
Appeal Decisions

Site visit made on 22 June 2016

by **Stephen Hawkins MA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 July 2016

Appeal A Ref: APP/A1530/W/16/3144635

Chestnut Farm, Abberton Road, Layer De La Haye, Essex CO2 0JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr R Foster against the decision of Colchester Borough Council.
 - The application Ref 152001, dated 24 August 2015, was refused by notice dated 16 November 2015.
 - The development proposed is '*outline planning application with all matters reserved for the erection of three detached dwellings not exceeding a combined gross floor area of 450 square metres*'.
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Appeal B Ref: APP/A1530/W/16/3144643

Chestnut Farm, Abberton Road, Layer De La Haye, Essex CO2 0JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr R Foster against the decision of Colchester Borough Council.
 - The application Ref 152000, dated 24 August 2015, was refused by notice dated 5 November 2015.
 - The development proposed is '*outline planning application with all matters reserved for a replacement of a single storey dwelling having a maximum gross floor area of 130 square metres*'.
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Decision

1. Appeal A is allowed and outline planning permission with all matters reserved is granted for the erection of three detached dwellings not exceeding a combined gross floor area of 450 square metres at Chestnut Farm, Abberton Road, Layer De La Haye, Essex CO2 0JU in accordance with the terms of the application, Ref 152001, dated 24 August 2015, subject to the conditions in the Schedule at the end of this decision.
2. Appeal B is dismissed.

Procedural Matters

3. Both applications were made in outline form, with all matters reserved for future consideration. Therefore, I have considered the details of the elevations, floor plans and layout provided solely on the basis that they were submitted for illustrative purposes.
 4. The single storey 'dwelling' proposed to be replaced in Appeal B consists of a twin-unit mobile home, which appears to have been altered and extended to the side and rear at some stage. Part of the appellant's case in Appeal B is
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that a dwellinghouse has been created by the extension and alteration of the mobile home and that the structure is lawful in planning terms. Evidence including photographs apparently taken within the mobile home when it was occupied by a relative of the appellant and letters purportedly from the present occupier and previous occupiers, has been provided to support the claim. I have also been provided with details of a case dealt with by a neighbouring planning authority concerning replacement of a mobile home with a dwellinghouse of a similar size.

5. However, whether the mobile home is lawfully a dwellinghouse for planning purposes is not a matter for me to determine in the context of an appeal under Section 78 of the Town and Country Planning Act 1990. It is open to the appellant to have this matter determined under Sections 191 or 192 of the Act. Any such application would be unaffected by the determination of this appeal. In the neighbouring planning authority case referred in support of the appeal, it appears that a Certificate was obtained which clarified the status of the mobile home, prior to that application being submitted.

Main Issues

6. In respect of both appeals, the main issues are firstly whether the proposals would be a sustainable form of development having regard to their location and access to local services and facilities and secondly, their effect on the character and appearance of the area.

Reasons

7. Chestnut Farm consists of a number of large-scale agricultural buildings formerly used in connection with a poultry business. There is also a detached dwelling and its associated outbuildings including a cattery and stables, as well as the mobile home which lies behind a large pole barn to the north of the poultry buildings. The farm is behind the long gardens of the housing fronting Abberton Road. Access is from the road, via a long gravel track. Both main parties agree that the farm is outside of the settlement boundary of Malting Green.

Appeal A

8. Prior approval under Class MB of the Town and Country Planning (General Permitted Development) Order 1995 (now Class Q of the 2015 GPDO) for the change of use of agricultural buildings on the appeal site to form three dwellings, was granted by the Council on 30 September 2014¹.
9. A previous appeal in respect of the demolition of the existing buildings and erection of up to three additional dwellings at the appeal site, was dismissed on 26 November 2014².

