



Appeal Decision

Site visit made on 13 June 2024

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2024

Appeal Ref: APP/X1545/W/23/3331586

Valentines Cottage, Crown Road, Purleigh, Essex CM3 6JF

- 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 and Mrs Mark Ewers against the decision of Maldon District Council.
 - The application Ref is FUL/MAL/23/00067.
 - The development proposed is retention of dwelling as a separate dwelling (not in compliance with Condition 3 of FUL/MAL/04/00816) and use of existing parking and garden areas. New landscaping and improvements and minor alternations to the adjacent property.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal site consists of a detached dwelling known as Valentines Cottage with a connected garage building, and a disused semi-detached building ('the appeal building'). The other half of the semi-detached property, known as 'Foxwood' is not located within the appeal site.
3. The appeal site has a lengthy planning history. The submitted evidence indicates that the appeal building was constructed in 1927. Planning permissions¹ for the construction of Valentines Cottage as a replacement dwelling were approved in the early 2000s. These permissions imposed conditions requiring the demolition of the appeal building prior to the construction of Valentines Cottage. Notwithstanding the conditions imposed on previous planning permissions the appeal building has not been demolished. This appeal relates to the retention of the appeal building and the use of it as a separate residential dwelling.
4. The main issues are:
 - whether the site is in a suitable location for the proposal having regard to local and national planning policy, and the accessibility of the site to services, employment opportunities and facilities;
 - the effect of the proposal on the character and appearance of the area; and
 - the effect of the proposal on the living conditions of neighbouring occupiers, having particular regard to the privacy for the occupiers of Valentines Cottage.

¹ 02/00957/FUL and 04/00816/FUL

Reasons

Suitable location

5. The appeal site is part of a small group of dwellings accessed via Crown Road, a long unmade track which connects with Latchingdon Road, the main street through Cold Norton. The site is approximately 300 metres outside the nearest settlement boundary, at Cold Norton.
6. Policy S8 of the Maldon District Approved Local Development Plan (2017) (LDP) sets out the strategic approach to the location of development. The main settlements of Maldon, Heybridge, Burnham-on-Crouch are the principal focus for development together with development within a mixture of larger and smaller villages. Cold Norton is identified as a smaller village.
7. Policy S8 states that outside defined settlement boundaries, planning permission will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon, and where the proposal meets one of several criteria listed a) to m). Criterion f) notes that suitable development could include circumstances where the development would re-use redundant or disused buildings whilst leading to an enhancement to the immediate setting.
8. As a result of planning conditions imposed on the previous planning permissions at the appeal site, the appeal building should have been demolished prior to the construction of Valentines Cottage. Therefore, the baseline for assessing proposals should be predicated upon a single dwelling standing within the site, and the proposal cannot be considered under criterion f) of the policy. Nevertheless, even if I were to agree that the proposal constitutes the re-use of a disused building, this would not negate the requirement identified within Policy S8 for the development to lead to an enhancement to the immediate setting.
9. Fields separate the small group of dwellings which the appeal site is within and the nearest properties fronting Latchingdon Road. This creates a visual and spatial buffer between the appeal site and the more built up areas of Cold Norton. Consequently, the surrounding area retains an inherently rural character. When considered cumulatively, the scale and positioning of Valentines Cottage and the appeal building in close proximity to each other, has an urbanising effect on the rural character of the area.
10. Furthermore, it is often the associated use of the external space around such buildings for domestic purposes that change the character and appearance of the surrounding area. The introduction of a second occupied dwelling on the appeal site with its associated domestic paraphernalia and parking area would have a further harmful urbanising effect which would reduce the perception of rurality in this location. Consequently, the proposal would adversely affect the intrinsic character and beauty of the countryside whilst failing to enhance the immediate setting.
11. Criterion m) notes suitable development could include other development proposals that are in compliance with policies within the LDP, neighbourhood plans and other local planning guidance. Policy H4 of the LDP states that infill development will be considered on a site-by-site basis to take into account local circumstances, context and the overall merit of the proposal. In this regard, Policy H4 of the LDP seeks to optimise the use of land having regard to

