



Appeal Decision

Site visit made on 8 April 2025

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th August 2025

Appeal Ref: APP/X1545/W/24/3349715

Land North West Of Riversleigh, Nipsells Chase, Mayland, Essex, CM3 6EJ

- 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 and Mrs Kenneth and Susan Paton against the decision of Maldon District Council.
 - The application Ref is FUL/MAL/23/00796.
 - The development proposed is described as 'retain structure for mixed use. Agricultural storage, office, reception/rec area, cake and jam making studio.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council submitted and enforcement appeal decision from 2024¹ and an associated Approved Judgment (the High Court Judgment)² during the course of the appeal. These both relate to the appeal site. I have had regard to this insofar as they are material to the case. The appellant was provided the opportunity to comment on this and raised additional evidence pertaining to the appeal. This related to their personal circumstances. I accepted the evidence and the Council were afforded the opportunity to comment. In this particular case I have considered the appellant's personal circumstances as a main issue.
3. The appellants submitted amended plans³ at an early stage in the appeal. The Council had the opportunity to review these. The amended plans show internal alterations and do not involve substantial changes. Therefore, having regard to relevant Judgments⁴ I consider that any interested parties would not be prejudiced by my acceptance of these. The development is partly retrospective, but I have determined the appeal based on the plans considered by the Council at the application stage and as amended by the revised plans and observations from my site visit.
4. The Council is no longer pursuing the second reason for refusal because further information on the proposed use of the appeal building addressing the second reason for refusal. The Council is satisfied there would be no harm to the living conditions of the occupiers of nearby residential properties. I have no substantive

¹ Appeal A Ref: APP/X1545/C/23/3326403 and Appeal B Ref: APP/X1545/C/23/3326404

² Paton and Anor v SSLUHC and Anor [2025] EWHC 245 (Admin)

³ Drawing No R05 Rev F – Proposed Floor Plan

⁴ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin) and Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

evidence to disagree with the Council on this matter and have determined the appeal on this basis.

5. In December 2024, the Government published a revised National Planning Policy Framework (the Framework). The provisions most relevant to this appeal were not altered significantly. Where I have referred to specific paragraphs of the Framework, the numbering used is that of the December 2024 version.

Background and Planning History

6. In 2018 the appellants applied for permission for the construction of an apple storage barn. Permission was granted by the Council on 23 May 2018⁵, and a variation was allowed on 10 August 2020⁶. A structure (the appeal building) was built on the location of the varied planning permission. The Council issued an enforcement notice which identified a breach of the planning permission.
7. Following a Planning Inquiry the Inspector dismissed the associated 2024 enforcement notice appeal. The Inspector went on to find that a C3 residential dwelling house had been erected, not the apple store for which planning permission had been given. The subsequent High Court Judgment refused permission. The Council's enforcement notice, which required its removal was corrected and upheld. There is no evidence before me that the development associated with either the 2018 and varied 2020 permissions on the appeal site have not lapsed or that there is an extant planning permission before me.

Main Issues

8. The main issues are the effect of the proposal upon:
 - the character and appearance of the area; and
 - the appellant, in relation to their private personal circumstances and the need for agricultural storage, office, reception area, cake and jam making studio.

Reasons

Character and appearance

9. The appeal site is located on the western side of Nipsells Chase, beyond the settlement boundaries of the larger village of Mayland. Although the site is not too distant from residential homes the appeal site is expansive and open. As well as the appeal building it mainly comprising grass with young trees within an orchard. Land surrounding and bordering the site is largely open or contains scattered trees and is rural or semi-rural in character. The site is accessed via a long track which runs through land and past a dwellinghouse in appellant's ownership.
10. Policies S1 and S8 of the Maldon District Approved Local Development Plan 2014-2029 (the Local Plan) seek to support sustainable developments within the defined settlement boundaries. This is to ensure that the countryside will be protected for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. 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

⁵ Council Ref 18/00280/FUL

⁶ Council Ref 20/00574/FUL

provided it is for one of the thirteen acceptable forms of developments listed within Local Plan Policy S8.

