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## Appeal Decision

Site visit made on 16 August 2016

**by Jonathan Tudor BA (Hons), Solicitor (non-practising)**

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

**Decision date: 27 September 2016**

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**Appeal Ref: APP/P1615/W/16/3148717**

**Walnut Farm Buildings, Brand Green, Gloucestershire GL19 3JE**

- 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 H Bailey against the decision of Forest of Dean District Council.
  - The application Ref P0032/16/FUL, dated 12 January 2016, was refused by notice dated 14 March 2016.
  - The development proposed is described as 'Removal of existing timber chalet and recently converted former chicken shed to residential dwelling with a replacement dwelling.'
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### Decision

1. The appeal is allowed and planning permission is granted for the removal of existing timber chalet and recently converted former chicken shed to residential dwelling with a replacement dwelling at Walnut Farm Buildings, Brand Green, Gloucestershire GL19 3JE in accordance with the terms of the application, Ref P0032/16/FUL, dated 12 January 2016, subject to the attached schedule of conditions.

### Main Issue

2. The main issue is whether the proposed development would be in an appropriate location, having regard to national and local planning policies relating to development in the countryside, and the effect on the character and appearance of the area.

### Reasons

3. The appeal site is a large roughly rectangular plot located on the southern outskirts of the rural village of Brand Green. There are two existing buildings on the site being a former chicken shed and a chalet. The former chicken shed, which occupies much of the eastern boundary of the site, is a long, single storey timber-clad structure with a pitched corrugated roof whilst the smaller single storey chalet, on the southern boundary, is of timber construction. The site is accessed via a no through road that runs adjacent to the eastern boundary and ends at the site.
4. Though outside any settlement boundary, and therefore categorised by Development Plan policy CSP.4<sup>1</sup> as open countryside, there are residential properties adjoining the site to the north, east, west and south east with open

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<sup>1</sup> The Forest of Dean Council: Core Strategy Adopted Version 23<sup>rd</sup> February 2012

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countryside to the south. The immediate area is characterised by sizeable residential dwellings in spacious plots with generous gardens. As the Council point out the nearest residential property to the north is only about 25 metres away. The site is also largely screened from its surroundings by hedges on its boundaries.

5. I note that whilst it aims to focus new development within settlement boundaries, policy CSP.4 does qualify itself both in terms of its language and in the exceptions that it incorporates. It also contemplates situations where development may be outside formal settlement boundaries. The proposed two storey dwelling is within the footprint of the former chicken shed and there is no increase in the total floor area. It seems to me that policy CSP.4 is directed primarily at new development involving an increase in the built form and incursion into the open countryside.
6. The former chicken shed which would be removed as part of the proposed development already has planning permission, granted on appeal<sup>2</sup>, for conversion to a residential dwelling. The conversion works including the installation of windows have commenced and there is no reason to suppose that the development would not take place if this appeal did not succeed. This provides a 'fallback' position which I have taken into account in this appeal. The timber chalet, also to be removed, had temporary planning permission allowing occupation by a rural worker which expired on 30 April 2012. According to the appellant, it was occupied until March 2011 which has not been disputed by the Council.
7. Therefore, the principle of residential development is already established and the chalet building has been lived in, albeit for occupational purposes. Considering the fallback position and the particular characteristics of this site, the rigorous application of the letter of Policy CSP.4 is inappropriate.
8. The Council's interpretation of the previous appeal decision is that the Inspector would not have given permission if he had considered that a new dwelling was being proposed. I disagree with that interpretation. The Inspector was considering the particular application before him and applying the relevant policy framework in force at that time, which has since, in any case, changed. That decision predates both the Council's Core Strategy (2012) (the Core Strategy) and the National Planning Policy Framework (2012) (the Framework). Similarly, I will consider the appeal before me within the current policy framework and factual context on its own merits.
9. I note that, as the Council regard the site as open countryside, residential development is not considered acceptable unless special circumstances have been demonstrated. At the same time, the Council accepts that it cannot demonstrate a sufficiently robust 5-year supply of housing, that some aspects of policies CSP.4 and CSP.5 are out of date and that it does not have a specific policy on replacement dwellings.
10. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a 5-year supply of deliverable housing sites. Case law confirms that this extends to policies which constrain housing supply.<sup>3</sup> This

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<sup>2</sup> APP/P1615/A/11/2160212

<sup>3</sup> Suffolk Coastal DC v Hopkins Homes Ltd [2016] EWCA Civ 168

limits the weight that can be given to policies CSP.4 and CSP.5. Paragraph 14 says that where the development plan is absent, silent or relevant policies are out of date, planning permission should be granted subject to two exceptions. Therefore, I consider that paragraph 14 has been engaged.

