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## Appeal Decisions

Site visit made on 11 February 2025

by **E Dade BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 February 2025

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### **Appeal A Ref: APP/A1530/W/24/3346609**

#### **Blackheath Bulb Company, Nayland Road, West Bergholt CO6 3DE**

- 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 M Nieuwenhuis on behalf of Blackheath Bulb Company against the decision of Colchester City Council.
  - The application Ref is 232751.
  - The development proposed is replacement of three agricultural buildings with three dwellings.
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### **Appeal B Ref: APP/A1530/W/24/3352608**

#### **Blackheath Bulb Company, Nayland Road, West Bergholt CO6 3DE**

- 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 M Nieuwenhuis on behalf of Blackheath Bulb Company against the decision of Colchester City Council.
  - The application Ref is 240964.
  - The development proposed is replacement of three agricultural buildings with three dwellings.
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### **Decision**

1. Appeal A is dismissed.
2. Appeal B is dismissed.

### **Applications for costs**

3. An application for costs was made by Mr M Nieuwenhuis on behalf of Blackheath Bulb Company against Colchester City Council's decision on Appeal B. This application is the subject of a separate decision.

### **Preliminary Matters**

4. Appeal proposals A and B would be sited in the same location, and therefore cannot both be implemented. Rather, Appeals A and B represent alternative designs, the merits of which I have considered in my reasoning, below.
5. The site has an extensive planning history. In 2019, prior approval was granted for the conversion of three agricultural buildings into three dwellings under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO)<sup>1</sup>. The prior approval scheme was not implemented and has lapsed. Nonetheless, it is accepted that the opportunity to convert the buildings under the provisions of the GPDO could represent a realistic fallback position.

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<sup>1</sup>LPA reference: 191409

6. Furthermore, a proposal of similar design to the current appeal proposals was dismissed at appeal in 2022<sup>2</sup>. Consistency in decision-making is an important tenet of the planning system. In my decision, I have had regard to the site's planning history.
7. As the proposals relate to the setting of a listed building, I have had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

## **Main Issues**

8. The main issues in these appeals are:
  - The effect of the proposed developments on the character and appearance of the area;
  - The effect of the proposed developments on the setting of listed building, Rookery Farm;
  - Whether the proposed developments would provide suitable living conditions for future occupants, with particular regard to privacy; and
  - Whether the proposal would achieve a net gain in biodiversity (Appeal B only);

## **Reasons**

### *Character and appearance – Appeals A & B*

9. The site formerly operated as a wholesale nursery involved in the propagation of bulbs. The business was run from outbuildings located around a central farmyard. Set back from the appeal site is a dwelling associated with the nursery business.
10. At the front of the site is a double range building, linked with a lean-to structure, used for storage of horticultural items and containing a large cold store. To the rear of the yard is a steel portal framed building for the storage of farm equipment.
11. The existing buildings are arranged around hardstanding and have a simple, rectangular form, with low, dual-pitched roofs and a modern, utilitarian appearance. The site's commercial horticulture use is formative of its character.
12. Rookery Farm is adjacent to the site but is unrelated to the nursery business. It is a Grade II listed, 17<sup>th</sup> century house, constructed from a timber frame and plaster, with a T-shaped plan and red brick wing in Flemish bond. It has sash windows with glazing bars, and a peg-tiled roof with two red brick chimneys. The building's form and traditional materials contribute to its special architectural and historic interest.
13. Both proposals A and B comprise three single-storey, three-bedroom dwellings, through a design which seeks to achieve the appearance of a traditional farmyard with dwellings arranged in a U-shaped layout around a courtyard.
14. Proposals A and B are also similar to the previously dismissed appeal proposal but incorporate revised designs which seek to address concerns raised in the appeal decision. The Inspector identified conflict with the development plan for design reasons, including that the form and proportions of the plot 2 dwelling would be consistent with a residential dwelling, in particular the angle of the roof pitch and

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<sup>2</sup> Appeal reference: APP/A1530/W/21/3279464

central gabled feature; and that the proposal would lack coherence, particularly because of the differing design proposed for plot 3.

