whether the proposed developments would preserve the settings of the Grade II listed buildings known² as: Dovecote or Granary (DG), South Barn (SB) and Plesheybury House (PH).
 - 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 site of nature conservation importance

8. The sites of these appeals are shown by the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS), Supplementary Planning Document ("the SPD"), as located within the Zone of Influence of the Blackwater Estuary SPA.
9. The SPA is one of several European sites of nature conservation importance on the Essex coast which support internationally important populations of bird species. The Essex coast is a major destination for recreational activities, most of which are undertaken by people living in Essex. These recreational activities cause disturbance to the internationally important bird species, resulting in

¹Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015.

² Taken from the official list entry.

declining numbers and threatening the integrity of the SPAs. New housing development within the ZoI of the SPA has the potential to increase the negative effects of recreational disturbance to the qualifying bird species, contrary to the SPA's nature conservation objectives, which are to ensure that its integrity is maintained.

10. The appeal developments would increase the number of households within the ZoI of the SPA and are therefore likely to increase recreational disturbance to its qualifying bird species. Consequently, they are likely to have a significant adverse effect on the integrity of the SPA, both in isolation and cumulatively with other housing developments
11. Under the Regulations it is my duty as the Competent Authority to undertake an Appropriate Assessment (AA). This is to determine whether I have certainty that measures could be put in place to avoid or mitigate the likely significant adverse effects of the proposed developments in these appeals, with the aim of maintaining or restoring, at favourable conservation status, the natural habitats and species of the SPA.
12. The SPD requires new residential development to make a financial contribution towards the delivery of the strategic RAMS to mitigate the potential adverse in-combination effects of new housing development and visitor pressure on the qualifying bird species within the SPAs. The strategy incorporates measures including habitat enhancement, diverting activities away from the most vulnerable locations through access management, the promotion of alternative walking and cycling routes, interpretation and signage, education and direct engagement with the public, a Ranger's service, enforcement, and the monitoring of visitors and bird numbers. The SPD states that the financial contribution will be paid by planning obligation, which can be a Unilateral Undertaking or a multi-party Section 106 Agreement.
13. The appellants have submitted a receipt for the payment of the financial contribution to the Council towards the mitigation strategy in the SPD. There is no dispute over the amount paid. However, the evidence of payment does not give any assurance that the contribution will be allocated to funding the RAMS mitigation strategy, nor does it appear to preclude the appellants from seeking a refund of the contribution. An obligation gives legal certainty and establishes a transparent link between the development and the mitigation. It ensures that the contribution will be spent by the party responsible for delivering the mitigation for its specific intended purposes, is legally capable of being enforced, and the circumstances under which the contribution would be returned to the payee.
14. The Regulations place a legal duty on me as the Competent Authority to have regard to the conservation of species. The species in question are of international importance and protected by law. In taking a necessarily precautionary approach to this matter, I cannot be certain beyond reasonable doubt that the necessary mitigation would be secured if the planning permissions were granted for the proposed developments in these appeals. Consequently, based on the evidence before me, I am unable to find that the developments proposed in these appeals would not harm the integrity of the SPA as a European site of nature conservation importance.

15. In exceptional circumstances³ a negatively worded condition could be imposed requiring a planning obligation to be entered into before certain development can commence. However, the evidence before me does not demonstrate any exceptional circumstances in the context of the Planning Practice Guidance that would justify imposing such a planning condition. It is the responsibility of the appellant to submit any necessary planning obligations with their appeals in accordance with the requirements of the SPD.
16. In accordance with the appeals procedural guide⁴ there are no very exceptional circumstances that would justify delaying a decision on these appeals until planning obligations are submitted. The efficient operation of the appeals process necessitates that I determine these appeals on the evidence before me.
17. Consequently, in having regard to my duty under the Regulations and in taking a necessarily precautionary approach to this matter, I conclude through my AA that the proposed developments in these appeals would have adverse effects on the integrity of the SPA. No alternative solutions, imperative reasons of overriding public interest and no other compensatory measures have been put forward.
18. As such, the proposed developments would be contrary to Policy DM16 of the Chelmsford Local Plan, Adopted May 2020 ("the CLP"), insofar as it requires developments likely to have an adverse impact on European Designated Sites to mitigate any recreational disturbance impacts in compliance with the Habitats Regulations and Habitats Directive. Having regard to my duties under the Regulations, I have attached substantial weight to this policy conflict.
19. Therefore, the proposals would conflict with Paragraphs 180.a) and 186.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 cannot be avoided, adequately mitigated, or as a last resort compensated for, then planning permission should be refused.