11. The list of the type of developments within Policy S8 includes agriculture and forestry related development and rural diversification, recreation and tourism. Potentially, the proposed development could fall within these categories. There is no evidence the proposal is a form of recreation or tourism development, so accordingly both elements require assessment against Local Plan Policy E4.
12. Policy E4 of the Local Plan states that the Council will support the development of new buildings or activities associated with agriculture and other land-based rural businesses where there is a justifiable and functional need for the building or activity. It also requires the function of the proposed building or activity is directly linked, and ancillary to, the existing use and could not be reasonably located in existing towns or villages.
13. Policy D1 of the Local Plan seeks to ensure that all development will respect and enhance character and local context. It also seeks for development to make a positive contribution in terms of design, landscape setting and the natural environment, amongst other requirements.
14. The appeal building is sited towards the south east corner of the appeal site. The appellants dwellinghouse is positioned to the west, closer to Nipsells Chase. Although there is a small orchard located next to the development and tree and hedgerow boundaries around the larger parcels of land, the orchard trees are young and its setting is within a relatively open context. The appeal building comprises a substantial mainly timber single storey building, it has an approximate length of 19m and width of 8m. It has a large hipped roof and glazed gable feature on the front. The overall height of the building is shown at 4.4m. Overall it is a very substantial building. Notwithstanding any other approvals, it has not been demonstrated that the building reflects the local rural or agricultural vernacular and the overall appearance is domestic.
15. Separate to the overall visibility of the appeal building, landscape impact occurs as a result of changes in the character and quality of the landscape due to development. Notwithstanding the presence of the self-build dwelling and other homes, sited closer to the more urban element of the road of Nipsells Chase, there are very few detracting or urbanising features within the appeal site itself and surrounding the appeal building. It therefore appears conspicuously sited within an open and isolated position. Whilst it did not appear that there had been any modifications to land form the development also necessitates an access, and hard standing extending a more urban form of development and activity into open countryside.
16. The appeal site also has a closer relationship to the surrounding countryside as opposed to the built settlement. Nevertheless, hedgerows and trees along the boundary and distance to other properties limit the visibility of the appeal building from outside the site. The wider visual effects would be localised. However, the scale and domestic appearance of the appeal building results in the incongruous siting of an urbanising form of development. There would be visual harm and a loss of openness and harmful effects on landscape character.
17. Whilst a similar size apple store had been granted permission by the Council, the plans showed implement stores, a WC/Shower room, apple preparation area with

office space and a large apple store. Although there is evidence provided regarding apple yields, fruit harvesting machinery and fertilizer requirements, the apple storage within the building is relatively limited in size, roughly around a quarter of the floor area. The evidence about the scale and nature of any agricultural activity is also limited, but part of the land is being used for growing fruit. As such I consider there is a reasonable requirement for some form of indoor storage for related equipment, materials and to store produce. However, this subsequently leaves the larger remaining areas for an office, reception, WC, Kitchen studio and store.

18. The appellants evidence suggests the cake and jam making studio would be on a limited scale and would not be much more than a hobby business. Nor am I aware whether the products from the orchard form a key component of this operation. The office would be used in association with the cake/jam making business. The reception area would be a general breakout, servicing and delivery area.
19. I can draw a distinction between the use of the building for apple storage and processing fruit from the office, cake and jam making studio and a large central reception area. There is insufficient evidence that the remaining activities are associated with agriculture or another form of land-based rural business, linked to the existing orchard. Whilst conveniently located for the appellant, and accessible it is not clear how this site is beneficial over any other site for collections, viewings, servicing and delivery. Nor has it been demonstrated that these activities could not be reasonably located within existing towns or villages.
20. Proposals such as garages and other ancillary buildings that serve existing dwellings in the countryside do require a countryside location. However, the appeal building is divorced from the appellant's dwellinghouse by virtue of the distance and extensive open and undeveloped nature of the land between them. Consequently, given the significant area within the appeal building given over to other uses, I do not consider that the proposal has demonstrated a justifiable and functional need for all the activities or building of this size in this countryside location.
21. The proposal would fail to enhance the character and local context and would not make a positive contribution to landscape setting as the effects arising from the development would not be justified. I do not find any purported accessibility benefits from the location outweigh the harm without a clear and compelling justification for the proposed use. I acknowledge the previous permission on this site. However, those proposals did not contain such a mix of uses as those before me within this appeal. There is no parallel to the issue in this case which concerns a different use.
22. Whilst visual mitigation has been proposed by the appellant, the details are scarce and not shown on drawings. I cannot be certain that if condition were imposed for landscaping, that it would successfully mitigate the harm. In any event, it would take a long time to realise and the development is already in situ.
23. I therefore conclude that the proposal would harm the character and appearance of the area. The proposal would be contrary to Policies S1, S8, E4 and D1 of the Local Plan. Together, and insofar as they are relevant to the appeal, these seek to maintain the rural character of the District and ensure that development respects and enhances character and local context and makes a positive contribution to landscape setting and the natural environment. The proposal would not accord with the Framework where it seeks to ensure decisions recognises the intrinsic character and beauty of the countryside at paragraph 18, and that development

functions well, adds to the overall quality of the area and is sympathetic to landscape setting as set out in paragraph 135.

