



Appeal Decision

Hearing held on 24 April 2024

Site visit made on 24 April 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2024

Appeal Ref: APP/X1545/W/23/3327753

Barn at Old Mill House Vineyard, Hazeleigh Hall Lane, Woodham Mortimer, Essex CM9 6GT

- 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 Mr Richard Britton (The Old Mill House Vineyard Ltd) against the decision of Maldon District Council.
 - The application Ref is 23/00292/FUL.
 - The development proposed is convert agricultural barn into vineyard manager's dwellinghouse with associated internal and external alterations, lay out amenity area and plant native hedgerows and trees.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In December 2023 the Government published a revised National Planning Policy Framework (NPPF). Before the hearing the Council confirmed what it considers to be its current housing land supply position, which is not a matter in dispute, so I have taken this into account in determining the appeal.
3. After the Council's decision and the appeal was lodged, and before the hearing, the Council received an ecology consultation response¹. The appellant was given an opportunity to comment on it before the hearing. No comments were received. I have taken this consultation into account in determining the appeal.
4. After the hearing closed, with my agreement and no objection by the Council, the appellant submitted an amended plan to clarify a proposed residential curtilage by a black line with hatching² and an amended unilateral undertaking (UU) to correct some minor omissions³. The UU relates to mitigating the impact of the proposal on the Blackwater Estuary Special Protection Area and Ramsar in accordance with the Council's 'Essex Coast Recreational disturbance Avoidance & Mitigation Strategy'. I have taken account of both in determining the appeal.
5. The Council has since confirmed in writing that the UU overcomes reason for refusal (RfR) 2 in its decision notice and that this reason is withdrawn. I have, therefore, determined the appeal on this basis.

¹ Essex County Council, 5 March 2024

² drawing number PDB/20/001/02 Rev A

³ dated 29 April 2024

Main Issues

6. The main issues in this appeal are:

- whether the dwelling by conversion of a rural building would in principle be in an acceptable location, having regard to the Council's development plan spatial strategy for rural workers accommodation;
- whether there is a functional need for a full-time vineyard manager to live in this location, including if there is a suitable alternative dwelling;
- whether the rural enterprise is a viable business with secure prospects;
- the effect of the proposal on a protected species, namely bats; and
- the size of the dwelling and the effect of the proposal on the character and appearance of the area.

Reasons

Principle and location

7. Old Mill House field (the site) and Spar Hill field, a short distance south, are a vineyard used to grow grapes for wine. Centrally within the site is a barn which would be converted to a permanent dwelling for a vineyard manager. The barn is located outside a defined settlement boundary, in the countryside.
8. The dwelling would, therefore, be related to and located in the immediate vicinity of this rural enterprise and in these respects the proposal complies with the spatial strategy for agricultural workers accommodation in Policies S8(g) and H7 of the Maldon District Local Development Plan July 2017 (LDP). At the hearing the Council agreed that on this basis there would be no conflict with travel or sustainability objectives of LDP Policies S1, H4, T1 and T2, otherwise referred to in its decision notice. I have no reason to find otherwise.
9. The Council also mentioned LDP Policy S8(e) about re-use of redundant or disused buildings in the countryside that would lead to an enhancement to the immediate setting. But this policy appears to relate to proposals in accordance with LDP Policies E4 and D3 and it has not been suggested either is relevant to this appeal. There is no evidence that re-use of a redundant or disused building under (e) means this, or re-use of any rural building, is excluded under (g). In any event, by virtue of 'either' in LDP Policy S8 the proposal engages (g) irrespective of (e), or (m) 'other development proposals' as was also referred to by the Council. There is no evidence that LDP Policy H7 does not apply to new dwellings by conversion of existing rural buildings, provided all five numbered criteria of this policy are also met.

Functional need

10. As established at the hearing, the appellant owns the vineyard and does not directly employ permanent staff as part of this business. He lives in Old Mill House about 200m along the lane from the site entrance gate and also administers the business from this house. He built the barn to store vineyard equipment and machinery and also intended it as a winery. While a winery is not the Council's position with regard to relevant planning history, initial better than anticipated grape yield and quality were instead sold to a local winery and this remains the case. As a result and as the enterprise expanded the appellant

soon after employed a contractor (a separate company with its own staff) to undertake most of the routine work to grow grapes and maintain the vineyard.