11. The first exception to the presumption in favour of granting permission is that if any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. The Council appear to be relying on Paragraph 55, which says that housing should be located where it will enhance or maintain the vitality of rural communities and that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. It then lists possible special circumstances which include where development would re-use redundant or disused buildings and lead to an enhancement of the immediate setting. The Council argue that as no special circumstances pertain, there is no basis for approving this development.
12. The Council view the development as a new isolated home in the countryside because it is outside settlement boundaries and there are limited services nearby. The Framework does not define the term 'isolated' and so it is in order to rely on the everyday definition of it as meaning far away from other places, buildings or people i.e. lonely or remote. It is already established that the appeal site is on the outskirts of the village of Brand Green but within an area of residential dwellings. I also note that the market town of Newent, with its range of services and facilities, is approximately 2.5 miles from the appeal site with the city of Gloucester about 9 miles away. There is also a bus service, albeit limited, between Brand Green and Newent. Furthermore the site already has planning permission for a residential dwelling. The combination of these factors leads me to conclude that the development would not be a new isolated home in the countryside. Therefore, the special circumstances suggested in paragraph 55 of the Framework are not required.
13. I now turn to consider any adverse impacts on the character and appearance of the area. The Council argue that the loss of an existing rural building and its replacement with a new two storey dwelling would represent a visual and material difference to the character and appearance of the area. This confuses change with harm. I consider that the former poultry shed has limited architectural merit and do not see that it makes any particular positive contribution to the character and appearance of the area. The replacement two storey dwelling would occupy a reduced footprint and appears to be of a similar scale and design to surrounding properties. I observed the appeal site to be self-contained, well-defined in terms of its boundary treatments and largely screened by hedging and some fencing. Therefore, neither do I share the Council's view of the 'openness' of the site or that a new two storey dwelling would 'encroach into the openness beyond'.
14. Public views from the access road which ends at the site are currently dominated by the long, unremarkable side elevation of the former chicken shed. The development proposes a new hedge along that boundary which would partially screen the two storey replacement dwelling. As it is a no through road, it would be used mainly by private residents accessing their properties rather than the general public. There is a public right of way some 70 metres to the west of the site running north to south but as the site is largely screened, views of the development from the public right of way would

- be limited. In any event, the two storey house would be seen against a skyline of other similar residential properties.
15. The second exception referred to in Paragraph 14 refers to a case where specific policies in the Framework indicated development should be restricted. Examples of such policies are given in an associated footnote and include Sites of Special Scientific Interest, but it seems to me that no such policy is relevant to the case before me.
16. In terms of the environmental dimension of sustainability, the design and south facing position of the new dwelling should optimise solar gain and natural light. Ecological benefits arise from the proposed landscaping and some new hedgerows. Economically, there would be short-term employment during the construction period, though the fallback position would also have employment benefits. Future occupiers would contribute towards the vitality and viability of nearby services, though it is accepted that these are limited. Turning to the social aspect, there would be some contribution to the housing supply, though it is noted that a planning permission already exists for residential conversion, and the replacement dwelling would contribute to the improving the quality of the housing stock available with a more energy efficient home.
17. Therefore, I conclude that, taking into account national and local planning policies relating to development in the countryside, the proposal would not be in an inappropriate location or harm the character and appearance of the area. Though the benefits generated by a single dwelling are inevitably relatively limited, as I have found no adverse effects of any substance, it follows that they cannot significantly and demonstrably outweigh the benefits. It also follows that the proposal is not in conflict with the objectives of policy CSP.1 of the Core Strategy, which, amongst other things, seeks to promote local distinctiveness, good design and ensure that development is compatible with its surroundings. Furthermore, it does not conflict with paragraphs 7, 17 or sections 1, 6, 7, or 11 of the Framework, which cover a broad range of issues including sustainable development, recognising the intrinsic character and beauty of the countryside and delivering high quality well designed homes in appropriate locations.
18. I give more limited weight to policies CSP.4 and CSP.5 for the reasons that I have already set out and, in any event, I do not find that the proposal is contrary to their general aims of focusing development in appropriate locations. Allocations Plan Policies AP.1, AP.4 and AP.5 are still under examination so I do not give full weight to them, but they are intended to support the Core Strategy. Again, it follows from my reasoning above that the proposal does not conflict with their objectives in terms of sustainability and ensuring that the design and style and type of materials used take account of local character.

