



Appeal Decision

Site visit made on 7 March 2025

by A Knight BA PG Dip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th May 2025

Appeal Ref: APP/W1525/W/24/3348439

Land Rear Of Marigolds, Main Road, Bicknacre, Chelmsford, Essex CM3 4HD

- 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 Gary Denham against the decision of Chelmsford City Council.
 - The application Ref is 23/01480/FUL.
 - The development proposed is use of residential outbuilding as primary living accommodation (seeking temporary permission/personal permission).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have amended the description of development from the appeal form to omit reference to the proposal being retrospective, as that is not an act of development.
3. The application form confirms that the development has started, and I was able to see this during my site visit. I appreciate that an objection has been raised to the retrospective nature of this proposal. However, my determination is based on the merits of the proposal as set out in this appeal.
4. Since the determination of this application a revised National Planning Policy Framework (The Framework) has been published. The main parties have been given the opportunity to comment on any implications for the appeal.

Main Issues

5. The decision notice cited inadequate tree planting as a reason for refusal. The Council has confirmed that, based on information supplied with the appeal, it now considers this a matter which could be dealt with via planning conditions should the appeal be allowed. I see no reason to take a different view.
6. Accordingly, the main issues are whether the proposal:
 - Is in a suitable location, having regard to the Chelmsford Local Plan (2020) (the Local Plan); and
 - Provides appropriate living accommodation for its occupants.

Reasons

Location

7. The appeal site (the site) comprises a plot of land east of Main Road, behind the main residential building line. Much of the land is open, though it includes vehicular driveways, paths, and buildings, including the Old Bakery Barn (the Barn) and the building subject of this appeal (the building).
8. The site is at the edge of the Defined Settlement of Bicknacre, beyond which is the rural area. Policy DM10 defines the approach to changes in the use of existing buildings in the rural area. It aims to allow the appropriate re-use and adaptation of existing buildings in the countryside, whilst maintaining the integrity of settlement boundaries, and the strategic, plan-led approach to the location of development they represent. In this respect, I see no conflict between Policy DM10 and the aims of Chapter 11 of the National Planning Policy Framework, which addresses the effective use of land.
9. It is agreed by both main parties that the boundary line delineating the settlement passes through the building, though differing views exist as to precisely where. On the evidence before me the proposals map is the appropriate point of reference, but is at too large a scale to provide precision. Even if, however, the majority of the building is within the settlement boundary, the proposal relates to the site as outlined in red on the site plan, the vast majority of which is outside of the settlement. On that basis, I see no reason why Policy DM10 should not be engaged.
10. Part C of Policy DM10 seeks to allow the change of use of land or buildings in the rural area where each of four criteria is met and, in instances where the proposed use is for a dwelling or dwellings, the building was constructed more than ten years ago. The appellant confirms that the building was erected less than 10 years ago (in 2019). The proposal therefore conflicts with Policy DM10.
11. The appellant contends that, through its relationship to the dwelling Marigolds, and then the use of the Barn as a dwelling, the lawful use of the site is residential; that the building was lawfully erected using residential permitted development rights; and that the residential use of the building is lawful by virtue of it having persisted for at least four years since September 2019.
12. Even if all of these are true, a planning application has been made, requiring the proposal to be assessed against pertinent policies. The circumstances described above do not alter the requirements of Policy DM10, or the extent to which the proposal falls short of them. That said, and whilst neither the lawful use of the land or the lawfulness of the building is before me, these matters may be material in my determination if they are relevant to a fallback position.
13. Any residential use of the site in connection with Marigolds has not been certified as lawful. The Council cites a previous appeal decision¹ in which the curtilage of Marigolds was found to exclude much of the site and, given the clear delineation between the rear boundary of Marigolds and the site, I see no reason to view matters differently to the previous Inspector.

¹ Appeal Decisions APP/W1525/C/12/2170150, APP/W1525/C/12/2170151, APP/W1525/X/12/2168168.

