



---

## Appeal Decision

Site visit made on 11 August 2020

**by M Philpott BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 November 2020**

---

**Appeal Ref: APP/X1545/W/20/3253506**

**Old Orchard Barn, Lea Lane, Great Braxted CM8 3ER**

- 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 Mr Benjamin King against the decision of Maldon District Council.
  - The application Ref FUL/MAL/19/01168, dated 8 November 2019, was refused by notice dated 6 January 2020.
  - The development proposed is described as 'Application for Change of Use of Vacant Barn and Occupied Class B.1 Workshop with Ancillary Storage into Live-Work Unit Comprising Single-Family Dwellinghouse and Class B.1 Workshop, Construct Extension to Link Barn to South-Western Range, Lay Out Parking Spaces and Change of Use of Use Land to Domestic Garden'.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) came into force on 1 September 2020, amending the Town and Country Planning (Use Classes) Order 1987 (the UCO). However, Regulation 4 of the Regulations requires that applications submitted prior to 1 September 2020 are decided with reference to the use classes that were specified in the Schedule to the UCO on 31 August 2020. I have determined the appeal on that basis and therefore references to the use classes in this decision should be interpreted accordingly.
3. The main parties indicate that the development would have likely significant effects on one or more European sites as designated by the Conservation of Habitats and Species Regulations 2017. The appellant has submitted a unilateral undertaking (UU) dated 7 January 2020 with the appeal, which is intended to mitigate the effects. The Council has sought not to defend its second reason for refusal as a result.

### Main Issues

4. The main issues are whether the proposal would be in an appropriate location, with regard to the Council's settlement hierarchy; its accessibility to services, facilities and sustainable transport options; and its effect on the character and appearance of the area, with regard to non-designated heritage assets.

## Reasons

5. The appeal site includes 3 buildings and surrounding land at Old Orchard Barn. The buildings comprise a vacant Victorian threshing barn, an attached electrical contractor's workshop within Class B1 (as defined by the Schedule to the UCO) that is identified as Range 2, and a detached building used for storage in connection with the workshop that is identified as Range 1.
6. A live-work unit is proposed. A dwelling would be formed from the barn and Range 1 and the workshop would continue to operate from Range 2. The appellant contends that the proposal comprises a single use which cannot be sub-divided into its component parts. However, in my view, it nonetheless includes the creation of a dwelling at the site and the implications of both the residential element and the business element need to be considered.

## Location

7. The site is located outside settlement boundaries. It is therefore within the countryside for planning purposes. Policy S8 of the Maldon District Approved Local Development Plan 2014-2029 (LP) sets out a settlement hierarchy. It states that planning permission will only be granted where the intrinsic character and beauty of the countryside is not adversely affected and one of several criteria are satisfied. Although it adopts a prescriptive approach to development in the countryside, it does not outrightly prevent housing there. The policy is consistent with the National Planning Policy Framework (the Framework) insofar as paragraphs 83 and 170 set out that the growth and expansion of rural businesses should be supported and the intrinsic character and beauty of the countryside should be recognised.
8. The appellant considers that the proposal complies with criteria e) and m) of Policy S8. Criterion e) provides for the re-use of a redundant or disused building that would lead to the enhancement of its immediate setting, subject to compliance with LP Policies E4 and D3. Criterion m) provides for other proposals which comply with policies in the LP. The appellant contends that the development is compliant with criterion m) as it accords with Policy D3.
9. The Council does not object to the continued use of the workshop and the parties do not dispute that the barn is disused. However, the business continues to operate from both ranges. No evidence has been provided which demonstrates that Range 1 is redundant, and it was being used for storage purposes at the time of my visit. The proposal conflicts with criterion e) of Policy S8 as a result.
10. Policy E4 supports the change of use of existing rural buildings to other employment generation uses. Its purpose is to encourage economic growth in rural areas to create jobs and prosperity. The live-work unit would be employment generating insofar as the workshop would be retained. However, the barn and Range 1 would not be used directly for employment purposes. In addition, the amount of floorspace used in connection with the existing business would be reduced and it has not been demonstrated that the proposal would facilitate the growth of the business. While a previous appeal decision<sup>1</sup> noted that the Framework does not require an appellant to demonstrate a justifiable and functional need for a proposal, this is nonetheless a requirement

---

<sup>1</sup> Appeal reference: APP/X1545/W/18/3206543

of Policy E4 that has not been addressed. Although the policy is more prohibitive than the Framework, it is broadly consistent with paragraphs 80 and 83, which encourage economic growth in rural areas.

11. Policy D3 requires heritage assets to be preserved or enhanced. The main parties agree that the barn is a non-designated heritage asset. The appellant contends that Range 1 is one too and this is not disputed by the Council. I see no reason to find otherwise. However, having regard to paragraph 2.103 of the LP, criterion m) of Policy S8 seeks to provide a degree of flexibility for land uses or activities that may be more suitable in the countryside than within settlements. Therefore, a proposal will not comply with criterion m) on the basis that it preserves or enhances heritage assets alone. Moreover, I identify within this decision that the proposal conflicts with policies within the LP.
12. Policy D3 also provides for enabling development. Paragraph 3.27 of the LP clarifies that this must provide significant improvements to a heritage asset which could not otherwise be obtained. Whilst there would be a benefit from the barn being put into use, the buildings have recently been repaired and it has not been demonstrated that the proposal would result in significant improvements that could not otherwise be obtained. Therefore, it has not been adequately demonstrated that the proposal is enabling development.
13. I therefore find that the proposal would not be in an appropriate location and would harm the integrity of the Council's settlement hierarchy. The proposal's location is not supported by LP Policy D3 and it conflicts with LP Policies S8 and E4. Having regard to their degree of consistency with the Framework, I attach moderate weight to this conflict.

