
Appeal Decision

Hearing held on 5 October 2016

Site visit made on 5 October 2016

by R C Kirby BA(Hons) DipTP MRTPI DipTP MRTPI

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

Decision date: 15 November 2016

Appeal Ref: APP/C1625/W/16/3153058

Astmans Farm, Longney, Gloucester, Gloucestershire GL2 3SW

- 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 and Mrs Scrivin against the decision of Stroud District Council.
 - The application Ref S.15/1018/FUL, dated 27 April 2015, was refused by notice dated 6 April 2016.
 - The development proposed is conversion of two storey brick agricultural building to a residential dwelling, with ancillary space within the adjacent Dutch Barn and the single storey cattle byre.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site address above was agreed between the main parties at the Hearing as best describing the location of the appeal site.
3. The appellants have requested that I consider a report by Wild Service in respect of a Bat Building Inspection and Activity Surveys Report – Issue 3. This report was not before the Council when it determined the planning application. However, it was provided with a copy of the report during the course of the appeal and has provided comments on it within evidence. I have considered this report under the principles established by the Courts in *Wheatcroft*¹ and I am satisfied that it does not change the development to such a degree that to consider it would deprive those who should have been consulted on the change, the opportunity of such consultation. I have therefore determined the appeal on the basis of the information submitted with the planning application and this additional report.
4. Local residents have expressed concern about whether or not the proposal would be a conversion of the existing buildings upon the site. From my observations, there appears to be some discrepancy between the submitted drawings and the buildings upon the site. However, I am obliged to consider the proposal on the same basis as the Council and therefore for the avoidance of doubt, my deliberations are based upon the drawings as submitted.

¹ *Bernard Wheatcroft Ltd v SSE & Harborough DC* [1982] P&CR 233

Main Issue

5. The main issue in this case is whether or not a new dwelling in this location would comply with the development plan settlement strategy and represent a sustainable form of development, having particular regard to the site's relationship to local services and facilities, flood risk and the effect on protected species.

Reasons

6. The site comprises two agricultural buildings: a 2 storey brick, pitched roof building with attached Dutch Barn, largely infilled with timber panels, and a single storey, open fronted brick byre building. The proposal is to convert the 2 storey brick building and part of the Dutch Barn into living accommodation; the remainder of the Dutch Barn would be used for ancillary parking and storage. The byre building would be used in part as a home office/hobbies room (northern 5 bays), and the remainder would be used in connection with the agricultural use of the appellants' land to the south of the site.

Settlement Strategy

7. Although located within a cluster of existing dwellings, there is no dispute between the main parties that the site is located outside of any settlement. It is therefore located within the countryside for planning policy purposes.
8. Stroud District Local Plan (SDLP) Core Policy CP15 sets out principles and criteria with which development outside identified settlement development limits must comply. These concern exceptions appropriate to a rural area, including, for new housing, where it is essential to the maintenance or enhancement of a sustainable farming or forestry enterprise, is a 'rural exception site', or is a replacement dwelling. The proposed development would not comply with any of the listed exceptions and so, on the face of it, would conflict with Policy CP15.
9. The appellants consider that Core Policy CP15 is inconsistent with paragraph 55 of the National Planning Policy Framework (the Framework) in that this allows for the re-use of redundant or disused buildings in the countryside where it would lead to an enhancement to the immediate setting. They also consider that this policy was not examined in depth at the examination stage of the SDLP.
10. The Council dispute these assertions and has referred me to the Examining Inspector's report² in respect of the SDLP prior to adoption. The Inspector considered that policies, including Core Policy CP15 provided 'an appropriate, effective and soundly based framework for protecting, maintaining and enhancing the environment within Stroud District ... which is fully justified and consistent with national policy'.
11. Paragraph 12 of the Framework makes it clear that its contents do not change the statutory status of the development plan as the starting point for decision making. Paragraph 1 states that the Framework sets out the Government's requirements for the planning system only to the extent that it is relevant, proportionate and necessary to do so, and that it provides a framework within which local people and their accountable councils can produce their own

² At paragraph 200 of the examining Inspector's report

distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities. Paragraph 15 states that all plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally.

12. Having regard to the above matters, the fact that SDLP Core Policy CP15 appears more restrictive than paragraph 55 of the Framework does not indicate to me that it is inconsistent with the Framework as a whole. I therefore afford it significant weight.
13. Although, SDLP Core Policy CP3 does not expressly exclude new housing development within Unclassified – Fifth Tier areas (of which Longney is identified), neither does it expressly provide for it, unless a specific need has been identified in a Neighbourhood Plan. There is no Neighbourhood Plan for the area and therefore the principle of new housing in this location would be in conflict with SDLP Core Policy CP3 also.
14. SDLP Core Policy CP14 supports high quality development that protects, conserves and enhances the built environment and allows for the re-use and/adaptation of existing buildings. This is on the premise that the buildings make a positive contribution to the character of the site and surroundings. Furthermore, such development should, amongst other matters, be at a location that is near to essential services and good transport links to services by means other than motor car; contribute to the retention and enhancement of important biodiversity interest; not result in increased flooding on or off the site, and include measures to reduce the causes and impacts of flooding as a consequence of the development. These matters are considered further below.

