
Appeal Decision

Site visit made on 27 January 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 March 2021

Appeal Ref: APP/X1545/W/20/3258408

Broadfield Fruit Farm, Braxted Park Road, Great Braxted CO50QB

- 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 Purdy against the decision of Maldon District Council.
 - The application Ref FUL/MAL/20/00340, dated 9 March 2020, was refused by notice dated 9 June 2020.
 - The development proposed is agricultural storage barn and related access road.
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Decision

1. The appeal is allowed and planning permission is granted for agricultural storage barn and related access road at Broadfield Fruit Farm, Braxted Park Road, Great Braxted CO50QB in accordance with the terms of the application, Ref FUL/MAL/20/00340, dated 9 March 2020, subject to the conditions set out in the attached Schedule.

Main Issues

2. The main issues are (i) whether or not a justifiable functional need for the proposed development in this location has been demonstrated; and (ii) the effect of the proposed development on the character and appearance of the area.

Reasons

Functional need

3. The site lies within the designated countryside for the purposes of planning policy. Policy S8 of the Maldon District Approved Local Development Plan 2017 (LP) seeks to protect the landscape and provides that, outside of the defined settlement boundaries, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided it is for one of the listed exceptions.
4. The appellant has set out that there is an urgent agricultural need for the proposed building to provide secure and dry storage space for hay and other crop and farm vehicles and other associated equipment. Agricultural related development falls within the listed exceptions under Policy S8 and therefore the proposed development is acceptable in principle subject to compliance with LP Policy E4. This policy supports the development of new agricultural buildings where there is a justifiable and functional need for the building; the building is directly linked or ancillary to the existing use and could not be reasonably located in existing towns, villages or allocated employment areas.

5. The proposal is an amended scheme from an earlier proposal which was dismissed at appeal. In that case the Inspector found that insufficient information had been provided to conclude that a building of the size and height proposed was needed at the site. The Council has stated that although the appeal building has been reduced in size and height and further supporting information has been provided when compared to the earlier proposal, the need for the amount of storage and the location proposed has not been adequately justified. The Council further considers that it has not been demonstrated that there are no other buildings within the appellant's land holding that could accommodate the storage claimed to be required.
6. It has not been made clear to me precisely the level or type of additional information that has been provided in this case compared to that of the dismissed appeal. However, detailed information in respect of the extent of the agricultural land holding, which includes the appeal site, has been provided by the appellant as part of the appeal evidence. This includes information relating to DEFRA payments that the appellant is in receipt of, and an evidenced explanation of why the appeal site, being land which contains a building, is not included within the DEFRA payments related maps. I am satisfied from the information provided that the site forms part of the agricultural holding and that the appellant is in the farming business. I consider that the height and scale of the proposed building has been reasonably justified in relation to its proposed purpose, given the size of the holding and the farming activities undertaken.
7. I am also satisfied that it is a type of development that requires a countryside location and that the position of the site, next to and in close proximity to other land within the agricultural holding and to the appellants house, is such that the function of the proposed building would be directly linked and ancillary to the existing use.
8. I note that the Council do not consider the site to be in current agricultural use. I saw on my visit the untidy state of the site and its derelict and fire damaged buildings. However, I also note that the site is the subject of enforcement action following a dismissed enforcement appeal, relating to its unauthorised use for external storage of materials and detritus. I do not consider an unauthorised use to be substantive evidence that the site is not agricultural land or that it would not be in agricultural use following cessation of the unauthorised use.
9. Further the appellant has explained that whilst there is an existing building situated on other land within the holding, it is too small for the required storage. In addition, it is stated that there are no other sites on the holding where the proposed building would replace an existing structure, as it would do at the appeal site, and that other land is considerably more open than the appeal site so any building in a different location would be visually more prominent.
10. The Council has not submitted a statement of case with its appeal documents and has not therefore provided any substantive evidence to refute the appellant's evidence in respect of these matters. On the basis of the evidence before me, I consider that the proposed building would be reasonably necessary for use in connection with agricultural activities within the vicinity of the site.

11. Accordingly, I conclude that the appellant has satisfactorily justified a functional need for the proposed development in this location. Thus, the proposal would comply with LP Policies S1, S8 and E4, which together and amongst other matters seek to maintain the rural character of the district and to ensure that there is a justifiable and functional need for buildings associated with agriculture. The proposal would also comply with the requirements of the National Planning Policy Framework (the Framework) in this regard.

Character and appearance

12. The appeal site comprises an area of land located to the rear of an existing residential property. The main body of the appeal site is obscured from public view by a close boarded boundary fence on one side and is further separated from the road by a grassed paddock which is enclosed by a timber post and rail fence. Roadside trees and other vegetation, including boundary planting, also provide screening of the site.
13. The proposed building would be located in a similar position to the existing buildings which are dilapidated and have been partially removed following fire damage. I note that a similar proposal was refused planning permission on appeal. Whilst I have had regard to the Inspector's findings, I am not bound by them. The height and scale of the building proposed in that case was greater than that of the appeal building before me. I necessarily give consideration to the appeal scheme on its own merits.
14. The proposed building would be some 2 metres taller than the original buildings on the site, however, the building would be simple in form and the design and proposed materials would be consistent with general agricultural buildings. Its scale does not seem excessive, with the height being kept to the minimum required to allow access and egress of a fork lift and bailing machinery. I do not consider that the proposed building would have a significantly greater visual impact than the existing structures on the site. The proposed building would not appear unusually large or incongruous.
15. The plans show that the building would have two openings situated within the eastern elevation, consisting of a personnel door and a large roller shutter opening for vehicles and crop. The appellant has explained that storage of hay or other crop would be at the rear of the building with machinery and vehicles at the front. The design of the building appears to be capable of supporting the mixed agricultural storage use in the manner suggested.
16. The appeal site boundary also includes an already constructed access track. This access forms part of the appeal scheme and has previously been the subject of an enforcement appeal. The Council has advised that the Inspector in that case found that the appearance of the access track could be made satisfactory by landscaping. On this basis, the Council has no objection to the proposed access. Similarly, I agree that whilst the appearance of the access is quite stark, it is comparable to the neighbouring access and to other accesses typically in agricultural use. I am satisfied that its appearance could be made acceptable by landscaping through the imposition of a landscaping condition. Although any approved landscaping would be on land outside of the red line planning unit, it would be on land within the control of the appellant who has indicated acceptance of a condition in respect of this matter.

