



Appeal Decision

Site visit made on 2 July 2019

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: Thursday, 25 July 2019

Appeal Ref: APP/X1545/W/18/3214422

**Lords Acre Nursery, Lower Burnham Road, North Fambridge, Essex
CM3 6NW**

- 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 Miss Cassie Burt against the decision of Maldon District Council.
 - The application Ref FUL/MAL/17/01238, dated 28 April 2018, was refused by notice dated 12 September 2018.
 - The development proposed is described as 'the retention of the office/rest area to be used as before, also for security in evenings'.
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Decision

1. The appeal is allowed and planning permission is granted for a building to be used as an office/rest area and for security purposes at Lords Acre Nursery, Lower Burnham Road, North Fambridge, Essex CM3 6NW, in accordance with the application Ref FUL/MAL/17/01238, dated 28 April 2018, subject to the following conditions:
 - 1) The building hereby permitted shall not be used at any time other than for purposes ancillary to the commercial use at the site.
 - 2) Within 3 months of the date of this decision a scheme for external cladding, including a timetable for its implementation, shall be submitted for the written approval of the local planning authority. The approved scheme shall be carried out and completed in accordance with the approved details and timetable for implementation and retained thereafter.

Preliminary Matters

2. The description of development in the banner heading above has been taken from the application form. However, it does not adequately describe the operational development applied for. The submitted plans show that this is in the form of a building. I saw on site that this building was physically attached to the ground and, given its size, it is likely that it was constructed on site. I also have no substantive evidence to suggest that it would be moved to other locations on the site. Despite the Council's reference to this building as a 'double unit caravan', I therefore consider it to be a permanent building.
3. Furthermore, from my site visit it is clear that this building has been constructed in line with what is shown on the submitted plans. I have therefore determined the appeal on the basis that retrospective permission is sought for a permanent building and reflected this in the description in my formal

decision. I have not used the word 'retrospective' in this description as this is not an act of development.

4. Amended plans were submitted with the appeal that would introduce external cladding and considerably raise the roof height of the appeal building. It is agreed that this would result in a building that would be substantially different in appearance compared to the existing building at the site. Regardless of whether or not the revised proposal represents a new building, I therefore consider that the amended scheme would be significantly different from that originally applied for and assessed by the Council.
5. The 'Procedural Guide – Planning Appeals – England' (2019) advises that: *"If an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal they should normally make a fresh planning application"* (Annexe M.1.1). Accordingly, taking everything together, I do not consider it appropriate to accept the revised plans and have determined the appeal based on the drawings that were before the Council when it made its decision.

Main Issues

6. The main issues are:

- whether or not the appeal site is a suitable location for the proposal, with particular regard to whether there is a need for it at a rural business; and
- the effect of the proposal on the character and appearance of the area.

Reasons

Suitable Location

7. The appeal site is in a rural location and comprises an established nursery business on the northern side of Lower Burnham Road. The main part of this nursery fronts the carriageway and contains the sales and customer parking areas. However, further beyond this, the appeal site also accommodates large agricultural style buildings. It would appear that these were formerly used in association with the rearing of turkeys. However, on the evidence before me, this use has been discontinued and I observed that they are now used for storage purposes associated with the nursery business. The appeal site as a whole is outside of a defined settlement boundary, as denoted by the Council's development plan. Consequently, for the purposes of planning policy it is within the countryside.
8. The building that is the subject of this appeal is a relatively small, single storey, structure at the nursery. This building was previously given a two year temporary permission by the Council¹. However, this has now expired. This proposal therefore seeks its permanent retention to be used as an office/rest area and for security purposes in connection with the business at the site.
9. Amongst other things, Policy E4 of the Maldon District Approved Local Development Plan (LDP) states that new buildings associated with land-based rural businesses will be supported, subject to their being a proven justifiable and functional need. I accept that the evidence submitted by the appellant in this regard is somewhat limited. Nevertheless, the toilet and kitchen facilities

¹ 10/00220/FUL

provided within the appeal building, together with the rest area, appear to be necessary to meet the requirements of Health and Safety legislation for the seven equivalent full time employees at the site. Moreover, the evidence before me indicates that there have been several attempted burglaries of farm machinery from the site. Whilst I accept that there are other methods of improving security, the appeal building also assists with providing 24-hour security to deter such criminal activity.