11. As amplified at the hearing, the appellant's active role in growing grapes has since diminished. When necessary he sets out and attends the operation of 'bougies' (paraffin fuelled wax candles) in Old Mill field in evenings, overnight or mornings. The heat raises local ambient ground or air temperature to help protect grapes from frost damage which could have a catastrophic impact on yield. He is also on hand for security and to call out the contractor to deal with unforeseen problems, usually with at least a next day response. The contractor brings equipment and machinery to and from the site, including the bougies. Some items, including trellis or fencing are also now stored in the appellant's outbuildings at Old Mill House. The contractor lives in Bicknacre 5 miles away or 11 minutes by car.
12. The appellant's occupation of Old Mill House and this arrangement with the contractor has met the functional needs of the enterprise for several years. At the hearing, he said he may not always live at Old Mill House or be fit and healthy to continue working in the vineyard, though would still own it. Instead, he wants to employ a suitably experienced manager to live on the site in the converted barn to essentially take over the day-to-day practical operation of the vineyard as he, in effect, retires from this aspect of the business. The dwelling would include a vineyard office and a condition could limit occupation to an agricultural worker.
13. However, there is no tangible detail about the frequency or reasons for problems at the site and why these could not continue to be dealt with by the contractor under existing or new arrangements, which the appellant acknowledged might be a possibility. The contractor already manages his own staff at the site and if that person is not experienced enough to be responsible for other tasks, it is not clear why another suitable contractor could not be secured. The appellant said that retaining the contractor might not anyway be a longer term arrangement, including even if there is further expansion of the vineyard; though I understood him to also say that the contractor could manage this additional land. In any event, the location and extent of this land was outlined at the hearing in vague, generalised terms and there has been little more than a conversation with the landowner.
14. It is also not clear to me why some equipment and machinery, or the grape crop, is at increased risk of theft compared to other arable enterprises and there is no history of Police or insurance records in this regard. Nor why equipment and machinery could not be securely stored elsewhere than at Old Mill House, including in the barn as it was originally intended so not be underused. At the hearing the appellant agreed that if the barn became a dwelling and Old Mill House outbuildings were no longer available or the contracting services ceased, the vineyard would require a storage building, including for the bougies. As such, there is no apparent reason why the condition of the barn would deteriorate if it was not used as a dwelling, as was suggested to me.
15. There is no evidence about why security cameras at the vineyard, including in the barn with alarms, would not provide some deterrent or be a proportionate cost effective response. As well as Old Mill House there are other residential

- properties nearby in the lane, including opposite the site entrance also giving some surveillance of the barn.
16. Even on the appellant's worst case frost risk 'window', bougies might need to be used for perhaps up to 5 or, exceptionally, 6 months so not year round. It was established at the hearing that (even if all of the bougies could be observed from within the vantage point of the dwelling) each of the 30 bougies burn for about 2 hours and need a few minutes to manually check, re-fuel and light. Also, as the Council pointed out, time to move between them across all of Old Mill field.
 17. In the absence of firm evidence to the contrary, by the time each bougie has received this attention it would appear likely to be roughly time to repeat this work, so on the face of it be suitable for an overnight shift working pattern. This would not require a worker to travel to the site every couple of hours, as was suggested to me. The appellant didn't know how soon after bougies ceased operating did the grapes become at risk or if other types of bougie could burn unattended for longer periods.
 18. The approved plans for the barn include (though not yet in situ) a toilet, a staff kitchen and an unspecified room, which could be used as a respite room. The barn is supplied with electricity and it appeared provision for water supply has been made. It is not clear to me why these facilities could not be used by contractors, including between monitoring the bougies, rather than have to sleep in vehicles at the site as the appellant suggests. This would not compromise the original main purpose of the barn.
 19. Alternatively, I am not convinced that temporary living accommodation, such as a caravan or mobile home, could not be used at the site during the frost risk period and removed thereafter, thus also alleviating visual impact concerns of the appellant. Nor is there compelling reason for any other essential need for a manager to be present on the site for the likely majority of the year, including late evening, overnight or early morning, as the appellant confirmed at the hearing. Moreover, the appellant's recent application to use the barn as holiday let accommodation (albeit to off-set income lost to frost) undermines the apparent gravitas to use the barn as a vineyard managers dwelling⁴.
 20. While the onset of frost can be unpredictable or rapid, on the face of it weather forecasts would give some advance notice, as would thermometers at the vineyard linked to remote alarms or monitoring equipment give some indication of ground or air conditions. Either way, allow a suitable, timely response given the close proximity of the contractor, or any of his staff who might also live in the local area.
 21. The appellant agreed that he had not explored these possibilities or with the contractor, and there is anyway no objective evidence of the actual attempts to secure workers to carry out these tasks in the manner outlined above and the reasons why this was unsuccessful. There are no figures to show that using wind turbines instead operated by generators over longer periods (or longer burning bougies), so require less attention, are unaffordable to the business.
 22. In short, there is no reliable or certain objective evidence, such as a business plan prepared by a suitably qualified professional (for example a rural or

⁴ Ref 22/00849/FUL

agricultural land agent) to clearly explain how the vineyard was established, has developed, operates now or is intended to in the future. I have no reason to doubt the sincere intentions of the appellant in these regards but his objectives, even if beneficial, are on the face of it therefore largely personal circumstances, preferences or convenience no matter how well intended, rather than shown to be underlying requirements of the business.