Personal circumstances

24. Disability is a relevant protected characteristic to which the Public Sector Equality Duty (PSED) applies. In determining the appeal, I have had regard to the PSED contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Furthermore, I am mindful of the matters raised and Article 8(1) of The Human Rights Act 1998 (HRA). Whilst it is not appropriate to set out full details in a public document, these rights are engaged in this case in reaching my decision. However, they are qualified rights and interference may be justified where in the public interest.
25. The Framework at paragraph 135 seeks to ensure developments promote health and well-being. The appeal building provides facilities which would be of benefit for the appellants in this respect. It provides space for the storage of equipment and therapeutic refuge derived from the activities undertaken therein. This contributes towards well-being and recovery in a natural environment as well as a convenient and stable base for recuperation. It would also provide a source of income.
26. If planning permission were to be refused, the appellant would not be made homeless but it could represent an interference with their home family life and with their property. It is likely to affect well-being and recovery. I have taken into account the potential effects in respect of any enforcement action. Whilst it is a matter for the Council, this could potentially have a detrimental effect on the well-being of the appellants. Enforcement action, like refusal of the permission is likely to be stressful and adversely affect the health and well-being of the appellants.
27. Although the appellants may not be able to accommodate the uses within their existing dwellinghouse the evidence does not demonstrate that other accommodation or another studio which would be removed from the home kitchen environment would not be obtainable. No evidence that other options such as adapting the dwelling have been provided. It is not clear if other therapies would offer benefits even if they are accessed elsewhere or have been fully explored should the appeal fail. Although there are intentions to start an evening and weekend business this has not been established.
28. I am not convinced that a temporary or personal permission would be appropriate for a building of this substance, it is not clear that a building of this size and internal arrangement could revert to an apple store or agricultural building because of its domestic character. However, occupation of buildings is ultimately transitory and the appellant's circumstances could change in the future whereas the building would remain on the site and continue to harm the character and appearance of the area in posterity. The above factors temper the significant weight to be attached to the personal circumstance of existing occupiers.
29. Therefore, I conclude that the factors which weigh in favour of the appeal scheme do not outweigh the significant weight I attach to the harm that would be caused by the development to the character and appearance of the area. Having regard to the legitimate and well-established planning policy aims in respect of character and appearance a refusal of permission would be proportionate and necessary. It would

not unacceptably violate the family's rights under the HRA and the requirements of the PSED. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

Other Matters

30. I have not been provided with substantive details of other nearby development at Sea View Parade or the taller stables and agricultural storage buildings in the vicinity of the site. I do not know their history to make a comparison to alter my above view as. Although the Council supported the proposal as an apple store and that would have had a similar effect upon the character and appearance of the area, it was for a different use and justifiable, whereas this proposal does not conform with the Council's policies and there is no extant permission. Accordingly, these argument have not persuaded me to reach a different conclusion.
31. The proposal would be satisfactory in terms of the effect on other nearby residents. Other matters such as were also found to be acceptable to the Council. The Council has not disputed that permission for a single storey self-build live/work dwelling was granted and that it is not in a relatively accessible location. However this is a different matter than the effect on the character and appearance of the area. There is also no substantive evidence that the proposal harms nature conservation interest and there were also no third party representations. These matters weigh neither for nor against the proposal.
32. I note the appellant's comments about the Local Planning Authority's handling of the planning application and enforcement cases; however these are matters between the parties and are not relevant to the determination of the appeal.

Conclusion

33. Dismissing the appeal would interfere with the rights to a private and family life as set out in the HRA. However, that is a qualified right and interference with it in this case would accord with the law and be in pursuance of a well-established and legitimate aim, the safeguarding the character and appearance of the area. I have had due regard to the PSED. Again, however, harm caused to the character and appearance of the area outweighs its benefits to the occupiers. Dismissing the appeal is necessary and proportionate.
34. The proposal conflicts with the development plan and the material considerations, do not indicate that the appeal should be decided other than in accordance with it. I therefore conclude that the appeal should be dismissed.

K Williams

INSPECTOR