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## Appeal Decision

Site visit made on 9 April 2025

by **A Knight BA PG Dip MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8<sup>th</sup> May 2025

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**Appeal Ref: APP/A1530/W/24/3355012**

**Land Adj. Elm Cottage, Spring Gardens Road, Chappel, Colchester, Essex  
CO6 2DW**

- 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 Ryan Jones against the decision of Colchester City Council.
  - The application Ref is 230986.
  - The development proposed is stable block erection on land adj. to Elm Cottage.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application form and some of the submitted plans indicate that the appeal site excludes the residential dwelling Elm Cottage. However, the site plan shows the appeal site as including it, and so I have determined the appeal on the basis that it does.
3. The appellant has indicated a series of alternative locations for the proposed stables. I have made my determination on the basis that the stables would be located on the southeasternmost corner of the smallholding, as shown on the submitted site plan, as that was the basis upon which the Council made its decision.
4. A revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. On the basis that the revisions have no material implications for the outcome of this appeal, I have not considered it necessary to request observations from the main parties.

### Main Issues

5. The main issues are the effect of the proposed development on:
  - the living conditions of occupiers of Elm Cottage, Springfields, and Merryhill with particular regard to noise and smell; and,
  - a wall to the west of Elm Cottage identified by the Council as a non-designated heritage asset.

## Reasons

### *Living Conditions*

6. The appeal site includes the residential dwelling Elm Cottage and its garden, along with an area of largely undeveloped land immediately east of it described by both main parties as a smallholding. The proposal is to erect a stable block on land within the smallholding, near to the garden of Elm Cottage.
7. Immediately north of Elm Cottage is Springfields, a residential dwelling. Immediately south of the location of the proposed stables is the garden of Merryhill, including a detached garden building near the boundary. The area is quiet and semi-rural.
8. The stable block would include two separate stables, one of which is intended to function largely as a hay store, and an open barn. The stables would support the smallholding, and the appellant envisages occasional use of it for animals that would otherwise live outdoors, as and when they require particular attention or treatment. The barn would generally house a tractor and attachments.
9. The Council Environmental Protection team describe the main issues with stable blocks as manure odour and flies, and advise they should be located as far away from neighbouring boundaries as possible. Whilst the rationale behind that advice is clear, the question before me is what harm the stables would cause in their proposed location, rather than whether an alternative location would be preferable.
10. Stables have an inherent potential for smell and flies. The Council estimates the distance from the proposed stables to the nearest dwellings to be some 25m, and my site visit suggests this is so. Whilst I have not been provided with any specific guidance as to acceptable distances, 25m is, to my mind, a distance over which smell or flies have the potential to be harmful to residential amenity. Furthermore, the gardens of Elm Cottage, Springfields, and Merryhill are very close to the location of the proposed stables. In the summer, the use of these gardens would coincide with the greatest risk of smell and flies. This could harmfully prohibit enjoyment of neighbouring gardens.
11. Little information is provided as to the functions on the smallholding of a tractor, and I have no means by which to gauge the likely extent of its coming and goings, or its typical maintenance regime. I also have very little to guide me as to the frequency and timings of the envisaged animal care, or level and type of sounds emanating from sick, birthing, or newborn animals. I have been provided with no reason to believe that the timing and extent of any of these activities could reasonably be limited by planning conditions and therefore proceed on the basis that they could be frequent and sustained.
12. Even given the modest intentions the appellant has for the smallholding, the starting and running of an engine has the inherent potential to disturb residential amenity. I have been given no reason to believe that animal care does not possess a similar potential to disturb. The harm that could arise would be particularly pronounced in a quiet setting, as exists near the site, to the detriment of neighbouring amenity.
13. I recognise that it may be possible to manage the storage and disposal of manure, thereby reducing the risk of smell and flies. The appellant has not objected to a

proposed condition requiring agreement over such a scheme. An existing manure heap, kept elsewhere on the site, does not evidently cause harm and I have no doubt that the appellant would manage manure from the stables efficiently and considerately. The proposed condition would reduce the potential for harm in that respect. Even so, I have no information as to what such a scheme would entail, and no evidence therefore that it could restrict the potential for harm to such a degree as to ensure the preservation of residential amenity.