Character and appearance

20. Development in the area of the sites in these appeals consists of a loose-knit and somewhat scattered pattern of traditional vernacular buildings. They are constructed from masonry or clad in dark coloured weatherboarding, and set within relatively spacious and well planted plots in a small cluster. Together with the dense planting alongside the narrow and winding Bury Road, these characteristics give the cluster of buildings a mature and verdant appearance, that is embedded within a wider pastoral landscape of expansive open arable fields, with hedgerows and blocks of woodland. The character and appearance of the area is therefore essentially rural.
21. The existing building on the sites of these appeals has a simple utilitarian appearance as an example of an agricultural storage building. It occupies an exposed and highly visible position within an agricultural field, which is contiguous to the mostly open fields to its north, east and west. In this context it is consistent with the agricultural character of the area, albeit the light colour finish to the cladding of its upper walls is somewhat conspicuous in the

³ The Planning Practice Guidance Paragraph: 010 Reference ID: 21a-010-20190723.

⁴ Paragraph 18.2.1 of the Procedural Guide: Planning appeals – England, Updated 28 May 2024.

landscape, when seen against the backdrop of the dark colours of the surrounding land and vegetation. Together with its large scale and significant massing, these factors give the building an imposing presence in a range of views from the nearby public footpath, and from Bury Road when seen through the relatively few gaps in the roadside planting. As such, its scale and appearance contrasts with the appearances of buildings in the area.

Character and appearance – Appeal B

22. The siting, scale and broad proportions of the proposed dwelling would substantially replicate those of the existing building. The dark coloured surfaces of the proposed external materials would make the appeal proposal less conspicuous in the landscape in long distance views. However, in all other views the pattern of window openings in the external walls, particularly those extending across the long east and west elevations, would make the appeal proposal overtly residential in character and appearance. As such, it would be far more conspicuous in the open pastoral landscape, including during the hours of darkness where light spill from the regular pattern of window openings would be expected to be visible.
23. Although there are residential buildings in the area, some of which occupy very spacious grounds, these are limited in number and of a traditional vernacular appearance set within an essentially agricultural landscape. The scale, form and appearance of the proposed dwelling would therefore represent the intrusion of a residential use onto an exposed area of an arable field, where it would erode the character and appearance of the pastoral rural landscape.
24. Planting could be secured in accordance with the proposed landscaping scheme and would be expected to have a softening effect on the development, including some low-level screening. However, landscaping takes several years to become fully established and would require regular maintenance. There could be pressure for future occupiers to prune and thin landscaping. As such, I am not satisfied on the information before me that the proposed planting would be sufficient to provide an impenetrable buffer to views of the proposed dwelling.
25. The Council did not find the modest garden area of the proposed dwelling to be harmful to the character and appearance of the area. Whilst I see no basis in the evidence to take a contrary view, this does not alter my conclusion in respect of the harmful visual effects of the appeal proposal.
26. For these reasons, the appeal proposal would cause a moderate level of harm to the character and appearance of the area, contrary to CLP Policies S1, S11, DM10 and DM23 insofar as they seek to ensure that development respects the character and appearance of the area in which it is located, including its landscapes, and does not adversely impact on the character and beauty of the countryside.

Character and appearance – Appeal A

27. CLP Policy DM8 sets a list of development types appropriate in the rural area, which the appeal proposal would not comply with. Although the siting, scale and general proportions of the proposed dwelling would substantially replicate those of the existing building, its appearance would consist of a relatively complex mixture of elements. These include small projections, an unusual

pattern of differently sized, positioned and proportioned window openings set within its walls, and recessed elements set within an exposed metal frame.

28. Compared to the existing building, the darker colours of the external materials would make the proposed dwelling more recessive in long distance views across the pastoral landscape and against the backdrop of dark coloured planting. However, in all other views, the appearance of the proposed dwelling would be considerably more conspicuous and overtly domestic in character and appearance than the existing building and its setting. This would also be the case during the hours of darkness from the spill of domestic internal lighting from the windows. It would be out of keeping with the character and appearance of the predominantly pastoral landscape around it, and the built environment of the vernacular buildings in the area.
29. The proposed landscaping scheme would soften the appearance of the proposed dwelling. The proposed reduction in the size of the garden area to reflect that in the Appeal B scheme, would avoid unacceptable harm from the accumulation of domestic paraphernalia. However, for the reasons given in respect of Appeal B, neither would make the visual effects of the development acceptable and they do not alter my conclusions above.
30. Appeal decisions are context specific. The precedent images of barn conversions provided by the appellant are of limited relevance and weight to my considerations in this appeal.
31. For these reasons, I conclude that the proposed development would result in significant harm to the character and appearance of the area, contrary to CLP Policies S1, S11, DM8 and DM23, insofar as they seek to ensure that development respects the character and appearance of the area in which it is located, including its landscapes, and does not adversely impact on the character and beauty of the countryside.

