



Appeal Decision

Site visit made on 24 April 2024

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13.05.2024

Appeal Ref: APP/X1545/W/23/3325045

Brook Farm, Marsh Road, Burnham on Crouch, CM0 8LZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Fowler Brothers Limited against the decision of Maldon District Council.
 - The application Ref is FUL/MAL/23/00053.
 - The development proposed is replacement of an existing farm butcher's shop known as 'The Secret Butchers' and associated parking facilities.
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Decision

1. The appeal is allowed and planning permission is granted for replacement of an existing farm butcher's shop known as 'The Secret Butchers' and associated parking facilities at Brook Farm, Marsh Road, Burnham on Crouch, CM0 8LZ in accordance with the terms of the application, Ref FUL/MAL/23/00053, subject to the conditions in the attached schedule.

Applications for costs

2. The appellant company's application for costs against the Council is the subject of a separate decision.

Preliminary Matters

3. The description of development used by the Council is disputed by the appellant and the heading above uses the wording on the application form.
4. A previous application for the erection of a new purpose-built retail unit including relocation of the existing farm butcher's shop and other ancillary uses with associated parking and servicing facilities was refused by the Council in 2022. However, this proposal should be considered afresh based on the justification provided for it rather than compared to the earlier submission.

Main Issues

5. These are:
 - Whether the proposed shop would be in a suitable location having regard to relevant development plan policies; and
 - The effect of the proposed building on the character and appearance of the surrounding area.

Reasons

Location

6. The appeal site is part of a wider holding at Brook Farm which comprises an abattoir, a series of farm buildings for rearing livestock, a butcher's shop, a lagoon and reedbed for irrigation purposes and the associated land. The site is about 400m outside the defined settlement boundary of Burnham-on Crouch.
7. Policy S8 of the Maldon District Local Development Plan is concerned with settlement boundaries and the countryside. Subject to visual considerations, it allows for rural diversification in the countryside in accordance with Policy E4. In turn, this policy supports the development of new buildings or activities associated with agriculture and other land-based rural businesses subject to certain criteria.
8. The appellant company's business was founded in 1966 and has grown and flourished over the years, notwithstanding the various challenges that it has faced. It supplies produce "from field to fork" as the livestock are reared on site, slaughtered at the abattoir, packaged, and then the meat sold from the shop. The proposal would replace the existing shop which is located in the midst of the farm complex in a structure that is said to be no longer "fit for its purpose". Indeed, it is not disputed that the existing building has outlived its usefulness and does not meet modern retail expectations.
9. Aside from the unsatisfactory nature of the existing building itself, the position of the shop in relation to the farm and the abattoir has become problematic. This is due to the noise and odour emanating from them as well as conflict between large articulated delivery lorries and customers' vehicles. The figures provided by the appellant indicate that the number of vehicle movements of all types throughout an average day is significant. The rationale for a separate, free-standing retail outlet is therefore understandable.
10. The proposed building would be larger than the existing one but would contain similar functional areas comprising the shop, cold preparation, fridges, freezers and related ancillary spaces. These are required to facilitate the sale of meat and it makes sense for them to be reasonably sized. Additional areas are included for an office and for sales and these would also support the retail activity, especially as this part of the operation would be detached from the main hub of the farm.
11. There is no policy requirement for any new building to be identical in size to any existing one. Indeed, it is not required to be a replacement. Whilst it might well be possible to quibble over the detailed dimensions of the proposal, the uses proposed internally directly relate to its main purpose. The reason for their inclusion has been explained by the appellant. None of them are frivolous or obviously excessive. Therefore, there is a justifiable and functional need for the building in line with criterion 1) of Policy E4.
12. Given that the shop is intended to only sell produce from Brook Farm there would be a direct link to the existing use of the site and the retail operation is, in a broad sense, ancillary to its activities. This could be conditioned in the event that the appeal was allowed and the proposal would therefore adhere to criterion 2) of Policy E4.

13. As the proposal is a small scale rural development the sequential approach to main town centre uses does not apply, as confirmed by paragraph 93 of the National Planning Policy Framework. Given this, there would be no conflict with Local Plan Policy E2. One of the key principles of the Burnham-on-Crouch Neighbourhood Development Plan is to focus shops on the core town centre rather than peripheral locations. However, no specific policy in this respect has been referred to. Moreover, there is no evidence to suggest that the vitality of the town centre would be jeopardised and the proposal is, in any event, to replace an existing retail unit outside of it.
14. The proposed shop would be about 200m away from the current one. In itself, this does not show that it could be relocated further away within the settlement boundary. The business model relies on a close association between the source of the meat sold and the retail outlet. It is therefore not reasonable, in this instance, to expect the building to be located within an existing town or allocated employment area. There would therefore be no conflict with Policy E4 criterion 3) provided that the use remained linked to the existing enterprise.
15. The Council anticipates that visitors to the site would be reliant on use of the car to reach it but that is no different to the position now. It also questions whether such vehicle movements would be greater than deliveries to the abattoir but there is no objection on highway grounds and none of the criteria of Policy E4 are concerned with traffic activity.
16. Therefore, when judged against relevant development plan policies, and having regard to the particular circumstances of this case, the proposed shop would be in a suitable location.