Sustainability of location

10. The appeal site is located a considerable distance away from the local services and facilities in Layer De La Haye, which are accessed from the site along roads largely lacking footways and street lighting. Consequently, I share the previous Inspector's conclusions that in order to access services and facilities the future occupiers of the proposed dwellings would be likely to rely on the

¹ Council reference 145628

² Reference APP/A1530/A/14/2223563

private car for the majority of their local journeys as well as for journeys further afield.

11. Nevertheless, the prior approval for conversion of the existing agricultural buildings to three dwellings is a material consideration. Whilst dismissing the previous appeal, the Inspector accepted that there was a realistic prospect of the prior approval being implemented. In the absence of any evidence to the contrary, I find no reason to disagree with that view.
12. Whilst the previous Inspector gave the fallback position reduced weight, he had been provided with few details of the prior approval scheme and little evidence of bedroom numbers. He could not establish whether or not the proposal before him would be occupied more or less intensively than the prior approval. Consequently, he was unable to conclude that the proposal before him would have had no more harmful impact in terms of access to local services and facilities, than the prior approval.
13. However, more evidence has been brought forward in this proposal, both in relation to the prior approval and the scale of development proposed in the appeal scheme. Although the details submitted with the proposal are illustrative, they nevertheless enable a clearer comparison to be drawn with the prior approval. The total gross floorspace of the proposal would not exceed that of the prior approval. The illustrative plans show that the new dwellings could be designed so that they would provide a total number of bedrooms not exceeding the total number shown in the prior approval. Overall, the three dwellings proposed would therefore potentially be occupied by a comparable number of people to the prior approval dwellings if they were built out. As a result, the proposal would be likely to generate a substantially similar number of private car journeys in comparison with the fallback position of the prior approval.
14. Consequently, the proposal would have a very similar effect to the prior approval scheme in relation to its sustainability of location and access to local services and facilities. A planning condition could be imposed requiring that the total gross floorspace of the proposed dwellings did not exceed that of the prior approval.
15. Therefore, the proposal would not harm the objectives of Policy SD1 of the Council's adopted Core Strategy (CS), which promotes growth in the most accessible and sustainable locations and seeks to sustain the character and vitality of small towns and villages and the countryside. It would also not harm the objectives of Policy H1, which seeks to locate the majority of housing development in and around Colchester or in sustainable settlements.
16. Moreover, as there would be no increase in the number of dwellings over the prior approval scheme, the proposal would not result in an increase in new isolated homes in the countryside. Therefore it would not be inconsistent with the National Planning Policy Framework (the Framework) at paragraph 55.

Character and appearance

17. The proximity of the appeal site to open fields and agricultural land and the considerable distance to the residential properties along Abberton Road, gives it a strongly rural character.

18. The illustrative plans show that the three single storey dwellings would potentially have a similar siting and floorspace to the prior approval scheme. However, these plans also indicate that the new dwellings could have a lower roof line in comparison with the existing buildings. This would assist in reducing the visual impact of the dwellings on their surroundings in comparison with the prior approval. Consequently, the proposed dwellings have the potential to be less visually intrusive in their surroundings. The overall height of the proposed dwellings could be controlled by condition.
19. Moreover, with careful design the proposed dwellings could have a form and external appearance which is more respectful of the rural character and appearance of their surroundings in comparison with the prior approval scheme. This is because the prior approval is constrained by the plan form and building envelope of the existing agricultural buildings, which are of fairly recent construction and of little visual merit.
20. I note the Council's concerns about the proposal having a suburban appearance and layout with the design of the dwellings not reflecting the form of the existing agricultural buildings and being bulkier. However, this is not obviously reflected in the illustrative details. Moreover, those are considerations of the detailed design which could be addressed at the reserved matters stage.
21. The proposal also presents the opportunity to secure the comprehensive removal of all the farm-related buildings within the appellant's ownership. Whilst this collection of simple functional buildings do not necessarily cause significant visual harm at present, removal of the substantial built form would nevertheless result in a more open character in the environs of the farm, consistent with that of the rural surroundings. It would also prevent the buildings falling into dereliction and decay. This is a further visual benefit offered over the prior approval and could be secured by condition.
22. As a result, there is no firm evidence to suggest that the proposal would have a significantly more urbanising effect than the prior approval scheme. If anything, handled sensitively the reserved matters would be likely to result in a form of development which would be more complementary to its rural surroundings.
23. I note the Council's concern about the potential for the appellant selling the appeal site in the future and subsequent proposals for two storey dwellings. However, any such scheme would have to be the subject of a separate application which the Council would be entitled to judge on its individual planning merits.
24. Therefore, I find that the proposal would accord with Policy UR2 of the CS because on the basis of the evidence I have been provided with, it could be designed so that it would be in accordance with its context and it would enhance the character, function and quality of the area. It would be able to achieve a high standard of design, sustainability and compatibility with local character, in accordance with CS Policy SD1. For similar reasons, the proposal would respect and enhance the character of the appeal site, its context and its surroundings in terms of its height, size, scale, form, detailed design and landscape setting, thereby complying with Policy DP1 of the Council's adopted Development Policies.