Listed Buildings

32. The DG and SB are Grade II listed seventeenth century buildings located on the opposite side of the road to the appeal site. Further to the east is the Grade II listed PH, which is a large dwelling with sixteenth century origins and later additions. They are located within a group of vernacular buildings occupying spacious and verdant surroundings set back from the road. The roofs and upper walls of DG and SB can be seen with the appeal site and above the roadside planting. I am required by Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act), to pay special attention, and have regard to, the desirability of preserving the setting of listed buildings.
33. The significance and special interest of the respective listed buildings are derived mainly from their traditional architecture and materials, and their likely historic associations with agriculture in the area, including the wider pastoral landscape of agricultural fields. The rural character and appearance of the site in these appeals, which is part of the agricultural landscape, therefore contributes to the settings of these listed buildings and their significance.
34. Both appeal proposals would result in heavily fenestrated buildings. This would change the character and appearance of the site through the domestic appearance of these appeal schemes. The Appeal A scheme would include

projections that would be different in form to the existing building, and with an intricate exposed framing detail containing part of the proposed dwelling.

35. The schemes in these appeals would erode the character and appearance of the pastoral rural landscape through the intrusion of a residential use onto an exposed part of an arable field. This would be appreciated in views from the public footpath and the road, where the heritage assets are experienced, and where there is intervisibility between DG, SB and the appeal site. As such, the proposed developments in these appeals would disrupt the relationship between the appeal site and how these heritage assets are experienced in the wider pastoral surroundings.
36. For these reasons, I conclude on this issue that the proposals in both appeals would cause harm to the settings of the listed buildings, albeit at a low level. In terms of the Framework, the harm that would be caused to the significance of the designated heritage assets would be 'less than substantial'. Nevertheless, I am required by Paragraph 205 to give great weight to the conservation of designated heritage asset and therefore this is a matter of considerable weight and importance. Paragraph 208 of the Framework requires me to weigh this harm against the public benefits of the proposal.
37. The public benefits of the proposals in both appeals include contributing to housing supply. There would also be short term and lasting economic benefits through construction works and future residents contributing to the rural economy, together with some unquantified biodiversity enhancement. The proposed dwelling would be energy efficient. However, these public benefits are relatively small given the scales of the proposed developments, and they would not outweigh the harms I have identified to the significance of the heritage assets.
38. The schemes in these appeals are therefore contrary to CLP Policy DM13, insofar as it seeks to ensure that development within the setting of a listed building would not adversely affect the significance of the listed building, including views to and from the building, landscape character, land use and historic associations. They also conflict with Section 66(1) of the Act and the conserving and enhancing the historic environment objectives of the Framework.

Interim conclusion

39. I have found through my AA that the appeal proposals would have adverse effects on the integrity of the SPA as a designated European site of nature conservation importance. The proposal would also harm the character and appearance of the area, and the significance of designated heritage assets. Consequently, the appeal proposals would conflict with the development plan policies referred to above. Therefore, my attention turns to whether the harm is outweighed by other considerations, including any fallback development.

Other considerations

40. Given the appellants' stated financial commitment to the site in these appeals, I see no reasons to doubt their intention to implement the Class Q scheme were these appeals to fail. As such, it constitutes a fallback development against which to assess the appeal proposals.