Character and appearance

17. Policy S8 indicates that planning permission will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon. This reflects the sustainable development principles in Policy S1. Policy D1 is concerned with design quality and Policy H4 refers to the existing character of the surrounding area as a relevant consideration. However, given that Policy S8 allows for certain types of development in the countryside, including rural diversification, it cannot be the case that any development on open land will automatically be unacceptable. If that were so then its purpose in allowing for certain exceptions would be defeated.
18. The appeal site forms part of a field next to Marsh Lane. It is bounded by a hedgerow at the front, an evenly spaced line of trees on the western side along the access road for Brook Farm and a shelter belt to the east. The surrounding area largely comprises a flat and open rural landscape but there are a group of cottages and other large buildings to the east as well as the appellant's farm to the north. As such, the immediate locality is not devoid of buildings.
19. In that it would introduce a commercial 'L' shaped building onto undeveloped land there would be some intrusion into the countryside as a result of the proposal. It would stand alone but would not be wholly apart from other buildings and so would not appear isolated. The building would be finished with black boarding and a black metal profiled roof and its agricultural idiom would be an apt design for the location. The associated parking would be discretely positioned to the rear. The detailed design aspirations of Policies D1 and H4 would therefore be met.

20. The building would be set back 18m from the road and existing and future planting would assist in assimilating it into the surroundings. The proposed development would be visible from along Marsh Road but views approaching it from the town to the west would be against the backdrop of a significant line of trees. These would also limit visibility from the east. For these reasons it would not be unduly prominent but would be seen as a well-designed structure in the context of the other buildings nearby and so would be absorbed satisfactorily into its setting. Because of this, the proposal would not spoil the intrinsic character and beauty of the countryside.
21. Care should be taken to ensure that the site does not become urbanised over time. In particular, further indigenous planting should be undertaken around the building, especially alongside the farm access to enclose the parking area. 'Grasscrete' is proposed for the hard surfaced area but a more sympathetic material should be utilised. These matters could be secured by condition.
22. Policy S8 makes some allowance for new development in the countryside. In the light of this, the proposal would not harm its character and appearance. There would clearly be change but the nature and position of the proposed building would not detract from the overall qualities of this rural area.

Other Matters

23. The Framework indicates that significant weight should be placed on the need to support economic growth. To that end, the proposal would enable the business to take on additional staff. The circumstances here also sit well with the policies that seek to support a prosperous rural economy at paragraphs 88 and 89 of the Framework. Amongst other things, these recognise that sites to meet local business needs may have to be found beyond existing settlements, although the appeal site is reasonably well related to Burnham-on-Crouch.
24. The existing shop is within flood zone 3 and the proposal would be in flood zone 1. There would therefore be beneficial consequences in moving the retail use and the people that visit and work there to a low risk area, in line with national policy. All of these considerations support accepting the proposal.

Conditions

25. The plans should be specified in the interests of certainty. As permission is given because of the particular circumstances of the appellant's enterprise, a condition should be imposed limiting sales to produce from Brook Farm rather than an unfettered retail use. For similar reasons, the hours of opening should be restricted to those proposed. Furthermore, to avoid the creation of an additional unit the closure of the existing shop should be secured.
26. In the interests of the appearance of the area, details of landscaping, surfacing materials and external materials should be agreed. Due to the location of the site and the national policy aim of enhancing the natural environment, measures to improve biodiversity should be put in place. Any lighting should be designed to take account of wildlife, although there is no evidence that the site is part of the territory, or on a route, used by bats. Neither is it apparent that the site is so sensitive that other lighting should be precluded.
27. There is no indication that the site has any ecological value and therefore requiring a construction environmental management plan is not justified.

There is space at the site for the reception and storage of building materials and so a condition requiring somewhere to be identified is not necessary.

Conclusion

28. The proposal would comply with the development plan and there are no material considerations to indicate that a decision should be made other than in accordance with it. Therefore, for the reasons given, the appeal should succeed.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos 2196.01C, 2196.02A, 2196.03A and 2196.04A.
- 3) The shop hereby permitted shall only be used for the sale of meat, meat products, dairy and other produce which has been grown or reared at Brook Farm.
- 4) The shop hereby permitted shall only be open to customers between 0900 hours and 1700 hours Monday to Friday, 0800 hours to 1500 hours on Saturdays and not at all on Sundays or on Public Holidays.
- 5) Within one month of the opening of the shop hereby permitted the existing farm butcher's shop known as 'The Secret Butchers' and shown on drawing nos 2196.04A and 2196.05 shall be permanently closed for retail sales.
- 6) No development above slab level shall take place until details of all external materials have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 7) No development above slab level shall take place until a soft and hard landscaping scheme has been submitted to and approved in writing by the local planning authority. This shall include details of:

- a) Species of trees and shrubs to be planted, planting layouts with stock sizes and planting numbers/densities;
- b) A planting scheme implementation programme, including ground protection and preparation, weed clearance, stock sizes, seeding rates, planting methods, mulching, plant protection, staking and/or other support;
- c) An aftercare and maintenance programme;
- d) Hard surfacing for the parking area; and
- e) A timetable for implementation.

The approved landscaping scheme shall be carried out in accordance with the timetable for implementation. Any trees or other plants approved as part of the landscaping scheme which die, are removed or become seriously damaged or diseased within five years of planting shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives written consent to any variation.

- 8) No development above slab level shall take place until a biodiversity enhancement scheme has been submitted to and approved in writing by the local planning authority. This shall include details of:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) Detailed designs or product descriptions;
- c) Locations, orientations and heights of proposed enhancement measures;
- d) Details of initial aftercare and long-term maintenance (where relevant).

The approved scheme shall be implemented prior to the first use of the shop hereby permitted and thereafter retained.

- 9) No development above slab level shall take place until details of any external lighting have been submitted to and approved in writing by the local planning authority. The external lighting shall be installed in accordance with the approved details.