The Planning Inspectorate

Appeal Decision

Hearing Held on 13 September 2017

Site visit made on 13 September 2017

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 October 2017

Appeal Ref: APP/U1105/W/17/3169196
Lily Farm Vineyard, Dalditch Lane, Budleigh Salterton EX9 7AH

- 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 Mr Alan Pratt against the decision of East Devon District Council.
- The application Ref 16/0839/FUL, dated 6 April 2016, was refused by notice dated 2 November 2016.
- The development proposed is the proposed extension to vineyard premises and manager's accommodation.

Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Mr Alan Pratt against East Devon District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I have used the description of the proposal from the planning application forms. The Council altered the description on its decision but at the hearing it was explained that the Council did not obtain agreement from the appellant before doing so. I will therefore use the original description.

4. I was made aware at the hearing that the Budleigh Salterton Neighbourhood Development Plan (NDPL) had reached the stage of a referendum. This was raised by a member of the public, Mrs Dickinson, who explained that the plan included a defined boundary for the built up area of Budleigh Salterton. Following the lunchtime adjournment, the Council provided me with a copy of the urban inset map for the settlement from the East Devon Local Plan 2013 – 2031, adopted January 2016 (LP). It was confirmed by the Council and Mrs Dickinson that this shows the same boundary that is being progressed through the neighbourhood development planning process. The appellant did not dispute this. I have been notified since the hearing that the NDPL has been adopted. However, at the hearing it had been confirmed that no policies from the NDPL were considered of direct relevance by any party.

5. It was not possible for a statement of common ground to be agreed prior to the hearing and I have not therefore taken into account the draft version submitted by the appellant. Furthermore, a draft S106 planning obligation was initially

submitted in relation to the proximity of the site to important biodiversity sites and the need to contribute financially towards mitigation of harm due to the proposed increase in population. However at the hearing I was informed that financial contributions would be made under the provisions of section 111 of the Local Government Act 1972. As this had not be raised previously, following the discussions and site visit I did not close the hearing. This was to enable the submission of written representations on this matter and I return to this below. I formally closed the hearing in writing on 3 October 2017.

Background and Main Issues

6. The proposed manager's accommodation would be within a 2 storey building. In addition, it is proposed to extend the existing single storey buildings positioned alongside the hedge on the south western boundary of the site. The existing machinery store and garage would become a seated area next to the existing sales and display room. An open sided covered seating area would also be added to that part of the building. At the other end of the building, a winery room would adjoin the existing preparation area and there would be further additional space to replace the machinery store as well providing a crate storage area.

7. It was agreed by the main parties at the hearing that the proposed extensions to the existing building at the vineyard were acceptable which confirms the basis of the reasons for refusal. It was also agreed that if I accept that the extensions are acceptable, the principle of issuing a split-decision, partly allowing and partly dismissing the overall proposal could be considered.

8. At the hearing, I set out 3 main issues for the purpose of the discussion including the suitability of the site for the proposed dwelling with regard to the location and proximity to the nearest settlement. However, a discussion took place about the location of the site relative to existing development. The appellant refers to the site as being semi-rural with reference being made to LP Strategy 21, although that reference relates to character rather than the location of development. I consider that the site is within the countryside as defined by LP Strategy 7 as it is outside of the built up area boundaries set out in the LP. This was accepted by the appellant. There was also agreement that the LP is generally consistent with the National Planning Policy Framework (the Framework) and that it can be given full weight.

9. Bearing the above in mind the main issues are therefore:

   - The effect of the proposed manager's accommodation upon the character and appearance of the area, including the consideration of and the effect upon the natural and scenic beauty of the East Devon Area of Outstanding Natural Beauty (AONB); and

   - Whether or not there is an essential need to live on site that would provide special circumstances to justify the proposed manager's accommodation.

Reasons

Character and appearance

10. The appeal site is outside of Knowle, a settlement which is part Budleigh Salterton. Existing development within Knowle is concentrated along the B3178. The site is along Dalditch Lane which includes some development close

to the junction with the B3178. However, the appeal site is clearly distinct from the settlement, separated by undeveloped land on both sides of the road. It is a large field with rows of vines ascending the steep hillside which is a part of the gently rolling countryside beyond the edge of the built up part of the settlement. There are residential properties nearby that I could see across the northern and southern boundary hedges of the site as well as on the opposite side of the lane close to the entrance. These include small clusters of dwellings and some individual, isolated properties along Dalditch Lane with development becoming more concentrated towards the cross roads in the centre of Knowle.