#### *Accessibility*

14. The parties do not contend that the proposal would create an isolated home in the countryside and thus the criteria set out at paragraph 79 of the Framework are not relevant to this appeal.
15. It is not disputed that the site has limited access to services, facilities and public transport infrastructure and that the occupiers of the dwelling will be reliant on private motor vehicles to satisfy the requirements of day-to-day living.
16. The business would continue to operate from the site and thus the employment element is unlikely to result in a greater reliance on private motor vehicles. I also note that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. However, these matters do not imply that the dwelling's reliance on private motor vehicles except for employment is appropriate. In addition, whilst a planning condition could be imposed to require the dwelling to be occupied by a person employed in the workshop and their family, it would not be reasonable to require all the occupiers to be employed at the workshop and the employees may nevertheless be required to travel in connection with the business.
17. The appellant contends that it can reasonably be concluded that planning permission would be granted for the barn to be used for business purposes, as the previous appeal allowed the use of Range 2 for Class B1. It is argued that such a use would generate at least the same number of vehicle movements as the use of the dwelling. However, I have no firm evidence that would be the

case. In any event, this proposal has both residential and employment elements and thus direct comparisons with a proposal that is entirely for employment purposes cannot be made.

18. The appellant has pointed out that another appeal decision<sup>2</sup> relating to the site stated that the re-use of many buildings in the countryside are likely to have similar shortcomings in respect of accessibility and there should be a degree of realism in such scenarios. However, that decision was made prior to the adoption of the LP and, moreover, it sets out that the site is not in an accessible location.
19. The proposal would have limited accessibility to services, facilities and sustainable transport options and the occupiers of the dwelling would be reliant on private motor vehicles for day-to-day living. It therefore conflicts with LP Policy S1, which seeks to deliver homes in the most sustainable locations, minimise the need to travel and promote sustainable transport modes. This policy is consistent with paragraphs 78 and 103 of the Framework, which set out that housing should be located where it will enhance or maintain the vitality of rural communities and patterns of growth should support its transport objectives, which include the promotion of sustainable transport options. This is a matter to which I attach significant weight.
20. The Council contends that the proposal also conflicts with LP Policies S8 and T2 in respect of this matter. However, they are not directly relevant as the former does not set out accessibility criteria and the latter seeks the provision and improvement of access infrastructure rather than ensure that development is in accessible locations.

#### *Character and appearance*

21. The buildings are part of a small cluster of built form which includes a large agricultural building that is beside Range 1. The buildings have an agricultural appearance and are located adjacent to fields which form part of a distinctly open and rural landscape.
22. The proposed link extension and the additional fenestration would have a domesticating effect on the appearance of the buildings and their immediate setting; however, they would continue to have an agricultural form and thus they would not appear incongruous within the wider landscape. In addition, the weatherboard cladding and new slate roofs would be less prominent and more sympathetic of the agrarian character of the buildings and the countryside than the existing surfacing and roofing materials. The impacts of domestic paraphernalia could be controlled by conditions. Moreover, the proposed native hedgerow planting at the site boundaries would be compatible with the appearance of the field boundary hedges that characterise the area and there would be little change in respect of hard surfacing.
23. I therefore find that the proposal would preserve both the heritage significance of the barn and Range 1 and the character and appearance of the countryside. In respect of these matters, the proposal accords with LP Policies S1, S8, D1 and H4, which seek to protect local character. It also accords with LP Policy D3, insofar as it seeks to protect heritage assets.

---

<sup>2</sup> Appeal reference: APP/X1545/A/13/2202660

### **Other Matter**

24. If I was minded to grant planning permission, I would need to be satisfied that the proposal would not adversely affect the integrity of any European sites. In doing so, I would need to consider whether the UU would secure the specific mitigation of any effects in this instance.

### **Planning Balance**

25. The proposal would contribute to the Government's objective of boosting housing supply, but this would be a limited benefit given only one dwelling would be created. The proposal would secure the use of the barn, which is desirable. However, this would be a modest benefit as the barn is a non-designated heritage asset of limited significance and the proposal would make a neutral contribution to local character and distinctiveness. If I were to conclude that there would be no adverse effect on European sites, this would also constitute a neutral consideration rather than a benefit weighing in favour of the proposal.
26. In acknowledging these benefits, I do not consider that they outweigh the harm and the policy conflicts I have identified. The proposal therefore conflicts with the development plan when read as a whole. There are no material considerations which indicate that a decision should be made other than in accordance with the development plan. It is thus not necessary that I consider the effect of the proposal on European sites, as such an assessment would have no bearing on my decision.

### **Conclusion**

27. For the above reasons, and having regard to all matters raised, I conclude that the appeal should be dismissed.

*Mark Philpott*

INSPECTOR