
Appeal Decision

Site visit made on 29 August 2023

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 October 2023

Appeal Ref: APP/X1545/W/23/3317950

Roundbush Farm, Colchester Road, Great Totham, Essex CM9 8BZ

- 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 Wyndham-Lewis and Gibson against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/01062, dated 12 October 2022, was refused by notice dated 9 December 2022.
 - The development proposed is 'a) a change of use of the ground floor of the existing outbuilding to Class E(g)(iii) - Commercial, Business so that the applicants can operate their beekeeping practice, Bermondsey Street Bees, from Great Totham; and, b) a change of use of the first floor of the outbuilding to Class C3(a) - so that the applicants can provide occasional overnight sleeping accommodation for family and friends when visiting Roundbush Farm socially, including Sarah's mother and the applicant's two sons. Such occupation would be totally ancillary and incidental to the main Roundbush Farm dwelling. The outbuilding will not be used as a separate dwelling or as an independent unit of residential accommodation'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. As the business use on the ground floor of the appeal building has commenced, I have dealt with the appeal on the basis that it involves an application for part retrospective permission.
3. An application for costs was made by Sarah Wyndham-Lewis and Dale Gibson against Maldon District Council. That application is the subject of a separate decision.

Main Issues

4. The main issues are whether the location is suitable for the proposed business use, including the effect on the character and appearance of the appeal site and the surrounding area; and whether the appeal building could function as accommodation ancillary to the host dwelling.

Reasons

Suitability of the Location for Business Use

5. Roundbush Farm comprises land and buildings to the south of Colchester Road. The farmhouse, which has Grade II listed status, is set well back from the road frontage, with the appeal building and another outbuilding to the south, both served by the same driveway as the farmhouse. There are residential properties to the south-west and north-east, with open paddock to the east and countryside to the south.
6. Reference is made to a previous unsuccessful application for the same form of development to the current proposal¹. While I note this earlier application and decision, this appeal involves a separate proposal which I have considered on its own merits.
7. Policy S1 of the Maldon District Approved Local Development Plan 2014-2029 (2017) (the LDP) promotes sustainable development, while Policy S8 of the LDP says that such development within the defined settlement boundaries will be supported. The appeal site lies adjacent to but outside the defined settlement boundary for Great Totham. Consequently, Policy S8 states that permission will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and where the proposal meets one of a number of criteria.
8. As beekeeping related activity falls within the definition of agriculture, criterion d) is relevant. This requires the proposed use to be in accordance with Policy E4 of the LDP, concerning agricultural and rural diversification. The appellants contend that regard should also be had to Policies S7 and E1 due to their promotion of, respectively, prosperous rural communities and employment. However, despite the assertion to the contrary, my reading of Policy S7 and the supporting 'policy clarification' is that it supports economic development within village settlement boundaries, particularly as, taking the LDP as a whole, Policy S8 and the other policies it refers to, address development proposals outside designated boundaries. Policy E1 encourages employment generating developments in existing employment sites and new ones, having regard to other policies in the LDP. For the reasons given above, due to the building's location and the proposed use relating to agriculture the principal policy in respect of the appeal proposal is E4.
9. Policy E4 requires there to be a justifiable and functional need for the activity; for the activity to be directly linked and ancillary to the existing use; and that the activity could not reasonably be located within a settlement or employment area. Despite the presence of a small number of hives near the appeal building, there is no established agricultural use and, as such, no functional need for the activity to be in this location. I note in this regard that the appellants accept that the use does not fully accord with the requirements of Policy E4.
10. With regard to the effect on character and appearance, the Council contends that the proposed business use would fail to provide visual enhancement to the wider rural locality and would intensify the urban appearance of the rural area.

¹ Ref 22/00731/FUL.

However, the appeal building is a two storey timber-clad structure of traditional appearance and no external changes are proposed. Moreover, the business operation is small-scale and aside from the appellants, one other person will be employed at the site. The building is not readily visible from the road frontage or neighboring properties and vehicle movements will be limited to one small van delivery or collection once or twice a week. These facts will in my view result in virtually no discernible change to the character and appearance of the appeal site and wider area. The principal external change will be the vehicle movements, which would be no different in frequency or effect to conventional deliveries to a residential property.

11. Interested parties raise concerns about an alternative business use or the expansion of a use beyond that applied for here. The description of development relates to the use of the ground floor for the appellants' particular business, but the use sought would nonetheless result in permission for a commercial or business use in perpetuity. While this would relate to the ground floor only, it could result in a more intensive use than proposed by the appellants. This could see more people employed at the building with a resultant greater activity and vehicle movements, which would harm the character and appearance of the area.
12. The appellants suggest that a condition could be imposed limiting the use to them as named individuals. However, the Planning Practice Guidance (PPG) says that planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission². In the circumstances of this case, there are no such exceptional circumstances arising from the proposed use.
13. Taking these findings as a whole, the appeal site is adjacent to the settlement boundary and the intrinsic character and beauty of the countryside, in the terms of Policy S8, would not be adversely affected by the proposed small-scale, low intensity use. Nonetheless, while the relationship of development with settlement boundaries is not always determinative, in this case no functional link for the proposed use in this location has been established, contrary to Policies S8 and E4. Moreover, the long term use of the appeal building for business purposes would harmfully alter the character and appearance of the site, contrary to Policy S8..
14. Accordingly, for these reasons, I conclude that the location would be unsuitable for the proposed use. As such, it is contrary to Policies S8 and E4 of the LDP, as described above. The National Planning Policy Framework (the Framework) expects planning policies to support a prosperous rural economy, including that sites to meet local business needs may have to be found adjacent to or beyond existing settlements³. However, it also states that it is important to ensure that development is sensitive to its surroundings, which given the permanent permission that would be created and the above findings, would not be the case here. Consequently, the Framework does not lend sufficient support in

² *Use of Planning Conditions*, paragraph 015.