11. Within the site, at the bottom of the hillside the field levels off to a similar level as the road with the existing single storey buildings in a discrete position next to the dense roadside hedge. There is an informally surfaced area close to the entrance which is also used for parking vehicles. Additional parking is available within a more enclosed section of the field at this lower level and a touring caravan is currently stored on this part of the site which is shown on the drawings for removal. As well as the vines, the site is largely covered in grass. Existing built development on the site is located in a discrete position low in the landscape. The higher parts of the site are more prominent and are undeveloped. The hillside contributes to the rolling countryside and provides space to break up the sporadic nature of development nearby.

12. The appellant has emphasised the small groups of dwellings described above along Dalditch Lane and the reference within LP Strategy 21 to the semi-rural character area on the edge of the built-up area of Budleigh Salterton. This seems to me to logically apply to parts of the settlement rather than areas outside of it. However, even if an alternative view is taken, not all areas on the edge of the settlement will be semi-rural as it is a matter to be assessed in each case. Furthermore, whether rural or semi-rural, the policy requires the protection of the character of the AONB which reflects the statutory purpose to conserve and enhance the natural beauty of the AONB[1].

13. The 2 storey dwelling would be in a raised position relative to the road in order to be above the higher flood risk zone. This would be a substantial structure in a position detached from any other buildings and enclosures elsewhere in the field. This is a sensitive location beyond the outskirts of the built up area. The roadside hedge containing evergreen and deciduous species would help to screen the new development when travelling along Dalditch Lane. Glimpses of the dwelling would still be possible from the road and when passing the entrance. Even if supplementary landscaping were to take place as proposed the building and domestic activity around it whether or not contained within boundary enclosures, would be noticeable from the existing dwellings on either side of the site to the east of Dalditch Lane.

14. The Council does not object to the style or design of the proposed dwelling and its basic form or use of locally distinctive materials. The character of the site and the built form would however be very different from the present undeveloped attributes of site. The substantial structure would intrude into the open hillside creating a pocket of suburban development. It would be the most noticeable element standing out from the hillside and would not be integrated with any existing buildings.

[1] Section 85 of the Countryside and Rights of Way Act 2000

15. The continued vineyard business would help to ensure land management within the AONB is sustained. However, the construction of the dwelling would lead to a small but nevertheless harmful impact that would undermine the landscape quality of the area. In relation to the first main issue, the proposal would not preserve the character and appearance of the natural and scenic beauty of the AONB. This would not comply with LP Policy D1 or Strategy 7. I give great weight to the harm to the landscape and scenic beauty of the AONB as required by paragraph 115 of the Framework.

Special Circumstances - policy context

16. LP Policy H4 allows for dwellings in the countryside for people employed in rural businesses but only subject to a number of criteria. The most relevant here is that there is a proven and essential rural business need for the occupier of the proposed dwelling to be housed permanently on the unit for functional reasons. Furthermore, for permanent dwellings it is necessary for the business to have been operational for a minimum of 3 years, to demonstrate that it is commercially viable and with clear prospects of remaining so.

17. The explanatory paragraphs within the LP make it clear that rural workers are usually expected to find housing in existing rural communities. Essential needs are defined as a management activity or combination of activities which require the presence of a worker at most times if proper functioning of the enterprise is not to be compromised. Crop or product quality or health and safety consequences of not being on site can be considered and in all cases, these would be events which could not be managed within normal working hours.

Special circumstances – essential needs

18. Grapes are grown for the wines which are currently processed elsewhere and brought back to the site for storage, sale and distribution. The appellant currently lives within Moormead which is a residential area within Budleigh Salterton, along with Mrs Pratt who appeared at the hearing. Mr and Mrs Pratt are the main employees of the business although family members help out and Mr William Pratt, the appellant's son, also appeared at the hearing. It was agreed that the site can be reached from the appellant's existing dwelling in around 5 minutes by vehicle, 15 minutes by cycle or 25 minutes by walking. Later in the evening, following the appeal site visit, I did drive to Moormead and these times seem to me to be a reasonable estimation.

19. There is no dispute that the appellant's business produces a very well respected range of products including still and sparkling wines. The business has achieved local, national and international recognition. In addition, the business offers tours for visitors, a small shop and tasting area.

20. The vines require close attention particularly during poor weather, with frosts being a significant threat to crop yield. The growing season is March to October with 'bud burst' normally in March when the plants are particularly susceptible to frost, there being no guarantee that a second burst will occur later in the season. Grapes can be destroyed over one night. Ways of dealing with frosts to prevent damage to crops include spraying with water which needs to be undertaken quickly.

21. Predicting conditions can be difficult particularly given localised weather and frosts can occur as late as June, so a substantial proportion of the growing

season can be affected. There is a system of weather stations around the site although these are not linked to the appellant's office at home to enable swift reaction to a sudden change in conditions. Wind is also often unpredictable and can be a problem if it results in structures holding up vines falling over. Vines lying on the ground can suffer problems requiring swift attention.