Other matters

25. I note the Council's general concerns regarding a more 'speculative' approach which it considers is being taken towards Class Q of the GPDO by some prospective developers. I agree this is at odds with the underlying purpose of Class Q, which is to convert agricultural buildings and increase rural housing without building on the countryside. I also note the comments regarding total demolition and replacement of buildings falling outside of Class Q and the views on why such development was not included within that Class. Even so, the appellant was entitled to make a planning application for the proposal and have it considered on the basis of its individual planning merits.
26. There is no dispute between the main parties that the Council has a five-year supply of housing land. I have also taken the Council's comments regarding the lack of any recent history of complaints from local residents about odours from the poultry business, into consideration.
27. Finally, whilst I note the Council's concerns about the proposal creating an unwanted precedent which would be difficult to resist elsewhere, it is a fundamental principle of the planning system that each case should be considered on its individual merits. There is no substantive reason why this proposal should create a precedent for unacceptable development in the countryside.

Planning Balance

28. To achieve the objectives of sustainable development as defined in the Framework at paragraphs 7 and 8, the proposal would be required to fulfil three mutually dependent roles-economic, social and environmental.
29. There would be economic benefits arising from the proposal, in particular the additional employment created during the construction period, as well as social benefits in respect of the contribution towards the supply of new housing and support for rural communities. The proposal would also meet the requirements of the environmental role, as it would contribute to protecting the natural environment and mitigating and adapting to climate change, in comparison with the fallback position of the prior approval scheme. I have afforded these benefits great weight. There are no adverse impacts which would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Consequently, the proposal would amount to sustainable development as defined in the Framework.

Conditions

30. I have imposed the standard outline conditions concerning submission of the reserved matters, prohibiting commencement until the reserved matters have been approved and the time limits for commencing development.
31. I have imposed a condition removing 'permitted development' rights to alter and extend the dwellings and erect ancillary outbuildings, to ensure that future residential alterations and additions are carefully controlled. This is in order to protect the rural character and appearance of the area. In doing so, I am mindful of the Planning Practice Guidance (PPG) 'Use of Planning Conditions' at paragraph 017³, which advises that such conditions should only be used in

³ Reference ID: 21a-017-20140306

exceptional circumstances. Even so, I consider that such a condition is necessary, exceptionally in this instance, having regard to the circumstances under which planning permission is being granted and the potential for harm to the rural character and appearance of the surrounding area as a result of the unfettered exercise of residential permitted development rights.