Services and Transport Links

15. The Council has calculated that the appeal site is approximately 1.5 kilometres from the nearest settlement Longney, which has a primary school and church. A wider range of facilities and services are found further away at Hardwicke, Frampton and Whitminster. This is not disputed.
16. The appellants consider that the road to Longney is lightly trafficked and conducive to walking. Whilst I have no evidence before me to dispute this assertion, I noted on my site visit that the local road network within the vicinity of the site had no pavements or street lighting. Given this, whilst there may be occasions where the intended future occupiers of the new dwelling would walk to Longney, once there, there are only limited services available.
17. In order to access basic day to day facilities in local towns and villages, including places of employment, health facilities, shopping and entertainment, my view is that the local highway network would be unlikely to be an attractive walking or cycling route to them, given its characteristics and the distance involved. There would therefore be a high probability that there would be a high dependency of the private car to access such services. I also find that other than the school bus, it would be unlikely that the bus service in the area would be an attractive alternative, given the limited service offered. For those without access to a private car, the services and facilities in the area would not be accessible. In this regard, the proposal conflicts with criterion 13 and 14 of SDLP Core Policy CP14.

Biodiversity

18. Delivery Policy ES6 of the SDLP requires, amongst other measures for protected species to be safeguarded. When determining planning applications, the Framework requires local planning authorities to aim to conserve and enhance biodiversity by applying a number of principles, including refusing planning permission where significant harm resulting from a development cannot be adequately mitigated, or as a last resort, compensated for.
19. The appellants submitted 3 ecological surveys³, taken at different times. The Wild Service reports identified that the buildings upon the site support a number of protected species. Both of these reports identified a series of recommendations, mitigation and enhancement measures.
20. The Council considers that the site is a valuable wildlife site, particularly for Natterers and Barn Owls. It is submitted that these species are not very common in the wider area. The Council is concerned that the proposed measures suggested by the appellants are not sufficiently detailed and suggests that a mitigation strategy needs to be agreed prior to approving development on the site. Whilst noting these concerns, I find that had the appeal been successful, this matter could be secured by way of a suitably worded planning condition requiring a suitable strategy to be agreed prior to the commencement of development upon the site.
21. In this regard, I conclude that there would be no conflict with the requirements of the Conservation of Habitats and Species Regulations 2010, the Wildlife and Countryside Act 1981, the Countryside and Rights of Way Act 2000 and the objectives of SDLP Delivery Policy ES6, criterion 8 of SDLP Core Policy CP14 and the Framework in this regard.

Flood Risk

22. There is no dispute between the parties that the appeal site is located within Flood Zone 3. It therefore has a high probability of flooding. The Technical Guidance on Flood Risk identifies that a building used for a dwelling house is classed as a more vulnerable use (Table 2). Table 3 sets out that more vulnerable development should not be permitted in Flood Zone 3b, and that the exception test should be applied in Flood Zone 3a. However, the Framework states at paragraph 104 that minor development and changes of use applications should not be subject to the Sequential or Exception Tests, unless falling within certain types of development. Given the nature of the appeal scheme, I find that neither the sequential or exception test is required in this case.
23. SDLP Delivery Policy ES4 requires, amongst other matters for development to be appropriately flood resilient and resistant with safe access and escape routes. The Framework advises at paragraph 103 that when determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment. It goes on to state that within the site, the most vulnerable development should be located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and the development should be appropriately flood

³ Wessex Ecological Consultancy (June 2013), Wild Service (October 2015) and (May 2016)