22. At the hearing, Mr Buchan an expert in viticulture, explained that there are some remote systems but that they are expensive. I have not been given any specific figures or details of such systems. Mrs Pratt had mentioned that there is a poor broadband connection at the site which would limit the effectiveness of such remote systems. I have no evidence about the effectiveness of mobile and wired broadband systems and what has been considered by the appellant.

23. In order to assess conditions, regular inspections of the site may be required. This may include overnight inspections when certain weather conditions are predicted. Living at the site may bring to the operators earlier attention the potential for problems such as sudden gusts of wind or localised frosts. From the evidence presented however, it was not clear that weather conditions in the area are so localised or so frequent that living 5 minutes away is inadequate to deal with such matters through additional inspections during the night and early in the morning. The appellant's efforts in this respect since establishing the vineyard show that it is possible to adequately react to most adversities due to weather conditions. It may be inconvenient to have to drive a short distance rather than simply walk out of the back door of the proposed dwelling. However, based on the evidence before me, managing the crop can be undertaken in this way. I am not convinced that living on the site or 5 minutes away makes a critical difference particularly if technological solutions are more thoroughly considered as an alternative to the proposed dwelling.

24. The main office for the business is within the appellant's home at the moment. Being on site whilst carrying out administrative duties can be a clear benefit and some of that work is inevitably undertaken outside of daylight hours. However these matters do not rely upon living on site and it is not clear why space for an office on site has not been considered. The organising of deliveries and pickers at harvest time and dealing with members of the public does not essentially require on-site accommodation. These duties can be done within the normal working day. Being divided between home and the vineyard clearly causes inefficiencies (I return to the financial aspects of that below) but that is the case with many businesses whether in urban or rural areas. That alone is not a factor that I give much weight to.

25. The area around the site is not completely devoid of activity and informal surveillance. Although the site is detached from the built up part of Knowle, there are dwellings nearby. It is unreasonable to expect neighbours to have any watching brief but it was clarified at the hearing that when alarms are triggered the matter soon comes to the attention of the appellant at their current home address. There may be ways in which security could be improved without needing to live on site and it is not clear what steps have been taken to consider the better use of technical solutions.

26. I can see that it is preferable and more convenient from the appellant's perspective to live on site. However, based upon the presented evidence there is not a clear essential rural business need for permanent occupation of the site

for functional reasons. Furthermore, the appellant's existing accommodation is close enough to provide for a similar level of management of the vineyard.

Special circumstances – financial viability

27. The business has been established for more than 3 years however in order to satisfy this aspect of LP Policy H4, commercial viability of the business is required. In 2014 and 2015 the business made a net profit of between £6,500 and £7,500. At the hearing it was confirmed the approximate figure for the last trading year would be similar. This is based upon £21,500 - £24,500 of sales and it is predicted by the appellant that sales may increase. The business is successful but the profit figures are before any drawings are paid to Mr and Mrs Pratt. The viability of the business as it stands therefore relies upon the 2 main employees not paying themselves very much and I do not consider that it is therefore commercially viable as required by LP Policy H4. The Framework does not refer to financial viability being a test to apply. However it was agreed at the hearing between the main parties that LP Policy H4 is consistent with the Framework and that it is the Council's interpretation of how to apply government advice at a local level. Approving the dwelling if the vineyard business is not viable could lead in the near future to a dwelling with no on-going business need which could undermine the relevant policies in this case.

28. Based upon current costs, money would undoubtedly be saved if the appellant were to live on site. This would include savings on fuel for travelling between the vineyard, on insurance policies as well as on telephone and other office costs. These savings could be around £2,600 per year although that would not increase profits to the extent that would go very far towards paying the wages of the current 2 full time workers.

29. Many of the planned financial benefits relate to the scheme as a whole rather than just the proposed dwelling. There is no dispute that the proposed extensions to the existing vineyard buildings would enable significant savings as it would facilitate wine making on site rather than transporting grapes for processing elsewhere. Savings are estimated at around £11,500 to £13,449 as well as transport cost savings. The scheme as a whole would also enable making more of the potential for visitor attractions including wine tastings, refreshments and sales from passers-by. It is estimated by the appellant that the proposals would lead to an increase of around £70,000 in sales.

30. Much of these benefits do not relate directly to having a dwelling on site and would be more due to the parts of the proposal that the Council considers are acceptable. Furthermore, these possible financial improvements are predictions rather than relating to current activity or past performance which reduces the weight that I can give to those matters. I do also take on board that the appellant would be able to sell his current accommodation and invest that money in the site overall, including the construction of the dwelling.