- considerations including accessibility to local services and facilities, and proximity to public transport.
12. The range of services and the frequent bus service available within Cold Norton are not in dispute between the main parties. However, to reach Cold Norton from the appeal site involves walking approximately 300 metres along a roughly surfaced unadopted track with no footpath or lighting. The Council indicate that the track is prone to puddles and flooding during inclement weather and this is not disputed by the appellant. Whilst there is limited surveillance from dwellings at either end of the unadopted track, the majority of the track is surrounded by fields which do not provide active surveillance.
 13. The unadopted track would be especially unattractive for pedestrian and cycle access for the young, the elderly and those with mobility issues and particularly so during the hours of darkness and inclement weather. Whilst there are Public Rights of Way over the surrounding countryside these are recreational routes rather than the means to access shops and services.
 14. It is recognised in the Framework at paragraph 109, that transport solutions will vary between urban and rural areas. As such, there will be a tension and a balance to be struck between the desirability of supporting sustainable rural development and maximising sustainable transport opportunities.
 15. However, given the constraints in accessing services and facilities by foot it is likely that future occupants would be heavily reliant on private car to travel. Consequently, the accessibility to services and facilities would be poor. This combination of factors demonstrates that the appeal site is not in a location where new dwellings would be considered acceptable.
 16. As the appeal site is set within a small cluster of buildings in residential use, it does not appear isolated within its immediate environment. Nor is it isolated in the context of paragraph 84 of the Framework. Nevertheless, it is in a rural setting, some distance from the edge of the nearest settlement.
 17. However, the appeal site's lack of isolation with regard to paragraph 84 does not mean that the site would be reasonably accessible to services when considered in the context of other requirements of the Framework, nor would it promote the sustainable development in rural areas sought by paragraph 83. The Framework, although encouraging the use of brownfield land at paragraph 124 c) is clear that this should be within settlements rather than in open countryside.
 18. An Inspector, in determining an appeal in 2014² at 7 Cherry Blossom Lane found that that site would be a suitable location for housing development. In that case the site was located adjacent to the settlement boundary of Cold Norton. Unlike the appeal site, it was connected to the settlement by an existing footway, and as a result of its proximity to Cold Norton that site has easier access to shops and services by accessible means. Regardless, I must determine the appeal based on its individual merits and given the distinct difference between the two sites I do not find any compelling reasons within this evidence to depart from my previous findings.
 19. I note that the Highway Authority did not raise an objection to the proposal and that the Framework recognises that opportunities to maximise sustainable

² APP/X1545/A/14/2219763

transport solutions will vary between urban and rural areas. However, the Framework also states that development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. It does not justify locating development in an inherently unsuitable location. Given my findings above, there would be conflict with the Framework in these respects.

20. The appeal site would not be a suitable location for the appeal scheme when applying the spatial strategy in the development plan. Instead, the proposal would undermine the objectives of the strategy. This would be harmful given the public interest in having a genuinely plan led system that provides consistency and direction.
21. In conclusion, the proposal would conflict with Policies S1, S8, D1, D2, H4, T1, and T2 of the LDP which, amongst other things, seek to direct new development to the most suitable and accessible locations; reduce the need to travel, particularly by private vehicles and prioritise sustainable modes of transport over private vehicles.

Character and appearance

22. The small group of dwellings is characterised by a loose and informal layout. Dwellings are positioned within reasonably spacious plots, which are of varying size, commensurate with their location in an open countryside location. The variety and absence of formality in built form contributes to a more rural character.
23. Whilst I acknowledge that the appeal building is a longstanding building, previous planning permissions have required that it be removed prior to the construction of Valentines Cottage. The concentration of two independent dwellings within the appeal site would result in an uncharacteristic concentration of sprawling built form in contrast to the rural character of housing locally.
24. As a result of its appearance as an independent dwelling with its own curtilage, combined with the associated domestic paraphernalia and parking area, the proposal would have an urbanising effect on the immediate area.
25. Planting across the site has the potential to mitigate the effects described above by providing screening. The restoration of the building would offer some further mitigation. However, the concentration of built form would remain apparent from both Crown Road and the surrounding countryside.
26. The appeal property is one half of a pair of semi-detached dwellings which are constructed with different facing materials, are different heights and have distinct front elevations which do not align. For these reasons, its demolition would not unbalance the neighbouring semi-detached property.
27. The proposal would have a harmful effect on the rural character and appearance of the appeal site and surrounding area. There would be conflict with Policies S1, S8 and D1, of the LDP. Collectively these policies seek to maintain the rural character of the borough and ensure that development makes a positive contribution in terms of landscape setting and contributes to and enhances local distinctiveness.