23. Consequently, there is insufficient certainty about likely actual outcomes in these regards. I am not, therefore, satisfied that the appellant has demonstrated a functional need for a full-time vineyard manager to live in this location. In these circumstances the proposal is contrary to this requirement of LDP Policy H7(1).

Alternative dwelling

24. It was established at the hearing that the appellant does not own or lease any other house, including that there are none on the site or at Spar Hill field nor on the land which the appellant might acquire to expand the vineyard. There has been five dwellings for sale at Woodham Mortimer at the time of the appeal application, over a year ago. There is no evidence that this information was obtained from more than a single property website or that properties for rent were considered.
25. The update in this appeal draws from just a single website and showed four properties for sale at Woodham Mortimer. There is no information about properties for rent. In the absence of objective evidence to the contrary, even the cheapest guide price (£625,000) likely, as I saw, reflects this desirable rural village location or, from the provided photo, land associated with the property. As I also saw, this would be quite different for example to circumstances of houses in new development on the edge of Maldon, just over a mile away or about 5 minutes by car from the site. The appellant has considered a very small search area and on each occasion a snapshot of properties at that moment, so it is not representative of potential availability.
26. It is also not clear why dwellings in Woodham Mortimer would not be 'convenient' or 'within easy reach' to meet needs of the business when this location is also so close to the site. I am also not convinced that a manager or worker could not live slightly further from the site, including on the edge of Maldon or at Bicknacre or Danbury (also about 5 miles or 11 minutes by car) and travel to the site to undertake required tasks. Given that the enterprise is in a rural area, travel to work by car is not unsurprising or unusual, nor in fact objectionable given the Council's spatial strategy for agricultural workers dwellings. In any event, occupiers of the proposed dwelling would have to make reciprocal journeys from the site to nearby settlements to fulfil other living needs and no net travel demand gain has been evidenced.
27. There is no objective evidence, such as a residential property report prepared by a suitably qualified professional (for example an estate agent or surveyor) about any sustained search, let alone in a wider geographical area or over longer time period. Nor to explain the reasons why (including comparison costs to undertake the conversion work to the barn) any potentially suitable alternative dwelling did not proceed further, such as asking price to buy or rent and offers made.

28. I am not, therefore, satisfied that the appellant has demonstrated that there is no suitable alternative dwelling. In these circumstances the proposal is contrary to this requirement of LDP Policy H7(2).

Viable business

29. The vineyard was set up by the appellant in 2016 and at the hearing it was reiterated that he considers it to be well-established and with every prospect of remaining viable and successful for the foreseeable future. I have also been referred to 'forecast income and expenditure figures and a Business Plan' but that evidence is not before me and was anyway prepared to support a previous planning application at the site in 2020⁵, with provided extracts from Council officer reports relevant then but not directly to the current appeal application some four years later.
30. The figures given for losses of grape crop to frost (20%) or equivalent product (13,000 bottles of wine), while potentially significant and unsustainable as claimed, are also snapshots from 2020. There is anyway no comparison or context provided to determine an overall financial effect on the business; likewise with regard to the more recent equivalent of 35,000 bottles of wine said to have been lost to frost. These losses have not, therefore, been properly justified, nor is there any information about the nature of the arrangement with the local winery, costs of employing the contractor including as compared to employing the vineyard manager, nor about the basis on which occupation of the dwelling would be given or made available.
31. I note what has been suggested for expansion of the vineyard by acquisition of the additional land, but the claimed increases in acreage, vines and grape yield is of little meaningful significance in the absence of any greater detail or certainty about those plans or for instance the costs of acquiring that land and establishing new fields of grape vines and over what timeframe. Moreover, it is not clear how the enterprise would afford to employ the suggested increase in permanent or seasonal staff, or if these are one in the same as the contractor and those staff.
32. The appellant agreed there is no objective evidence before me prepared by a competent person to verify any of this, such as by an accountant or a rural or agricultural land agent, including for instance up-to-date figures about yields, actual and forecast income and expenditure, turnover and profit or loss. Though not a new business starting up and I also have no reason to doubt the sincere intentions in these regards, it is therefore largely unsubstantiated anecdote, conjecture or speculation no matter how well informed.
33. Consequently, there is also insufficient certainty in these regards. I am not, therefore, satisfied that the appellant has demonstrated that this rural enterprise is a viable business with secure prospects. In these circumstances the proposal is contrary to this requirement of LDP Policy H7(3).