15. In both proposals A and B, the design of the plot 2 dwelling is based on a full height barn with outshots. The roof pitch angle is altered from the previous appeal proposal's design. However, the prominent, central gable feature has been retained. Therefore, in both schemes A and B, the proposed plot 2 dwelling would have the appearance of a residential dwelling and fail to achieve the appearance of an agricultural building.
16. In both schemes, the proposed plot 1 and 3 dwellings would be of simple, rectangular form with a gabled roof, and would appear symmetrical. The Council assert this would not achieve an aesthetically successful cascade in building forms. However, the proposed plot 1 and 3 dwellings would be similar in height and form to the existing buildings and would thus be characteristic of the site's built features in this regard.
17. As set out above, Appeal A and Appeal B would harm the character and appearance of the area.
18. Appeal A and Appeal B would therefore conflict with Policy SP7 of the North Essex Authorities' Shared Strategic Section 1 Plan 2021 (SSP) which requires proposals respond positively to local character and context to preserve and enhance the quality of existing places and their environs.
19. In addition, the proposals would conflict with Policy DM15 of the Colchester Borough Local Plan 2022 (CBLP) which requires proposals respect the character of the site, context and surroundings in terms of layout and architectural approach.

#### *Setting of listed building*

20. The site layout plan for the previous appeal proposal indicated the dwellings would be positioned toward the front of the site. In particular, the plot 3 dwelling was proposed to be sited close to the highway edge.
21. In the previous appeal decision, the Inspector found that when travelling along Nayland Road from north to south, the development would be seen in the foreground with the listed building behind. In addition to being out of character, the Inspector concluded the dwellings would be more visually intrusive than the existing buildings because of their increased height, resulting in harm to the listed building's setting.
22. In appeal proposals A and B, the dwellings would be set back in the site. In this regard, both proposals differ significantly from the previous appeal scheme.
23. In both proposals, dwellings would exceed the height of the existing buildings. However, through siting the dwellings back from the highway, the development would not obstruct views of listed building Rookery Farm when travelling along Nayland Road in either direction.
24. As discussed above, the character and appearance of the proposed dwellings would not be acceptable. However, prominent physical features such as the substantial brick wall along the shared boundary, along with the siting back from the highway, provide distinct visual separation between the appeal site and Rookery Farm.

25. Therefore, I am satisfied that Appeal A and Appeal B would not harm the setting of Rookery Farm, and would preserve the listed building and its setting, as required by the Act.
26. Appeals A and B would therefore comply with SSP Policy SP7, which requires proposals protect and enhance assets of historical value, and CBLP Policy DM16, which requires proposals conserve the significance of heritage assets.

*Living conditions – Appeals A & B*

27. In each proposal, dwellings would have bedroom windows facing into the communal courtyard which would provide space for parking and turning vehicles and enable access to the front door of each property.
28. In Appeal A, the plot 1 and 3 dwellings would have large areas of full-length glazing at bedroom 2. Occupants of bedrooms would have an expectation of privacy, and the Essex Design Guide Supplementary Planning Document 1997 (SPD) recommends a separation distance of 25m between privacy sensitive elevations. However, the bedroom windows would directly face one another with a 20m separation distance, thereby failing to achieve the SPD's design standard.
29. The SPD suggests developments may be designed in such a way as not to overlook one another. This would require an intervening above eye-level fence or other visual barrier between facing ground floor windows. The appellant asserts there would be two car parking spaces between the dwellings. However, I have been provided no details of any mitigation measures, such as eye-level screening, that would prevent overlooking when the parking spaces are unoccupied.
30. For Appeal B, the delegated report indicates there would be no overlooking between dwellings. However, the report asserts that privacy would be impacted by the comings and goings of occupiers. The Council notes the parking and access arrangement to the front of the plot 2 dwelling, including two uncovered parking spaces and manoeuvring space serving the whole development, would be close to the windows serving bedrooms 2 and 3.
31. However, the parking spaces to the front of the plot 2 dwelling would normally be used by occupants of the plot 2 dwelling, since the plot 1 and 3 dwellings would have parking spaces next to their end elevations. In addition, there would be opportunity for screening through soft landscaping in the front garden area. Therefore, I am satisfied Appeal B would achieve a suitable standard of privacy for future occupants.
32. As set out above, I have identified no harm in respect of living conditions for Appeal B, and therefore conflict with the development plan would not occur.
33. However, with particular regard to privacy, Appeal A would not provide suitable living conditions for future occupants.
34. Appeal A would therefore conflict with CBLP Policies DM12 and DM15 which together require proposals be of a high standard of design, and protect and promote residential amenity, with particular regard to privacy.