32. I have also imposed conditions restricting the combined gross floorspace of the proposed dwellings and their overall height, to ensure that in comparison with the prior approval scheme there are no more harmful effects, in terms of access to local services and facilities and in terms of the rural character and appearance of the surroundings. I have modified the conditions suggested by the Council in the interests of precision.
33. After seeking the views of both parties, I have also imposed a condition requiring the submission and implementation of a scheme requiring the removal of all the farm-related buildings prior to occupation of the dwellings, in the interests of protecting and enhancing the rural character and appearance of the area. I have also re-ordered the conditions suggested by the Council in accordance with the PPG at paragraph 024⁴.
34. However, I have not imposed the condition suggested by the Council restricting the times of construction and demolition work. The appeal site is some distance from the nearest houses and I have not seen any evidence to suggest that this condition is necessary. There are other statutory controls available to the Council in the event that construction or demolition activity on the appeal site gave rise to complaint.

Appeal B

35. This appeal site comprises the part of the farm occupied by the extended twin-unit mobile home, as well as the adjacent barn.

Sustainability of location

36. Due to its location in terms of access to local services and facilities, the appeal site has similar inherently unsustainable qualities to the Appeal A site. However, as the status of the mobile home is unclear there is no realistic fallback position which would have a similar or more harmful effect than the proposal.
37. As a result, the proposal would be tantamount to an additional dwelling in a location which is not sustainable in terms of its access to local services and facilities. Therefore, it would fail to accord with Policy SD1 of the CS, which promotes growth in the most accessible and sustainable locations and seeks to sustain the character and vitality of small towns and villages and the countryside. It would also fail to accord with CS Policy H1, which seeks to locate the majority of housing development within and around Colchester or in sustainable settlements. Further, it would not accord with CS Policy ENV1, as the proposal would fail to protect unallocated greenfield land outside of the settlement boundary and the open character of the Borough. Moreover, the proposal would be inconsistent with the Framework at paragraph 55 as it would amount to a new isolated home in the countryside.

⁴ Reference ID: 21a-024-20140306

Character and appearance

38. As with Appeal A, the appeal site and its surroundings have an open and strongly rural character.
39. The proposed dwelling would be single storey and have floor area no greater than 130 square metres, which is similar to the floor area of the mobile home. Nevertheless, due to its situation on the northern edge of the existing group of buildings, the proposal would result in a substantial and more obvious intrusion of residential built form into the open countryside, beyond the existing complex of farm buildings.
40. In the event that either the prior approval or the Appeal A scheme were implemented, the proposed dwelling would then be sited well away from the new dwellings as well as the appellant's dwelling, further emphasising its rather isolated and intrusive position in the rural surroundings.
41. The mobile home is a simple, small scale, low profile structure which is assimilated into the background of the large scale farm buildings. Whilst its appearance is somewhat utilitarian, it has a limited overall visual presence in its surroundings. The dwelling shown on the illustrative details is also likely to have a greater height and bulk than the mobile home and would be a significantly more obvious and assertive, residential intrusion into the rural surroundings in comparison. This is likely to be the case even if the redevelopment schemes under the prior approval or Appeal A were implemented. Consequently, I have afforded removal of the mobile home limited weight in terms of the effect of the proposal on the character and appearance of the area.
42. The existing barn is a simple, functional structure with an agricultural appearance. Removal of the barn would also offer little significant benefit to outweigh the visual harm identified above.
43. As a result of all of the above, the proposal would cause significant and unacceptable harm to the open, rural character and appearance of the surrounding countryside. Therefore, it would fail to accord with CS Policy UR2, as it would be discordant with its context and it would not enhance the character, function and quality of the area. The proposal would also fail to accord with CS Policy SD1, which expects development to achieve a high standard of design, sustainability and compatibility with local character. Further, the proposal would not respect and enhance the character of the site, its context and its surroundings in terms of its height, size, scale, form and landscape setting, thereby failing to comply with Policy DP1 of the Council's adopted Development Policies.

Other matters

44. I note the appellant's comments regarding the Framework core principles at paragraph 17, in relation to replacing the mobile home with accommodation fit for purpose, the potentially higher quality design and better energy efficiency. However, due to the uncertain status of the mobile home, I have given these matters limited weight. The absence of any enforcement action by the Council in relation to the mobile home to date cannot be taken as any indication that they condone its presence or that such action might not be forthcoming in future. I have also taken the lack of any objection in principle from the Parish

Council into account. However, this does not outweigh my findings on the main issues above.