14. There are references in the planning officer report for the Barn² to the '*wider garden area of Marigolds*' and to the grounds of the house extending a long way to the rear, but I do not consider these conclusive as to the lawful use of the site; the report did not need, and was not seeking, to identify the curtilage of Marigolds. The use of the barn was not evidently tied to the domestic activities at Marigolds, and I see no reason to view that permission as having changed the use of the site to residential.
15. The use of the Barn as a dwelling was refused a certificate of lawfulness³. The height of the building and its proximity to the boundary casts significant doubt over the claim that it could, in any event, have been built in accordance with the terms of Class E of the General Permitted Development Order (2015). Overall, I have no evidence that the lawful use of the site is residential, that it is part of the curtilage of a dwelling, or that the building was lawfully erected. These contentions carry little weight in my determination as a result.
16. I have little from the Council to disprove the claim, advanced by the appellant, that the building was built and occupied as a dwelling more than four years ago and that lawfulness has, therefore, been attained. However, no certificate exists in support of this claim, reducing the weight I can attach to it.
17. Moreover, I am mindful that the proposal before me is for the use of a residential outbuilding as primary living accommodation. The appellant describes the proposal as seeking temporary permission for the building to be used as a residential dwelling for their son, after which it would revert to an ancillary residential outbuilding. The site includes both the building and the Barn, with no meaningful segregation between the two. Plainly, the proposal has at its heart an ancillary relationship to a dwelling, including a familial link, that is fundamental both during the intended three-year lifespan of the permission, and afterwards.
18. However, even if the lawful status of the building is as the appellant claims, I see no way in which I could reasonably grant planning permission, even temporarily, for it to be used as ancillary primary living accommodation on a site where there is no other lawful dwelling that the building can be ancillary to. Nothing has been provided to show me that such an approach is sound. For the purposes of this appeal, and given the specific nature of the proposal, I attach very little weight to the prospect that the use of the building as a dwelling may be a viable fallback position.
19. The proposal conflicts with Policy DM10 of the Local Plan where it requires that, in the case of proposals to change the use of a building to a dwelling, the building is at least ten years old. As such, the site is not a suitable location for the proposed development.

Living accommodation

20. Policy DM26 of the Local Plan sets out the design specification for dwellings. A proposed dwelling must meet all the requirements of this policy; failure to meet one is not outweighed by the ability to meet others. One requirement is to achieve appropriate internal space through adherence to the Nationally Described Space Standards. The building is occupied by the appellant's son and his partner,

² Application Ref 17/00399/FUL.

³ 23/01197/CLEUD).

resulting in minimum internal space requirements that include a gross internal floor area of 50m², 1.5m² of built-in storage, a bedroom floor area of at least 11.5m², and a bedroom depth of at least 2.75m.

21. The Council finds the building to have a floor area of 42m², a shortfall of 8m²; no storage; a bedroom floor area of 9.9m², a shortfall of 1.7m²; and a bedroom width of between 1.8m and 2.7m. The appellant contests these figures, insofar as they argue the building to be 48m².
22. Based on the submitted floor plan the external area of the building appears to be less than 45m². Once a deduction is made for the thickness of the walls I see no obvious reason to doubt the Council's figures, and have been provided with no evidence in support of the appellant's assessment. Moreover, the appellant does not contest the Council's figures in respect of bedroom size and storage capacity. During my site visit I noted that the building, whilst homely and benefiting from a pleasant outlook, is notably cramped in these respects.
23. Policy DM26 allows departures from Nationally Described Space Standards where it can be demonstrated that the particular site circumstances allow for a lower provision. Regarding the appellants arguments on this front, I see no evidence that the policy should be applied differently to proposals to make residential use of existing buildings; the policy plainly anticipates such circumstances, and occupants of such buildings are not likely to require less space than anyone else.
24. I do not doubt that the building represents a greater degree of internal space than its occupants were used to previously. Even so, I have no evidence that their needs are any different to, or less than, average, or that the minimum internal space standards imposed by the policy are anything other than the least they need. Moreover, I consider three years a significant period of time for anyone to occupy a building which is inadequate in size, and that harmful living conditions have been created.
25. I recognise that the personal circumstances of the appellant's son and his partner, who intend to emigrate once the relevant documentation is in order, have led to the proposal. I do not doubt that, living conditions aside, use of the building for primary living accommodation in the meantime would be helpful to them, but I have been provided with no evidence that alternative accommodation is not available. I do not find the personal circumstances of the occupiers to outweigh the identified conflict with planning policy.
26. My attention has been drawn to planning permission for an ancillary outbuilding at Sunnymede, a neighbouring dwelling⁴. The appellant considers this outbuilding to have at least as significant an effect on local character as the building subject of this appeal. Even if this is so, the Council has raised no objection to the appeal proposal on the grounds of character and appearance, and the outbuilding at Sunnymede carries no weight in my determination, therefore.
27. The proposal provides inappropriate living accommodation for its occupants, contrary to the space standards contained in Policy DM26 of the Local Plan.

⁴ Application Ref 23/00668/FUL.

Conclusion

28. I conclude that the proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. The appeal is dismissed.

A Knight

INSPECTOR