- resilient and resistant, including safe access and escape routes, and that any residual risk can be safely managed, including by emergency planning; and it gives priority to the use of sustainable drainage principles.
24. The appellants submitted a Flood Risk Assessment⁴ (FRA) with the planning application which identified that the site would be unlikely to flood, except in extreme conditions. The primary flood risk to the site is posed by the tidal River Severn. The River Severn is defended and the flood risk from the river would be if the defences were breached or overtopped.
25. The FRA identified that the site may be liable to flooding in a 1 in a 200 year flood event if the flood defences were overtopped or breached. The buildings upon the site and access are located on a part of the site that would be at the lowest risk of flooding and the dwelling would be designed to ensure that it was flood resilient and resistant. The site could be sustainably drained. During times of flood, the submitted Flood Warning and Evacuation Plan (FWEP) identifies a number of actions that should be taken by the occupiers of the dwelling and any visitors to it.
26. The Council is concerned that during times of flood, the site would become isolated and the measures contained within the FWEP could not be relied upon to provide safety for the dwelling's occupiers and/or the emergency services. Whilst noting the Council's concern, I was told at the Hearing that the Environment Agency would know 2 days in advance of a likely flood event overtopping the defences on the River Severn. It would then take a further 2 days for flood water to reach the appeal site. This was not disputed by the Council. Given the advance warning that future occupiers would have in the event of a flood, and that the flood water would be likely to disperse as a result of its tidal flow, I am satisfied that sufficient warning would be given such that the property could be evacuated safely in the event of flood risk to the site.
27. Given my findings above, I am satisfied that the location of the building would be unlikely to prove a significant threat to the safety of the intended future occupiers, their visitors and emergency service's personnel. As such there would be no conflict with SDLP Delivery Policy ES4, criterion 2, 3 and 4 of Core Policy CP14 or the objectives of national planning policy in this regard. In reaching this conclusion, I am mindful of the Environment Agency raising no objections to the proposal. Furthermore, the Council's Water Resources Engineer raised no objections to the findings and mitigation measures set out in the appellants' FRA and FWEP. I have no substantive evidence before me to reach a different view.

Other Matters

28. The appellants have referred me to the Longney and Epney Parish Village Design Statement, which the Council confirmed had been adopted as supplementary planning advice in 2011. This document states at LBE5. that the conversion of redundant farm buildings will need to comply with the requirements of any relevant national and Local Plan policies. For the reasons given above, I have found that the proposal would not accord with national or local planning policies. Accordingly, the proposal would conflict with this supplementary planning advice also.

⁴ By KRS Environmental June 2014

29. The appellants have sought to convince me that the proposal could occur without the need for planning permission. Be that as it may, I understand that an earlier proposal under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) was submitted to, and refused by the Council. On the basis of the evidence before me, I have no substantive evidence that there is a significant probability that this fall back position would be used to convert the buildings on the site to a dwelling should this appeal be dismissed. This limits the weight that I can attach to this matter in my overall Decision.
30. Although the GPDO does not attach a sustainability test in respect of the location of agricultural buildings where it is proposed to convert into a dwelling, the policies of the development plan are clear that the location of development needs to be sustainable. The proposal before me relates to an application for planning permission and I am required to determine it in accordance with the development plan unless material considerations indicate otherwise. For the reasons given I have found that the location of the appeal site conflicts with the settlement strategy for the area and is not in a sustainable location. The tests applied to development permitted under the GPDO do not outweigh the harm that I have identified.
31. The appellants consider that the Council has been inconsistent in its approach to decision making in respect of agricultural building conversions elsewhere in the District. Reference is made in evidence to several examples, and whilst noting the concerns raised, I do not have detailed drawings or the circumstances of the particular cases referred to. I am therefore unable to ascertain if they are directly comparable to the scheme before me. In any event, each application and appeal must be determined on its individual merits. I therefore attach limited weight to this matter in my consideration of the appeal proposal.
32. My attention has also been drawn to a previous application on the site for the same development. This was refused on flooding grounds only. The Council has indicated that at the time this application was determined it could not demonstrate a 5 year supply of housing land, and its housing policies were therefore out of date. Since the determination of this application the Council has indicated that it is able to demonstrate a 5 year supply of housing land, which is not disputed. Furthermore, the SDLP has been adopted. Given these matters, I consider that circumstances have materially changed between the earlier proposal and that before me. I am therefore not convinced that the planning history of the site is good reason to reach a contrary conclusion to that which I have reached.

Conclusion

33. I have found that the proposal would conflict with the relevant SDLP policies which set out the District's development strategy. Overall, and taking the development plan and Framework as a whole, I conclude that the proposal would not represent sustainable development in the terms of the Framework. The public benefits of the scheme as set out in the Statement of Common Ground, and the absence of unacceptable harm to biodiversity and flood risk do not outweigh the harm that would be caused. There are no other material considerations which strongly indicate that permission should be granted in this instance.

34. For the above reasons, and having regard to all other matters raised, the appeal is dismissed.

RC Kirby

INSPECTOR

APPEARANCES

FOR THE APPELLANTS

Mrs A Scrivin	Appellant
Mr A Case	AC Planning Solutions
Mr K Serjeant	KRS Environmnetal
Mr E Heath	Wildlife Consultant

FOR THE COUNCIL

Mr J Cooper	Principal Planner
Ms K Colebourn	EPR

INTERESTED PARTIES

Mr R Godwin	Longney and Epney Parish Council
Mr C Catcheside	Local Resident
Ms C Sims	Local Resident
Mr D Kent	Local Resident
Mrs J Kent	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of email from Environment Agency dated 11 March 2016
2. Copy of email from Mr Lesser dated 11 April 2014
3. Copy of Longney and Epney Parish Village Design Statement

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Extract from the Planning Practice Guidance relating to residual flood risk
2. Copy of amended conditions agreed between the main parties