### **Conditions**

19. I have had regard to the various planning conditions that have been suggested by the Council, amending them if necessary. A condition setting a time limit for commencement of the development is a statutory requirement. For the avoidance of doubt and in the interests of proper planning, it is appropriate that there is a condition requiring that the development is carried out in accordance with approved plans. A condition requiring the existing buildings to be removed prior to commencement of any other works is necessary to protect the character and appearance of the area. Conditions in respect of drainage,

access and parking are appropriate in the interests of site drainage and road safety. I also agree that conditions relating to soft landscaping, materials, and permitted development rights are necessary to safeguard the character and appearance of this rural area. The condition in respect of a biodiversity enhancement scheme is appropriate and in accord with section 11 of the Framework. I have amended the suggested condition regarding external lighting as I cannot see that any such lighting is included in the proposal but assume that some lighting may be necessary to illuminate the car parking or other areas at night. Such a condition is to safeguard the rural environment and nocturnal species from the effects of light spill.

### **Conclusion**

20. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Jonathan Tudor*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing nos: 14.10.3.PL-100; 14.10.3.PL-101; 14.10.3.PL-102; 14.10.3.PL-103; 14.10.3.PL-104; 14.10.3.PL-105; 14.10.3.PL-106; 14.10.3.PL-107; 14.10.3.PL-108; 14.10.3.PL-109; 14.10.3.PL-110.
- 3) The existing rural building (former chicken shed) and chalet building shown on the submitted plans shall be demolished and removed from site prior to the commencement of any other works hereby permitted associated with the erection of the new dwelling.
- 4) Prior to the erection of the replacement dwelling full details for foul and surface water drainage with sufficient details incorporating where appropriate the principle of Sustainable Drainage Systems (SUDS) within the development shall be submitted to and approved in writing by the local planning authority. Thereafter, prior to the occupation of the approved dwelling the approved drainage scheme shall be carried out in accordance with the approved details and permanently maintained.
- 5) The replacement dwelling hereby permitted shall not be occupied until the access, parking spaces and turning facilities shown on the approved drawings have been constructed, laid out and provided ready for use. The land so provided shall not thereafter be used for any purpose other than for the parking, turning of vehicles and cycles.
- 6) Prior to the erection of the replacement dwelling hereby permitted full details of the soft landscaping scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include species, sizes and

density of planting. Thereafter the approved soft landscape details shall be fully implemented within 12 months or the next planting season (whichever is sooner) following the first occupation of the dwelling hereby approved. If at any time during the subsequent five years any tree, shrub or hedge forming part of the scheme shall for any reason die, be removed or felled it shall be replaced with another tree, shrub or hedge of the same species during the next planting season to the satisfaction of the local planning authority.

- 7) Prior to any works above ground level on the replacement dwelling full details of the roofing and external facing materials, including colourations, proposed to be used shall be submitted to and approved in writing by the local planning authority. This shall include the erection of a sample panel of stonework and render onsite that will be retained following approval for reference until the dwelling is completed. Thereafter the development shall be carried out in accordance with the approved details.
- 8) Prior to any works commencing above ground on the replacement dwelling a small scale biodiversity enhancement scheme (bird and bat box provisions) shall be submitted to and be approved in writing by the local planning authority. Thereafter the approved scheme shall be fully implemented prior to occupation of the replacement dwelling and be maintained.
- 9) No external lighting shall be installed on site unless details of such lighting, including the intensity of illumination and predicted lighting contours, have been first submitted to, and approved in writing by, the local planning authority prior to first occupation/use of the site. Any external lighting that is installed shall accord with the details so approved.
- 10) Notwithstanding the provisions of Part 1 of the Second Schedule to the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no development as specified in Part 1 (Classes A, B, C, D, E and F), other than such development or operations indicated on the plans hereby approved, shall be carried out.