41. The fenestration pattern in the extant Class Q scheme consists of a repetitive pattern of predominantly tall, narrow windows, mostly aligned vertically. The relatively wide and mostly even gaps between these windows would retain a sense of solidity to the building's walls. This fenestration pattern gives the building a simple, calm and functional aesthetic that is somewhat akin to a commercial use, thus lessening its degree of domesticity.
42. Compared to the Class Q scheme, the pattern of shorter and wider window openings in the Appeal B scheme, mostly with unequal distances between them, would give the proposed dwelling a more overtly residential character and appearance. However, the differences between the schemes would be relatively modest given the number of window openings, including balconies, on the respective schemes. I am not persuaded that the effects of light spill from windows during the hours of darkness would be materially different.
43. Due to the darker colour tones of its external materials, the degree to which the scale and massing of the Appeal B scheme would recede into the pastoral rural landscape would be greater than for the lighter coloured upper walls of the Class Q scheme. There would also be less of a contrast between the walls and window openings, as the Class Q scheme would likely result in dark window openings set within the building's light coloured walls.
44. Compared to the Class Q scheme, less domestic paraphernalia would be expected to accumulate and it could be located on the opposite side of the proposed dwelling to the footpath, thus limiting its visibility in close distance views from the public footpath. There is no certainty that securing soft landscaping by condition would lead to an impenetrable barrier of planting to screen the development. However, the Class Q scheme secured no planting, and the proposed landscaping scheme in this appeal would be expected to provide some beneficial softening of the development.
45. For these reasons, the Class Q scheme would have moderately worse effects on the character and appearance of the area, and on the settings of the listed buildings, than the Appeal B scheme.
46. Compared to the Class Q scheme, the darker coloured materials of the Appeal A scheme would lessen the appearance of the proposed dwelling in distant views over the landscape. Planning conditions could secure a single dark coloured material type for all external wall surfaces.
47. However, in all other views, the appearance of the Appeal A scheme, would be more complex, elaborate and conspicuous than the Class Q scheme. As such, it would draw the eye to the proposed dwelling and the intrusion of its residential use onto an exposed area of an arable field, where it would erode the character and appearance of the pastoral rural landscape.
48. The proposed soft landscaping would provide some beneficial softening of the development, however for the reasons given above, I have no certainty that it would deliver an impenetrable barrier of planting that would screen the appeal A scheme in all views.
49. Implementation of the Class Q conversion scheme would lead to a dwelling that could be replaced under CLP Policy DM8, including by the appeal proposal. Therefore, the harm arising from the policy conflict between the Appeal A proposal and the list of developments permissible in the Rural Area under

Policy DM8, would be outweighed by the approved Class Q scheme. I note the Inspector in the Bicknacre⁵ appeal reached a similar finding.

50. Nonetheless, for these reasons, the scheme in Appeal A would be materially worse in terms of its effect on the character and appearance of the area, including on the settings of the listed buildings, than the Class Q scheme.
51. I have no substantive evidence that replacing the Class Q scheme with a single larger family home would materially alter the Council's housing land supply position. The Council can demonstrate a 5-year housing land supply and is therefore achieving the boost in supply that the Framework expects. The Class Q scheme would deliver 3 smaller homes which the Council asserts are much needed in its area, albeit there is limited substantive evidence of a shortfall in the delivery of smaller housing units.
52. Fewer households on the site of the appeals would mean a lesser contribution to the services and facilities in the rural economy, and a likely reduction in energy use and carbon emissions. However, the differences would be small given the respective scales of the schemes in these appeals and the Class Q scheme.
53. Biodiversity benefits could be delivered by the schemes in these appeals through landscaping and ecological enhancement, which includes tree planting to contribute towards the Council's Climate and Ecological Emergency Action Plan. The proposed dwellings in these appeals would achieve a high level of energy efficiency. However, the benefits from a single dwelling are of limited weight in its favour.
54. I have no reasons to doubt that the Class Q scheme would have adequately mitigated its impact on the integrity of the SPA as a designated European site. The Class Q fallback scheme would have worse effects on the character and appearance of the area, and on the settings of the listed buildings than the Appeal B scheme. However, this would not outweigh the harm caused by the occupation of the proposed Appeal B scheme on the SPA.
55. Taking all the above into account, I conclude that the totality of the harms identified above in respect of Appeals A and B are not outweighed by other considerations, including the Class Q fallback development.

Planning Balance and Conclusion

56. The proposed developments in Appeals A and B would have adverse effects on the integrity of the SPA as a designated European site and would harm the character and appearance of the area, and the settings of the listed buildings. This would result in conflict with CLP Policies S1, S11, DM8, DM10, DM13, DM16 and DM23. These adverse impacts bring the proposed developments into conflict with the development plan when read as a whole and I give substantial weight to the totality of this conflict.
57. There are no material considerations of sufficient weight, including the Class Q fallback scheme or the benefits of the proposals in these appeals, to outweigh the conflict with the development plan and indicate that decisions on these appeals should be made other than in accordance with the development plan.

⁵ APP/W1525/W/21/3278018

Having considered all matters raised, I therefore conclude that the appeals should be dismissed.

G Sylvester

INSPECTOR