



Appeal Decision

Site visit made on 20 June 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 July 2023

Appeal Ref: APP/C1435/X/21/3282119

Beacon Down Vineyard, Browns Lane, Cross in Hand, Heathfield TN21 0QJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Paul Pippard against the decision of Wealden District Council.
 - The application Ref WD/2020/1990/LDP, dated 12 October 2020, was refused by notice dated 2 March 2021.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as: Use of land and buildings for agricultural purposes to include for the growing of grapes and producing/storing of wine from grapes grown on the site only together with the sale of the wine produced from the site grown grapes and the provision of tours, tastings and refreshments.
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Summary of Decision

1. The appeal is dismissed.

Preliminary Matter

2. Certification is sought for a proposed use (or activity). The Council has issued a certificate for the proposed use of land and buildings for agricultural activities to include the growing of grapes and production/storage of wine on site from grapes grown on the site together with the sale of that wine. Specifically, the certified wording reads:

'Use of land and buildings for agricultural purposes to include for the growing of grapes and producing/storing of wine on site from grapes grown on the site only together with the sale of the wine produced on site from the site grown grapes from the site directly.'

3. The appeal is focussed on whether there would be a material change of use arising should grapes be taken off-site for wine production and then returned for storage and sale and/or from the provision of tours, tastings and refreshments. This formed part of the appeal application, and which the Council has not certified. The appellant's proposed form of wording reads:

'Use of land and buildings for agricultural purposes to include for the growing of grapes and producing/storing of wine from grapes grown on the site only together with the sale of the wine produced from the site grown grapes and the provision of tours, tastings and refreshments.'

Main Issue

4. The main issue is whether the Council's decision to have only issued a certificate in the aforementioned terms is well founded.

Reasons

5. The site extends to approximately 18 acres and comprises three fields, two of which are currently planted with vines, along with two buildings served by a vehicular access and hardstanding for parking.
6. In matters such as this, the onus is firmly on the appellant to demonstrate their case on the balance of probabilities. My assessment is therefore very fact specific, based upon the evidence before me.
7. The Planning Practice Guidance (the Guidance) sets out that an appellant is responsible for providing sufficient information to support an application for a Lawful Development Certificate. The Guidance says: *'In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.'* Those sentiments apply equally to an Inspector at appeal stage.

The storage and sale of wine, from site grown grapes, but produced off-site

8. The Council accepts that the growing of grapes to produce wine is an agricultural activity, and I have no reason to disagree.
9. For the purposes of wine production, the processing of grapes that has then been brought to my attention can be broadly summarised as: fermentation over the course of around two weeks, the adding of sugars and sulphites, bottling and labelling; and then in the case of sparkling wine: secondary fermentation and disgorging of the yeast. This is therefore a lengthy process to make a different product, akin to an industrial process, as opposed merely the crushing of grapes, even if they are of a type and grown exclusively for wine making.
10. The parties rely upon case law¹, where it was held that the on-site processing of grapes grown and harvested from a given site was incidental to the primary agricultural use of growing grapes at that site. However, that case law related to production remaining on-site. As a matter of fact and degree, the proposed activity before me differs, because it is proposed that grapes be taken from the site for wine production elsewhere.
11. It is my understanding that wine is not currently produced at the site. Even if I am wrong, the appeal application provides little evidence of the proposed balance between on-site and off-site production. It is therefore entirely feasible that only a very modest percentage, or none at all, of the 20,000 bottles that could be produced annually would take place on the site, with the remaining (or all) grapes then transported from the site, processed variously as I have already summarised, and then returned to the site for storage and onward sale by various means.

¹ Millington v Secretary of State for Environment Transport and Regions v Shrewsbury and Atcham Borough Council: CA 25 Jun 1999

12. The limited evidence concerning the production balance therefore casts considerable doubt in my mind for the purposes of certification, when the onus is firmly on the appellant to demonstrate that the character of the use would remain merely an agricultural one, and thus a material change of use would not arise. In the absence of adequate evidence concerning the production balance, there is insufficient clarity, and it has therefore not been demonstrated that the proposed activity can be certified as incidental to the primary agricultural use of the land.
13. The appellant has drawn my attention to an example of a pig farmer, the off-site production of sausages, and their subsequent sale from the farm. I accept that some off-site adaptation of site grown produce, such as this, could then be regarded as incidental to the agricultural use of the land.
14. However, there is no production balance in this example, given there might be other meat products arising that do not require such adaptation. Moreover, if there were then a farm shop as suggested, the relevance of such an example would further waver depending on whether there was a planning permission for that shop and the wording of any planning conditions. I am therefore not persuaded on the evidence before me that the hypothetical example of a pig farmer, or indeed the other examples² provided, translates into the proposed activity before me and therefore demonstrates lawfulness.
15. When considered in the round, the proposed activity involves the sole and lengthy industrial process of turning grapes into a different product. The return of this product to the appeal site for storage and sale may then not give rise to a material change of use if the production balance were adequately evidenced and so could then be assessed. However, based on the evidence before me, as a matter of fact and degree, the appellant has failed to demonstrate on the balance of probabilities that it would be ordinarily incidental and reasonably necessary to process up to 20,000 bottles of wine annually off-site and then return it for storage and sale as part of the primary agricultural use of the appeal site for growing grapes.

The provision of tours, tastings and refreshments (the tours)

16. The appeal application form describes the proposed tours as taking place 3 days per week, for up to 30 people per tour excluding children, with tastings. The wording now proposed by the appellant would see no quantification of this activity.
17. That being so, there is limited evidence to enable me to assess whether such an activity would be or remain merely an incidental one to the primary agricultural use of the land.
18. Moreover, I have already been unable to certify the appellants proposal relating to the storage and sale of wine, from site grown grapes, but produced off-site, given the limited evidence pertaining to the proposed production balance. This also casts significant doubt in my mind when it comes to assessing the tours.
19. Presently, the site appears to only be used for the growing of grapes. If wine was then proposed to be produced exclusively at the site, this would potentially broaden the scope and/or number of tours that could be said to be merely incidental to that agricultural use of the land.

² including APP/K6920/D/99/513513

20. However, in the absence of adequate evidence of the proposed production balance somewhere between the two extremes, I am unable to adequately assess whether a potentially significant number of '5* *tour experiences*' would be merely incidental and reasonably necessary to make the product marketable, as opposed give rise to a material change in the character of the use. There is insufficient clarity before me. The aforementioned case law advanced by the appellant accordingly does not assist him given the entirety of production in that case remained on-site.
21. As a matter of fact and degree, based upon the evidence before me, the appellant has therefore not discharged the necessary burden of proof to demonstrate the case on the balance of probabilities.

Conclusion

22. Accordingly, for the reasons given above I conclude that the Council's decision was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

23. The appeal is dismissed.

Paul T Hocking

INSPECTOR