Protected species - bats

34. The appellant's bat report found no evidence the barn had been used by bats in May 2022, with negligible potential as a roosting place⁶. However, the report confirms the barn was then in active use – 'the building receives daily

⁵ Ref 20/00229/FUL

⁶ Bat Survey prepared by Essex Mammal Surveys, May 2022

disturbance'. It also states that if more than a year elapses from the date of the report it is only 'unlikely' that bats would colonise the barn meantime.

35. The report has not been updated since, including no new survey or walkover of the site or barn. It is now 2 years old. As I understand it, the barn has since not been in any significant or sustained active use. Even if there has been no change to the structure of the barn, that is therefore not quite the same as that there has been 'no change on the site' since the report, as was suggested to me at the hearing. The management or active use of the barn is now more dormant, so on the face of it possibly more conducive for bats.
36. Essex County Council consider the report to be out of date having regard to relevant guidance⁷. In the absence of objective evidence to the contrary by a suitably qualified professional, the report is time expired so cannot be relied on. As such, I cannot be certain that there would be no harm to this protected species. A further up-to-date bat survey cannot be conditioned because it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposal, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision⁸. This also includes the suitability of any necessary mitigation or compensation measures.
37. I find that the appellant has not demonstrated there would be no adverse effect on a protected species. In these circumstances the proposal does not comply with LDP Policies S1, S8 and N2. These policies include to conserve and protect local biodiversity and ecological value, such as by making provision to mitigate negative impacts of development or avoid net loss of habitat and ensure new or replacement habitat maintains a viable local population.

Size, character and appearance

38. It is not clear if a vineyard manager has already been identified or secured in principle, pending the outcome of this appeal. Nonetheless, to attract a suitable, experienced person to this senior, responsible role it would be important to meet expectations for quality of life and living conditions. This reasonably includes flexibility for family circumstances such as a spouse, partner or dependent children, or for guests to stay, without relying on meagre or bare minimum living space.
39. The 4-bedroom, 162m² dwelling over two floors would, though, largely be as a consequence of the building envelope that already exists, as well as an open plan layout with generous internal circulation and storage space and a vineyard office room. A modest external amenity space, mostly a timber deck, would be requisite for this family sized dwelling, so too some parking spaces at the front. The proposal would provide for these circumstances without being excessively out of proportion to this intended use (though this should not be taken as that satisfactory living requirements could not also be met by the same size or a smaller dwelling elsewhere).
40. The site wraps around two lower slopes of a knoll on one side of Old Mill House, towards lower land facing north with distant hedgerow and tree lined field

⁷ Chartered Institute of Ecology and Environmental Management Advice note on the Lifespan of Ecological Reports & Surveys 2019; and British Standard (BS) BS42020 'Biodiversity – Code of practice for planning and development 2013 paragraph 6.2.1

⁸ Circular 06/2005 paragraph 99 and BS 42020:2013 paragraph 9.2.4

boundaries and glimpses of distant roads and buildings, including new housing on the edge of Maldon. It also slopes down to the west and Hazleleigh Hall Lane but just the upper part of the barn, with the appearance of a rural building, can be seen set well back from the lane which also contains some sporadic housing and other scattered rural buildings, as do other lanes nearby. The east and south boundaries are next to woodland. The site and the barn therefore make a positive contribution to the character and appearance of the area.

41. The barn is a relatively new structure, in good internal and external condition with suitable materials whether as a barn or a dwelling. While the conversion would include some large areas of plate glass fenestration this is not uncommon in barn conversions and a condition could secure suitable frame materials and colour. In this case it would be in a proportionately narrow central part of the front and rear elevations and not, in my view, excessive or unduly erode the design integrity and essence of what the Council agrees has the appearance of a traditional agricultural barn, including the parts that would be glimpsed in public view from the lane. The residential curtilage behind it would not be unusual in layout and domestic use and activity in it and around the barn at ground level would be out of public sight due to intervening topography or vines.
42. While there would be some change to the barn and at the site, the overriding impression would, therefore, continue to be of a largely unobtrusive rural building in a pocket of well-maintained land, surrounded by countryside which is in the main also well managed with few residential or other buildings. At the hearing the Council accepted the principle of converting this existing rural building as preferable to the erection of a conventional dwelling on the site. I agree and moreover suitable landscaping and boundary treatments could be secured by a condition to help minimise adverse impact of residential use of the barn and this curtilage in its setting.
43. While this would provide some enhancement, enhancement is not itself a specific requirement of LDP Policies S8(g) or H7. There is no apparent reason why residential occupation and use of the barn per se would otherwise result in enhancement of its setting, let alone be a betterment on the permitted rural use of this rural building in a rural location, as the appellant contends.
44. Nevertheless, I find that in size and nature the dwelling would be commensurate with the needs of the enterprise and the proposal would not have any significant adverse effect on the character and appearance of the area. Consequently the proposal complies with these requirements of LDP Policy H7(4) and (5). Additionally, LDP Policy D1 which includes that development should respect local character and context with regard to architecture, materials, design details and overall height, size, scale, form, massing, proportion, layout and landscape setting; as well as provide sufficient useable private amenity space.