Planning Balance

45. The economic benefits of the proposal in respect of the additional employment created during the construction period and its social benefits in terms of the contribution towards the supply of new housing and support for the long term vitality of rural communities, would all be small scale. When assessed against the policies in the Framework taken as a whole, these benefits would be significantly and demonstrably outweighed by the adverse effects of the proposal, due to its failure to meet the environmental objectives of contributing to protecting the natural environment and mitigating and adapting to climate change. Consequently, the proposal would not achieve the mutually dependent economic, social and environmental objectives of sustainable development set out at paragraphs 7 and 8 of the Framework.

Conclusions

46. The Appeal A proposal would have no more harmful effect in terms of access to local services and facilities than the prior approval scheme and it would potentially be more sensitive to the character and appearance of the area. Consequently, it would accord with the Development Plan and would be consistent with the Framework.

47. The Appeal B proposal is not sustainably located in relation to access to local services and facilities and it would harm the character and appearance of the area. Consequently, it would fail to accord with the Development Plan and would not amount to sustainable development as defined in the Framework.

48. For the reasons given above I conclude that appeal A should be allowed and Appeal B should be dismissed.

Stephen Hawkins

INSPECTOR

APPEAL A: SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The details submitted pursuant to condition 1 above shall show, *inter alia*, three dwellings with a combined total gross floor space of no greater than 450 square metres.
- 5) The details submitted pursuant to condition 1 above shall show, *inter alia*, three single storey dwellings with the ground floor window heads approximately level with the eaves, no windows in the roof and a ridge height not exceeding 6.5 metres, as measured from the level of the adjoining ground.
- 6) None of the dwellings hereby permitted shall be occupied until all of the existing agricultural buildings and silos have been demolished and the resulting demolition materials removed from the site, in accordance with a scheme which has been previously submitted to and approved in writing by the local planning authority.
- 7) Notwithstanding the provisions of Classes A, B, C, D and E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), none of the dwellings hereby permitted shall be extended or ancillary buildings or structures shall be erected within their curtilages, without the prior written approval of the local planning authority following the submission of a planning application.

**RE: CHESTNUT FARM, ABBERTON ROAD, LAYER-DE-LA-HAYE,
COLCHESTER**

ADVICE

INTRODUCTION

1. I am asked to advise Mr Chris Waumsley of Freeths LLP in relation to the decision of an inspector dated 26th November 2014 to dismiss an appeal against the decision of Colchester Borough Council to refuse an application for planning permission by Mr Robert Foster for the demolition of a chicken farm, associated buildings and structures and redevelopment for up to 3 additional dwellings at Chestnut Farm, Abberton Road, Layer-de-la-Haye, Colchester, CO2 0JU.
2. In particular, I am asked to advise whether there are any grounds for challenging the decision of the inspector by way of an application under s. 288 of the Town and Country Planning Act 1990.

DISCUSSION

3. In order for a successful application to be brought under s. 288 TCPA 1990, it would be necessary to identify some error of law, or some procedural impropriety on the part of the inspector (*Seddon Properties Ltd v Secretary of State for the Environment* [1981] 42 P & CR 26). The decision may not be challenged on the basis that the inspector should or could, as a matter of planning judgment, have exercised his discretion differently.
4. It seems to me that there are two potential points of weakness in the inspector's decision:
 - (1) The inspector, having compared the harm that would be caused by the appeal proposal measured against the chicken farm, has failed to compare the harm that would be caused by the appeal proposal measured against the prior approval scheme; and
 - (2) The inspector has failed to consider the possibility of imposing a condition limiting the scale of the proposal which could have addressed any uncertainty as to the comparative impacts of the appeal scheme and the prior approval scheme.