Special circumstances conclusion

31. Whilst there are some operational matters that would be improved if the appellant could live on site, it has not been demonstrated that these are significant. The scheme as a whole could potentially lead to a significant improvement in profits from the business but it is less clear that a dwelling would be essential in order to achieve this. In relation to this main issue, I do not consider that it is essential to live on site and special circumstances to

justify the proposed manager's accommodation have not been demonstrated. The proposal would not comply with LP Policy H4 or the Framework.

Other Matters

32. The appellant has provided an undertaking under the provisions of section 111 of the Local Government Act 1972 as well as a payment of £201.61 to the Council to mitigate for the effects of the proposed dwelling due to the proximity of the Pebblebed Heaths and Exe Estuary Special Protection Area. This is a unilateral undertaking and so there is no obligation upon the Council to use the money for the stated purpose. However, given my overall conclusion as set out below, it has not been necessary for me to consider this in further detail.

33. LP Policy H4 links the allowable size for dwellings to the functional need. The business has 2 full time workers and occasionally a third family member is involved, who also has a family. This is aside from seasonal helpers. The building would have a floor area of 218m^2 providing 3 bedrooms, ground floor lounge, dining and kitchen rooms as well as an office, utility and shower room. Some of these areas would be part of the vineyard business use or at least in duel use. The Council has referred to the Technical Housing Standards[2] but these provide for minimum standards expected to provide good living conditions rather than relating to any functional needs of rural businesses. In this context I give them little weight. The size of the dwelling would not be more than is necessary for family occupation combined with running a small business. Had I considered that there was a justification for living on-site, the proposed size of the dwelling would not weigh against the proposal.

34. I have been provided with limited evidence of other developments nearby. Mention is also made of other vineyard developments where dwellings have been permitted. I have insufficient information about these other cases for them to influence how I have interpreted the relevant policies and other material considerations. Furthermore, these other examples do not overcome the harm that I have identified in relation to the main issues.

35. The main parties are in agreement that the extensions to the existing building are acceptable although some concerns have been raised by members of the public regarding the noise and traffic consequences of the increased business activity. The reduction in travel between the site and the appellant's home and due to the production of wine on site rather than elsewhere would lead to a reduction in some traffic movements. Even if there were an increase in visitors to the site as planned, I do not consider that overall there would be a harmful impact upon highway safety along Dalditch Lane. I have no evidence that the production of wine on site would cause significant noise or disturbance to nearby residents.

36. The proposed dwelling and extensions to the existing building would not add to risks of flooding on site or elsewhere. This is a neutral matter in the overall balance.

Planning Balance and Conclusion

37. The harm to the AONB that would be caused by the construction of the proposed dwelling has great weight in my decision which is not outweighed by

[2] Technical Housing Standards – nationally described space standard, Department for Communities and Local Government, March 2015

any special circumstances or other matters. For these reasons, the proposed dwelling is unacceptable.

38. The proposed extensions to the existing buildings are acceptable. I have considered whether I could issue a 'split decision' partly allowing the appeal under the provisions of Section 79(1)(b) of the Act. The proposed driveway as shown on plan '3514.7' would be required to access the proposed garage and tool store and winery. It is also shown linking to the proposed dwelling. Even if that driveway were not essential it is shown on that plan directly next to the extensions and therefore these parts of the proposals are not clearly severable physically or functionally. It would be very difficult to word a planning condition to address this. I have considered whether a planning condition could for instance require the submission of further details of the driveway but that would alter the development proposed which could be prejudicial to those who may wish to comment on those changes. I therefore consider that I cannot issue a split decision.

Conclusion

39. For the reasons given above and having considered all other matters raised, I conclude that the appeal should be dismissed.

Andy Harwood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr MP Kelly,	Planning consultant
Mr K Crellen	Architectural technologist
Mrs F Pratt	Appellant's wife
Mr W Pratt	Appellant's son
Mr J Buchan	Viticultural consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Barret	Planning officer
Mr P Thomas	Planning officer

INTERESTED PERSONS:

Mrs M Dickinson	Local resident
Mr L Dickinson	Local resident
Mr C Richards	Budleigh Salterton town councillor
Mr A Dent	East Devon District Council ward member
Mrs C Channon	Devon County Council ward member

DOCUMENTS

1 Additional East Devon Local Plan extracts

2 Background documents to the Budleigh Salterton Neighbourhood Development Plan

3 Appellant's additional background statement and unilateral undertaking under the provisions of S111 of the Local Government Act 1972 relating to habitat mitigation

4 Council's additional information regarding habitat mitigation including East Devon Local Plan extracts, South East Devon European Site Mitigation Strategy