Other Matters

Listed building

45. Old Mill House is a grade II listed building (LB). Its significance includes its 17th or 18th century, or earlier, architectural and historic origins as a distinctive isolated residential dwelling in the countryside. The immediate setting of the LB

is the well-established and defined residential curtilage around this property on a lower north slope of the knoll. The barn is located in the wider setting of the LB but on the lower south slope beyond the crest of the knoll, so there is no visual interrelationship with the LB and no longstanding functional relationship. The proposal would therefore have a neutral effect on the setting of the LB so preserve the setting of the LB⁹.

Housing land supply

46. The Council can currently demonstrate a 5 year supply of deliverable housing sites, at 5.97 years, against its identified local housing need because the housing requirement in the LDP is more than 5 years old. The Council did not fail the 2022 Housing Delivery Test (at 155%). By virtue of footnote 8, NPPF paragraph 11 d) is therefore not engaged in this appeal so the presumption in favour of sustainable development (the 'tilted balance') does not apply in this case.

Previous decisions

47. The appellant considers that the proposal overcomes the Council's previous objections to similar proposed use of the barn and my attention has been drawn to support for the proposal by Woodham Mortimer with Hazeleigh Parish Council. I have, though, considered the appeal on its individual planning merits and the evidence before me.

Planning Balance and Conclusion

48. The site is in the countryside where agricultural workers accommodation is acceptable in principle under the development plan, including in this case by conversion of the barn and in size and without harm to the character and appearance of the area. The proposal would also meet an identified need for 4-bedroom family sized dwellings in the district. There would be some employment during conversion work which could be locally based or use locally sourced materials. The occupiers of the dwelling would likely contribute to sustaining local facilities and the dwelling would generate a Council Tax receipt to help deliver public services. Subject to a condition new landscaping could include some ecology enhancement at the site.
49. These aims of the development plan and outcomes of the proposal are consistent with the Government's objective in the NPPF of significantly boosting the supply of new homes and to meet the needs of people with specific housing requirements, including rural workers and families. It would also achieve aims of the NPPF for visually attractive development sympathetic to local character (built environs and landscape setting) and recognise the intrinsic character and beauty of the countryside. Though important considerations, a single dwelling would make a small impression in these regards so these public benefits have modest weight in favour of the appeal.
50. On the other hand, a functional need for the dwelling has not been justified, nor that even if there was such a need it could not be met by a suitable alternative dwelling. It has also not been demonstrated that the vineyard is a viable business with secure prospects sustained for a further reasonable period of time, or that there would be no adverse effect on a protected species.

⁹ Section 66(1) - Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

51. This would be at odds with the development plan, which is consistent in these respects with other aims of the NPPF. These include to avoid isolated new homes in the countryside unless there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. Additionally, in these circumstances, the proposal would not support a prosperous rural economy through sustainable growth and expansion of the vineyard business in this rural area including through conversion of existing buildings, nor would it minimise impact on or provide a net overall biodiversity gain. Once established the dwelling would be permanent so these considerations have substantial weight against the appeal.
52. The benefits of the proposal do not, therefore, outweigh the harm. It does not comply with certain policies of the development plan and conflicts with some provisions of the NPPF. There are no other material considerations to indicate that the decision in this case should be made other than in accordance with the development plan taken as a whole¹⁰, consistent with relevant parts of the NPPF.
53. Consequently, for the reasons given above the proposal is unacceptable so the appeal does not succeed.

Robin Buchanan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

- Ben Elvin MSc MRTPI
Planning Consultant, Agent
- Richard Britton
Appellant

FOR THE COUNCIL:

- Lisa Page BSc (Hons) MSc MRTPI
Principal Planning Officer, Maldon District Council

DOCUMENTS

- no documents were submitted at the hearing

¹⁰ Section 38(6) Planning and Compulsory Purchase Act 2004 (as amended)