³ Paragraphs 84 and 85.

this particular case to overcome the above conclusion in accordance with the development plan.

Ancillary Accommodation

15. The original permission for the appeal building includes a condition which requires it not to be used for overnight sleeping purposes, to ensure that it remains ancillary to the main house and does not create a separate or independent unit of accommodation⁴. The Council refers to guidance on residential annexes in the *Specialist Housing Needs* Supplementary Planning Document (SPD). While the appellants question the relevance of this, it does provide guidance on the general principles that should reasonably be applied to the use of a separate building as ancillary residential accommodation.
16. The main principles in this regard are the functional and physical relationship between use of the main and ancillary accommodation. The appeal building is in the same ownership as the farmhouse and the proposed use, included in the description of development, is for occasional sleeping accommodation for the appellants' relations as well as family friends. While there is no indication of the frequency of the proposed use, there is nonetheless a functional link with the main dwelling. These facts distinguish the current proposal from one of the appeals referred to by the Council⁵. In that case the Inspector found that there was no firm indication that occupation would be by a close family member who is likely to share various living activities with the family in the main dwelling; and it was unclear whether the main dwelling and annexe would be in the same ownership.
17. The building does, however, contain facilities that would allow independent use, in terms of a kitchenette and shower room. Moreover, it is a relatively large two storey building with a number of separate rooms that, notwithstanding the existing layout, could be used as living accommodation. In addition, there is substantive separation between the appeal building and the farmhouse with a fence between the two. The replacement of the fence with a hedge would not alter the extent of separation of the appeal building from the farmhouse. There is a single vehicular access from the main road, but this also enables independent vehicular access to the appeal building.
18. Therefore, as a matter of fact and degree, the building could readily be a separate planning unit capable of independent residential occupation, although that is not what is proposed. Nonetheless, the use of the building needs to be considered in the long term as well as in relation to any initial occupation. As such, it is important that it would retain its original purpose and remain tied to use of the main dwelling. The SPD indicates that a planning condition will be used to ensure that the annexe is used solely as accommodation ancillary to the main dwelling and cannot be disposed of separately.
19. There is potential for the building to be used for occupation as a separate dwelling due to its size, facilities, layout and access, and the building is not readily visible from public views. In these circumstances, I share the Council's concerns about long-term monitoring of compliance with such a condition after the use proposed by the appellants has ceased. I note in this regard another

⁴ HOUSE/MAL/11/01119, Condition 3.

⁵ APP/X1545/D/21/3289927 dated 27 June 2022.

appeal decision drawn to my attention for a replacement building to be used as an annexe⁶. In that case the Inspector also had concerns that due to the facilities in the building, the distance from the main house and the access arrangements, the proposed use could not be satisfactorily controlled by a condition. While this proposal does not involve a replacement or new building, it does nonetheless seek an ancillary residential use.

20. I have had regard to the appellants' contention that a personal permission could be imposed in the same manner as proposed for the business use. However, as with that proposed use, there are no exceptional circumstances arising from the proposal to justify a departure from the usual approach set out in the PPG that planning permission usually runs with the land and it is rarely appropriate to provide otherwise.
21. Therefore, for the above reasons, I conclude that the appeal building would be unlikely to function as accommodation ancillary to the host dwelling in terms of its long term use. The consequences of this would be to create a separate residential unit, which would result in intensification of such use outside the settlement boundary, contrary to the existing character and appearance of the locality. As such, the proposal is contrary to S8 of the LDP, as already described in terms of the effect of development on character and appearance. Policies D1 and H4 of the LDP are less directly relevant in this case as they principally concern new, replacement or altered buildings, none of which apply in this case.

Other Matters

22. The appeal site is within the setting of the Grade II listed farmhouse and, therefore, I am mindful of the statutory requirements for decision makers to have special regard to the desirability of preserving the setting of a listed building⁷. In this regard, I agree with the Council's assessment that the proposal would result in no impact on the setting or significance of the listed farmhouse.
23. The appellants refer in their final comments to a number of alleged procedural failures or errors by the Council in its appeal documents. While I note these, they do not have a direct bearing on determination of the appeal. In particular, the appellants had the opportunity to comment on the representations made by interested parties and I have had full regard to these comments.

Conclusion

24. I acknowledge the benefits of the small-scale business use proposed in this case. However, these must be balanced against the long-term harm and conflict with the development plan found above. In the circumstances of this case, the benefits are not sufficient to outweigh the harm in this location. Therefore, for the reasons given above it is concluded that the appeal should be dismissed.

⁶ APP/B1930/W/18/3217177 dated 21 March 2019.

⁷ Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

J Bell-Williamson

INSPECTOR