14. The appellant has drawn my attention to other stables near the appeal site, which are closer than 25m to nearby dwellings. I am informed that at least one of these stables has planning permission, but I have no details of that application and so cannot see that the circumstances are comparable to those before me. Otherwise, though I note the proximity of stables to dwellings in the area, I have no evidence that those arrangements have been approved or, more pertinently, that they do not create, or have the potential to result in, harm to residential amenity. I attach minimal weight to them in my determination.
15. The proposed development would have a harmful effect on living conditions of occupiers of Elm Cottage, Springfields, and Merryhill with particular regard to noise and smell, contrary to Policies SP7 and DM15 of the Colchester Borough Local Plan 2013-2033 (2021). These policies require, amongst other things, that development protect residential amenity, including in respect of noise and smell.

### *Heritage*

16. To the rear of Elm Cottage and marking the westward edge of its residential curtilage is a brick wall (the wall). The appeal scheme includes the creation of an opening some 2m wide within the wall, allowing access from Elm Cottage to the proposed stables. The wall is one of several brick enclosures to the garden of Elm Cottage. There is little consistency between them in terms of design, and whilst some sections have the appearance of age, others are plainly modern. I found nothing in my visual inspection of the wall that would indicate its age or connect it to the history of the surrounding area.
17. As set out in the Planning Practice Guidance (PPG), non-designated heritage assets (NDHAs) may be identified through processes such as local and neighbourhood plan-making though, in some cases, they may also be identified as part of the decision-making process on planning applications. The wall is not locally listed but has been identified as an NDHA by the Council.
18. The reason for refusal cites Framework paragraph 216 (formerly 209), which requires consideration of the effect of the proposal on the significance of the NDHA, and the formation of a balanced judgement, having regard to the scale of any harm or loss and the significance of the asset. This is the correct approach, and I deploy it in my determination below.
19. The reason for refusal goes on to describe the appeal scheme as likely to result in less than substantial harm, but lacking justification or identified public benefits. These are tests set out in paragraph 215 and are applicable to designated heritage assets. They are not applicable to NDHAs and, as such, I have not applied them in my determination.
20. I have little from the Council to demonstrate the significance of the wall as an NDHA. Whilst there is sufficient clarity in the Council's case to show that the terms

'loss' and 'demolition', both of which feature throughout, are intended to describe the creation of the opening, there is little to set out the effect of the proposal on the NDHA beyond an observation that it would be harmful to the landscape character of the area.

21. Furthermore, the Council contends that without a proportionate historical analysis to confirm the wall lacks historical value, an alternative solution for the new stable block should be found, but has provided no response to a pertinent submission from the appellant; Maps showing the site between 1955-63, 1972-75, and 1993-94 respectively have been supplied. Only on the latest of these is there a clear correlation between the western boundary of Elm Cottage as shown on the maps, and the position of the wall on site demonstrating, to the appellant's mind, that it is a relatively modern development.
22. The accuracy with which enclosures are shown may be affected by the scale and purpose of the maps in question and I do not, therefore, find the maps conclusive as to the age of the wall. That the wall separates two parcels of private land and is not directly visible from the public sphere does not, in itself, negate any heritage value it may possess. At the same time, there is simply no evidence to show that the wall has any heritage value. On that basis I find that its significance is in it being a pleasant domestic garden enclosure in a traditional, rural setting. The wall does not persist in the same form all around the garden, and so draws little from its continuity. Overall, the proposed opening would be so modest as to have no harmful effect on any significance the wall possesses, and I find the proposal to adhere to the requirements of the Framework regarding NDHAs.

### **Other Matters**

23. I appreciate that there is local support for the proposal, but I have determined the appeal on its merits as set out above.
24. Whether alternative locations within the appeal site would be acceptable, and whether permitted development rights may be used to achieve the appellants ambitions are not matters before me.

### **Conclusion**

25. Whilst I have not found the effect of the proposed development on the wall to be harmful, the effect on residential amenity would be such that the proposal conflicts with the development plan when read as a whole. Material considerations do not indicate that the appeal should be determined other than in accordance with it. I therefore conclude that the appeal should be dismissed.

*A Knight*

INSPECTOR