### *Biodiversity Net Gain – Appeal B*

35. Biodiversity Net Gain (BNG) is a mandatory requirement of Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021).
36. The national mandatory BNG would not apply to Appeal A which was submitted prior to its introduction. However, Appeal B would be subject to the statutory BNG condition, unless exempt.
37. The Appeal B proposal does not contain the minimum information required by Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 for the purposes of the statutory BNG condition. The appellant asserts the statutory BNG condition does not apply as the proposal would be self-build development, and the site contains less than 25sqm of habitat.
38. The appellant has lived on the site for more than 50 years and has been involved in the design of the scheme. The proposal is intended to house the appellant and their family. However, I have been provided no mechanism to secure and retain any proposed dwellings as self-build units. In the absence of such a mechanism, the self-build exemption cannot apply to the proposal.
39. The “de minimis” exemption to BNG applies where development would not impact on any onsite priority habitat, and if there is an impact on other onsite habitat, that impact must be on less than 25 square metres. Most of the site area comprises hardstanding and buildings. Sealed surfaces have a zero score and are effectively exempt for the purposes of BNG.
40. However, the site layout plan shows the proposed development would extend beyond the area of existing hardstanding and buildings. The proposed development would therefore encroach into surrounding undeveloped land.
41. The Planning Practice Guidance indicates that, when providing reasons for the de minimis exemption, the appellant should provide sufficient evidence to support their justification<sup>3</sup>. The proposal does not quantify the amount of land that would be utilised beyond the areas of sealed surface and does not provide details of the habitat value of such land.
42. Whilst it is not likely that the site contains priority habitat, the proposal does not demonstrate that on-site habitat exceeding 25sqm would not be impacted. Therefore, it is not demonstrated that the de minimis exemption would apply.
43. As set out above, Appeal B does not demonstrate that the proposal would be exempt and would not satisfy the minimum information requirements of the statutory BNG condition. The proposal fails to demonstrate that it would achieve at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat.
44. Consequently, Appeal B would not comply with Schedule 7A of the Town and Country Planning Act 1990 and would conflict with CBLP Policy ENV1 which requires development provide a measurable biodiversity net gain.

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<sup>3</sup> Paragraph: 004 Reference ID: 74-004-20240214

## **Other Matters**

45. The appeal site is within the zone of influence of one or more 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. Each proposal includes a unilateral undertaking containing a planning obligation to secure a financial contribution in accordance with the Essex Coast RAMS.
46. 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, AA is only necessary where the competent authority is minded to give consent for the proposal. Since I am dismissing the appeal for other substantive grounds which result in conflict with the development plan, it is not necessary to address the proposed development's effects on European sites in further detail.

## **Conclusion**

47. Both proposals would conflict with the development plan as a whole and there are no other considerations which outweigh this finding. Therefore, for the reasons given, Appeal A and Appeal B should be dismissed.

*E Dade*

INSPECTOR