28. I also find conflict with Paragraph 131 of the Framework which outlines that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.
29. The Council also alleges a conflict with Policies N1 and N2 with regards to this matter. However, my attention has not been drawn to any words in the policies which are relevant to this issue. The policies have therefore not been determinative in my decision.

Neighbouring occupiers

30. The first floor windows of the appeal building would look towards the first floor bedroom dormer window within Valentines Cottage. The evidence indicates that the separation distance between the windows would be approximately twelve metres.
31. The submitted drawings indicate that the bedroom window within Valentines Cottage would be obscure glazed and the appellant suggests that a condition could be used to secure this. The use of obscure glazing within the dormer window would prevent harmful levels of overlooking and an associated loss of privacy for the occupiers of both Valentines Cottage and the appeal building.
32. The bedroom within Valentines Cottage is served by a second window which opens onto its garden, and which would not be overlooked from the appeal property. Consequently, there would be no requirement for obscure glazing within this window, and the occupiers of Valentines Cottage would retain a reasonable level of outlook from the bedroom.
33. As Valentines Cottage is included within the red line application boundary, I am satisfied that a condition requiring the installation of obscure glazing prior to the occupation of the appeal property would be relevant to planning and to the development to be permitted, reasonable and enforceable as required by paragraph 56 of the Framework.
34. I conclude that, subject to the necessary condition requiring the installation of obscure glazing, the proposal would not harm the living conditions of the occupiers of Valentines Cottage, with particular reference to the effect on privacy. I therefore find that it would comply with Policy D1 of the LDP and Policy C04 of the Maldon District Design Guide (2017), which seek to protect the living conditions of neighbouring occupiers, by providing residents of adjacent buildings with privacy.
35. I also find no conflict with the principles of the Framework that seek the creation of places that are safe and have a high standard of amenity for existing and future users.

Other Matters

Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy

36. The appeal site lies within the zones of influence of European sites on the Essex coast. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (Essex Coast RAMS) indicates that residential development in this location is likely to have significant effects on European Sites through increased recreational disturbance.

37. Where a proposal is likely to have a significant effect on European sites, Regulation 63 of the Conservation of Habitats and Species Regulations 2017 requires the competent authority to carry out an Appropriate Assessment (AA). However, even though the appellant has indicated a willingness to enter into an agreement to address any mitigation required to address concerns related to the European sites I have no such agreement before me. In any event, given the harm that I have identified above and that I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter further as it would not alter my findings on the main issues.

Personal Circumstances

38. I understand that the appellants' grandson has struggled to find local accommodation due to affordability pressures, high house prices and lack of suitable accommodation. I have had regard to the personal circumstances set out within the evidence and his desire to live close to his family who live at Valentines Cottage in order that they can support one another and remain in close proximity.
39. In determining this appeal, I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. This requires me to have due regard to the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not.
40. Amongst other things, for the purposes of the Equality Act, protected characteristics include disability. Whilst I have not been provided with supporting medical information, I am satisfied that the purpose of the appeal is to accommodate the appellant's family member who has a protected characteristic for the purposes of applying the PSED.
41. Article 1 of the First Protocol sets out that a person is entitled to the peaceful enjoyment of his possessions and that no one shall be deprived of his possessions except in the public interest. Article 8 of the Human Rights Act states that everyone has the right to respect for his private and family life and his home. Dismissing the appeal would represent an interference with the home and family life of the proposed occupiers, such that both Articles would be engaged.
42. Given the specific circumstances involved, the benefits associated with the proposal is a matter that attracts substantial weight. That is not to say that this matter will be determinative. Whether that is the case will require a balanced judgement based on the circumstances of any given case.

Planning Balance

43. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
44. Paragraph 11 d) ii. of the Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework

taken as a whole. Footnote 8 of the Framework states that relevant policies should be considered out of date where the local planning authority cannot demonstrate a five year supply (or a four year supply, in specific circumstances) of deliverable housing sites.