5. Both of these points are potential grounds for judicial review insofar as the inspector has arguably failed to take a material consideration into account and/or reached an irrational conclusion, which would, if made out, amount to errors of law.
6. That said, it seems to me that, as regards the first point, it would be argued by the Secretary of State that the inspector did not carry out a comparative exercise in respect of harm caused by the appeal scheme measured against the prior approval scheme because there was insufficient evidence (as regards bedroom numbers and intensity of occupation) to allow such an assessment of the relative harm to be made.
7. It is right to say that the level of detail required of the appeal and prior approval scheme were the same (i.e. both established merely the principle of development) and that the inspector should arguably have gone on to identify that (irrespective of any uncertainty as regards the precise level of harm) the "the benchmark had moved" and that the appeal scheme was bound to be significantly less harmful when measured against the prior approval scheme than when measured against the chicken farm. However, it seems to me that the Secretary of State's response would be that while it is right to say that neither proposal required any greater level of detail, the inherent uncertainty in the two proposals and the possibility that the grant of permission for the appeal scheme might result in a more harmful development than would result from the implementation of the prior approval scheme (i.e. although the benchmark had moved, it was not possible to say by how much) was a good enough reason for him to say, as he does, that any comparison of the two schemes was not possible.
8. As regards point 2, while it is no doubt correct to say that any such uncertainty could have been resolved by way of a condition limiting the scale of the proposal to that of the prior development scheme, the difficulty that we would face here is that there is no obligation on an inspector, in the absence of any reference to an appropriate condition, to search for a condition which might be used to assist an appellant (*Top Deck Holdings Ltd v. Secretary of State for the Environment* [1991] J.P.L. 961). Where a condition is "obviously a possibility" and an inspector has failed to consider it, it might be possible to criticize the decision of an inspector (*Brightwell v Secretary of State* [1997] 73 P. & C.R. 418) but in *Brightwell*, the court stated explicitly that the failure of the inspector in that case to consider such an obvious condition would not of itself have been sufficient justification to quash the decision.
9. In this case, given that no such condition was proposed, we would therefore have to demonstrate that a condition limiting the size of the appeal proposal was "an obvious possibility" which is a very hurdle and even then it might not be sufficient grounds to persuade a judge to quash the decision.
10. For those reasons, it seems to me that, while the inspector's decision can undoubtedly be criticized, any application under s. 288 TCPA 1990 is unlikely to be successful.
11. I therefore put the prospects of success of such an appeal at significantly less than 50%.

12. That said, it is clear that the inspector's concerns as regards the lack of detail in the proposals can be easily addressed, and that a strong application for planning permission can now be made to the local planning authority in light of the inspector's decision.
13. If the appellant produced evidence as to the likely intensity of occupation of the prior approval scheme (by reference to indicative layout plans, floorspace calculations, bedroom numbers or some other method), and, at the same time, proposed conditions limiting the redevelopment proposals to a scale equivalent to the prior approval scheme with the consequence that the intensity of occupation would be the same then it is difficult to see how the local planning authority could refuse permission for such an application (at least as regards the principle of development) given that the redevelopment would demonstrably not lead to any greater harm than would be the case if the prior approval scheme were implemented.

CONCLUSION

14. In summary, I consider that, despite the obvious deficiencies in the inspector's decision, as set out above, it would be difficult to challenge it by way of a s. 288 application for the reasons given.
15. However, it seems to me that the decision is helpful insofar as it clearly identifies that if the appellant demonstrates that the harm from the grant of permission for the redevelopment would not be any greater than the harm that would result from the implementation of the prior approval scheme, then permission should not be refused on this basis. As such, if the appellant (by way of indicative layout plans, floorspace calculations, bedroom numbers or some other method) is able to demonstrate the intensity of use that would result from the implementation of the prior approval scheme and propose suitable conditions limiting the scale of the redevelopment proposals, then it is difficult to see how any further application for planning permission could be refused on the same ground.

3 DECEMBER 2014

JACK PARKER

CORNERSTONE BARRISTERS