10. It would also appear that the business is expanding, with a proposal for four poly tunnels and a new farm shop at the site having been submitted for the Council's consideration. Such a scheme appears to have been approved in the past². Not only does the proposal provide facilities to assist with an expansion of the business, but it also gains the support of the National Planning Policy Framework (the Framework) insofar as it seeks to support the growth of rural businesses.
11. Furthermore, although the poultry business at the site has ceased, at the time of my visit the nursery was busy and other existing buildings were well-stocked. Taking this into account, I have no good reason to consider that there are other suitable buildings at the site that could accommodate the space and facilities currently provided within the appeal building. Neither do I have any evidence to show that it could be reasonably located within an existing town, village or allocated employment site.
12. Although the exact roles of the existing employees and their shift patterns have not been detailed, Policy E4 of the LDP does not appear to clarify what level of detail is required to satisfy its criteria. Taking everything together, in this particular instance, I am satisfied that the proposal, which has previously been granted permission by the Council, is required on site to assist with the current functional operation of the nursery and its expansion. It is also proportionate to the scale of this business.
13. For the reasons given, I conclude that the appeal site is a suitable location for the proposal as there is a need for it at an established rural business. The proposal therefore accords with Policies E4 and S1 of the LDP. Amongst other things, these support developments for new buildings associated with rural businesses where there is a justifiable and functional need and seek to support the economic conditions of the area.
14. I have also been referred to Policies D1 and S8 of the LDP. Amongst other things, these deal with character and appearance and are not relevant to this main issue.

Character and Appearance

15. The appeal building is located towards the rear of the main sales area of the nursery. Its positioning and scale, together with the existence of established vegetation adjacent to the appeal site and along this part of Lower Burnham Road, ensures that it does not appear conspicuous or unduly prominent within the streetscene and wider surrounding countryside.
16. I accept that the appeal building is rudimentary in design and somewhat domestic in character. However, in my view its functional nature does not appear wholly out of character within this commercial setting. Furthermore,

² 10/00839/FUL

any limited harm to the immediate setting arising from its appearance could be suitably mitigated through the imposition of a condition requesting details of cladding to be submitted and then installed.

17. For the reasons given, I conclude that the proposal does not harm the character and appearance of the area. It therefore accords with Policies S1, S8 and D1 of the LDP insofar as they seek to ensure that developments respect their local context and that, outside of defined settlement boundaries, they maintain the rural character of the District and are in compliance with policies within the LDP. The proposal also accords with the Framework insofar as it seeks to ensure that proposals are sympathetic to local character, including the surrounding built environment and landscape setting.
18. Policy E4 of the LDP seeks to ensure that there is sufficient justification for new buildings at existing rural businesses. It is not relevant to this main issue.

Conditions

19. I have considered the conditions put forward by the Council. Having regard to the tests set out in paragraph 55 of the Framework, I have amended the wording where necessary in the interests of clarity and simplicity. The standard plans condition is not required as the development applied for has been carried out. However, a condition to ensure that the development remains ancillary to the existing nursery business is reasonable, particularly given that there appears to have been a previous unlawful residential use of the building which resulted in the Council taking enforcement action. Furthermore, a condition requesting a scheme for cladding, including a timetable for its implementation, to be submitted within 3 months of the date of this decision is required to ensure that the proposal integrates effectively with the character and appearance of the appeal site.

Conclusion

20. For the reasons set out above, the proposal would not conflict with the development plan. Having considered all other relevant matters raised, I conclude that the appeal should be allowed.

M Heron

INSPECTOR