45. At the time of the determination of the planning application the Council did not have a five-year housing land supply. However, they advise that following a review of the housing land supply methodology they are able to demonstrate a deliverable five-year housing land supply of 5.97 years.
46. The appellant has questioned this but has not provided detailed analysis underpinning any suggested alternative figure and they identify that their submission does not amount to a robust scrutiny of the five-year supply position. As a result, I favour the Council's position.
47. The Framework seeks to significantly boost housing supply. It also encourages the optimal use of underutilised land, and states that, where there is shortage of land for meeting identified housing needs, planning decisions should avoid homes being built at low densities. The proposal would bring a single dwelling into use. However, any weight attributed to these factors is tempered by the Framework's expectation that developments prioritise pedestrian and cycle movements. The Framework also gives substantial weight to the value of using suitable brownfield land within settlements for housing, rather than land in the countryside as is the case with this proposal.
48. The appellant indicates that the appeal building is currently empty. The proposal would bring it back into use. Whilst it would be the home of the appellants' grandson in the first instance, the home would over the longer term contribute to the undersupply of smaller homes in rural areas, for which there is an identified local need. The proposal would provide a limited amount of short-term employment during works to bring the building back into use, and future occupiers would help to maintain rural services and facilities. These are benefits of the scheme, but they would be modest.
49. The appeal building contains embodied energy, and its use as a separate dwelling could commence without further impacts on emissions. It could be retrofitted to achieve high environmental standards, including through energy and water efficiency measures and renewable energy. The proposal would also provide electrical vehicle charging points, bird and bat bricks and bird boxes on adjacent trees, hedgehog domes and reptile refuges, and new planting to encourage biodiversity. These are in line with local and national policies and weigh in favour of the proposal.
50. The benefit of the dwelling for the appellants' family member is a matter that attracts substantial weight. The appellants' grandson wishes to reside at the appeal building to remain in close proximity to his grandparents. In these circumstances annexe accommodation may be an appropriate solution, for which an extant planning permission³ exists. However, I have not been provided with any evidence to suggest this would be a suitable option and therefore is a consideration to which I have attributed limited weight.
51. Whilst I am very sympathetic to the appellants' personal circumstances, I am mindful of the advice contained in Planning Practice Guidance that in general planning is concerned with land use in the public interest. It is accepted by the

³ FUL/MAL/13/00380

appellants that the appeal building would remain long after the appellants' personal circumstances cease to be material. Future use of the appeal building as a dwelling would also not necessarily entail a similar situation.

52. The proposed dwelling would also have adequate internal space, with a functional layout and future occupiers would have a generously sized external amenity area. I acknowledge that the proposal may be compliant with various other provisions of the development plan, and, for instance, would provide a policy compliant quantum of off-street car parking. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the proposal.
53. My findings above demonstrate that the proposal would comprise unsuitable development in the countryside, and that it would harm the character and appearance of the area. These considerations carry significant weight against the proposal.
54. Whilst I am very mindful of the needs of the appellant's family member, and attach substantial weight to those needs, the cumulative weight attributed to that and the other considerations in support of the case does not outweigh the harm I have identified.
55. Therefore, the identified adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Proportionality

56. The human rights interference associated with this conclusion is in accordance with the law and is necessary in a democratic society to protect the countryside by restricting inappropriate development, which is a legitimate objective. The relevant planning policy objectives could not be achieved by means less imposing or intrusive, and the minimum action necessary to achieve those important ends, would not have an excessive or disproportionate effect on the interests of the persons affected.
57. The public interest cannot be served by means that cause less interference with the appellant's rights. Therefore, dismissing the appeal is a proportionate response in all the circumstances and a violation of rights under Article 1 and Article 8 would not occur.
58. In accordance with the public sector equality duty, due regard has been paid to minimising the disadvantages suffered by the intended occupiers of the site and to meeting their needs in so far as they are different to those without a relevant protected characteristic. Whilst ultimately the appeal is to be dismissed, these considerations have been at the forefront of the decision-making process. Because of the significant objections identified the outcome is a proportionate one.

Conclusion

59. I have no reason to make a decision other than in accordance with the development plan. I conclude that the proposed development conflicts with the development plan, when read as a whole. There are no other considerations that outweigh that conflict.

60. Therefore, even if the Council was unable to demonstrate a deliverable five-year supply of housing land, the adverse environmental effects of the proposal would significantly and demonstrably outweigh the benefits.
61. Consequently, for the reasons given above the proposal is unacceptable so the appeal does not succeed.

B Pattison

INSPECTOR