17. I note the Council makes reference to the proposal seeking to extend the existing access. However, whilst the red line site plan links the existing access to the position of the proposed building, the proposed plans and other supporting evidence does not include any proposal to physically extend the access.
18. Overall, I consider that the proposed development would not unacceptably harm the character and appearance of the area. Thus, the proposal would comply with LP Policies S1, S8, D1 and E4, the Maldon District Design Guide 2017 and the requirements of the Framework, which together and amongst other matters seek good design and development which maintains rural character and local context.

Conditions

19. I have had regard to the conditions suggested by the Council and the advice in the Framework and the Planning Practice Guidance. As a result, I have amended, consolidated or omitted some of the conditions so that they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. With regard to Section 100ZA (5) of the Town and Country Planning Act 1990, the appellant has raised some concerns, but has nevertheless given their written agreement to the pre-commencement conditions attached to this decision.
20. As the application is in part retrospective and the parts are independent of each other, I have imposed the standard commencement condition (1) but I have amended it to refer to the approved building rather than the development as a whole. The Council has suggested 5 years for implementation with the reason given being to comply with Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. The appeal proposal is not for permitted development and I see no valid reason to allow more than the standard 3 years for commencement of the development of the building.
21. As only part of the development is retrospective, a condition requiring development to be carried out in accordance with the submitted plans (2) is necessary. This provides certainty that the development would be carried out in the form proposed. In the interest of character and appearance, conditions are necessary to ensure the use of appropriate external materials (5) and the provision of appropriate landscaping (6). Provided landscaping details are approved prior to the first use of the building, I consider it reasonable for the approved planting to be carried out during the first planting season, following completion or first use of the building, rather than before the first use of the building.
22. A condition is necessary and reasonable to restrict the use of the building to agricultural storage purposes only (7) in this case, because the principle of such a building in the countryside is only justified to meet a specific, genuine agricultural need. Other uses would potentially harm the rural character of the area and the living conditions of occupiers of the neighbouring residential property and would require full consideration.
23. The Council has suggested three conditions relating to contamination. Whilst I note the concerns of the appellant and his comments in regard to the unauthorised use of the site and the type and location of materials stored, from

my own observations of the site and its planning history, I consider that there is a reasonable possibility that the site could be contaminated. Any contaminants present could be disturbed during the construction of the approved building. For this reason, a pre-commencement condition requiring the investigation and remediation of any contamination (3), including any unexpected contamination, is required in the interests of the safety of construction workers, neighbouring residents and future users of the site. I have amended and consolidated the Council's suggested contamination conditions for clarity and preciseness.

24. To prevent light pollution and in the interests of the living conditions of occupiers of the neighbouring residential property, I consider that a condition relating to the installation of external lighting (8) is reasonable and necessary. I have amended the Council's wording for clarity.
25. The Council has suggested a condition in respect of surface water drainage. The appellant considers that because the building would replace existing buildings with a similar floor area there would be no additional surface water discharge beyond that as existing and that no known surface water drainage issues have been identified. Therefore, he suggests that the imposition of a condition in this respect could be unreasonable. To support the appellant's suggestion, I have been directed to an appeal decision within the Council's district where the Inspector did not impose a similar condition suggested by the Council in that case.
26. However, in that case the footprint of the proposed building was identical to the existing structure and it appears that the Inspector had specific details about the existing drainage arrangements on that site, including where water was piped to, such that the Inspector was able to be satisfied with the suitability of those arrangements. That is not the case here and I consider it reasonable and necessary to impose a pre-commencement in relation to surface water drainage (4) in order to ensure that the site is properly drained. I have amended the wording of the suggested condition for clarity and brevity.
27. For the reasons given in my decision above, a condition relating to surfacing of the extended access is not necessary.

Conclusion

28. For the reasons above the appeal is allowed.

S Tudhope
Inspector

Schedule of Conditions

- 1) The development of the agricultural building hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Block Plan; Proposed Floor Plan; and Proposed Elevations.
- 3) Development of the building hereby permitted shall not commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority.

If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 15 days of the report being completed and approved in writing by the local planning authority.

- 4) Development of the building hereby permitted shall not commence until details of the surface water drainage scheme to serve the development has been submitted to and approved in writing by the local planning authority. The agreed scheme shall be implemented prior to the first use of the building.
- 5) The materials to be used in the construction of the external surfaces of the building hereby permitted shall be in accordance with the details set out in paragraph 3.3 of the submitted undated 'Planning Statement'; prepared by Peter Le Grys MA Dip.TP MRTPI, Stanfords.
- 6) Prior to first use of the building hereby permitted there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first use of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased

shall be replaced in the next planting season with others of similar size and species.

- 7) The building hereby permitted shall be used for agricultural storage purposes only.
- 8) No means of external illumination of the site shall be installed unless details are first submitted to and approved in writing by the local planning authority. The external lighting shall thereafter be installed and maintained in accordance with the approved details.

End of Schedule.