
Appeal Decision

Site visit made on 5 December 2016

by R C Kirby BA(Hons) DipTP MRTPI

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

Decision date: 13 February 2017

Appeal Ref: APP/C1760/W/16/3154235

Barrow Hill Barns, Barrow Hill, Goodworth Clatford, Hampshire SP11 7RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Hamish Macbeth, Cawdor Construction Devs Ltd against the decision of Test Valley Borough Council.
 - The application Ref 15/03017/OUTN, dated 9 December 2015, was refused by notice dated 21 March 2016.
 - The development proposed is develop land with erection of 5 dwellings (demolish existing offices).
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Decision

1. The appeal is allowed and outline planning permission is granted, with all matters reserved apart from access, to develop land with erection of 5 dwellings (demolish existing offices) at Barrow Hill Barns, Barrow Hill, Goodworth Clatford, Hampshire SP11 7RG, in accordance with the terms of application Ref 15/03017/OUTN, dated 9 December 2015 and in accordance with the 9 conditions in the attached Schedule.

Procedural Matters

2. The planning application was submitted in outline and the application form makes it clear that approval was being sought for access and layout. However, during the course of the appeal the appellant requested that layout be reserved for future consideration. This was in order to address the Council's third reason for refusal relating to bin storage. The Council has indicated that it has no objection to this matter not being considered at this stage.
3. I have considered the appellant's request under the principles established by the Courts in *Wheatcroft*¹ and I am satisfied that the removal of the layout from my consideration of the appeal proposal would not change the development to such a degree that to consider the change would deprive those who should have been consulted on it, the opportunity of such consultation. I have therefore determined the appeal on the basis that permission is being sought only for access at this stage. I have therefore treated the proposed layout, and street and courtyard elevations as illustrative only.
4. The appellant submitted an Ecology Report (ER) by KP Ecology dated 29th June 2016 with the appeal. Whilst the Council did not consider this information when it determined the planning application, it has been provided with a copy of the ER and has confirmed that its findings and recommendations satisfactorily

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

address its concerns relating to protected species, as set out within its second reason for refusal.

5. Having regard to the findings of the ER which identified that no bats were using the existing buildings upon the site, and the recommendations contained therein, I am satisfied that the proposal would not have an adverse effect upon protected species within the vicinity of the appeal site. Furthermore, biodiversity enhancements could be secured, in accordance with the objectives of Policy E5 of the Test Valley Borough Revised Local Plan (2011-2029) (RLP) and paragraph 109 of the National Planning Policy Framework (the Framework), through the imposition of suitably worded planning conditions. This matter is not therefore a determining factor in this case.
6. The Council's fourth reason for refusal related to the absence of a mechanism to secure a financial contribution towards affordable housing provision. Within its appeal statement, the Council has advised that this reason for refusal has fallen away, because it has changed its policy to reflect changes to the Planning Practice Guidance (PPG). As such, the Council no longer seeks financial contributions towards affordable housing from sites of 5 units or less in the Designated Rural Area. As the proposal is for 5 units, no affordable housing contribution is necessary. This matter does not therefore form part of my consideration of the appeal proposal.
7. The Council's fifth reason for reason related to the absence of a mechanism to secure a financial contribution towards public open space provision. Following the adoption of a Community Infrastructure Levy (CIL) charging schedule in August 2016, the Council has confirmed that the impact of the scheme on public open space could suitably be mitigated through its CIL charging schedule. The Council has therefore advised that this reason for refusal has also fallen away. Accordingly, this matter does not form part of my consideration of the appeal proposal.

Main Issue

8. In light of the foregoing, the main issue in this case is whether the principle of new housing is appropriate in this location, having regard to the settlement hierarchy set out in the RLP.

Reasons

9. There is no dispute between the parties that the site is located within the countryside for planning policy purposes. Policy COM2 of the RLP establishes that the principle of development and redevelopment will be permitted within the boundaries of settlements identified in the hierarchy. Development outside of settlements will only be permitted where certain criteria are met. There is no dispute that the appeal proposal does not comply with the necessary criteria for new development in the countryside. The proposal would therefore conflict with the settlement hierarchy of the RLP in conflict with Policy COM2. Furthermore, although not specifically referred to within the Council's decision notice, the proposal would result in the unjustified loss of an existing employment site in conflict with RLP Policy LE10.
10. Section 38(6) of the Planning and Compulsory Purchases Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that applications for

planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

11. The appellant has drawn my attention to a notification for prior approval under Class J of the Town and Country Planning (General Permitted Development) Order (GPDO) 1995, as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013, for the conversion of the existing building into 5 residential units. The Council determined that its prior approval was not required on 31 March 2015 (Ref 15/00270/PDJN). The appellant submits that he is able to implement this decision and this fall-back position is a material consideration which should be given weight in the assessment of the appeal scheme. He states that if the appeal is not successful, the conversion scheme will be constructed.
12. The Council considers that this fall-back position is not realistic, as in order to benefit from the notice that prior approval was not required, the use of the building as dwelling houses should have begun before 30 May 2016. No evidence has been provided that the use of the building as dwelling houses has occurred.
13. However, since the Council determined the Class J notification, the statutory instrument has largely been replaced by the Town and Country Planning (General Permitted Development) (England) Order 2015. Equivalent provisions to Class J of the 1995 GPDO were included within Schedule 2, Part 3, Class O of this Order. The relevant legislation² provides for anything done under the previous provisions to be treated as if done under the new provisions, so Class J has effect as if made under Class O.
14. In April 2016³, the 2015 GPDO was amended. In relation to Schedule 2, Part 3, Class O of this Order, the requirement for the change of use to be completed by 30 May 2016 has been removed and replaced by a new general condition which allows three years for the change of use to take place from the date of prior approval. The extension of the time period therefore applies to what was Class J development (where that was extant on 6 April 2016 (when the amendment came into force)). The appellant therefore still has time to complete the change of use of the building to dwelling houses.
15. The April 2016 amendment also added the requirement that the impacts of noise from commercial premises on the intended occupiers of the development should be considered as one of the prior approval elements (in addition to transport and highways impacts, contamination risks, and flooding risks). Whilst I note the Council's concern that it has not assessed the appellant's change of use scheme in relation to noise, there is no requirement to apply this retrospectively to those applications made before 6 April 2016. However, if the appellant chose to apply for a determination under Class O as to whether the prior approval of the local planning authority was required, the issue of noise would obviously be a consideration at this time.
16. It is the stated view of the appellant that the conversion scheme is awkward and unattractive in terms of the confined courtyard and elongated building forms. However, it is asserted that the scheme would be feasible and would be

² Section 17(2)(b) of the Interpretation Act 1978

³ The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 (No. 332).

implemented if the appeal scheme fails. I have no evidence before me to doubt the appellant in respect of these matters. I therefore find that the fall-back position to convert the building into 5 dwellings is therefore more than a theoretical prospect; there is likely to be a high probability that the scheme would be constructed if the appeal proposal is dismissed.

17. Notwithstanding my findings above, I consider that it is also necessary to assess the impact of the proposed scheme against the permitted scheme, to determine whether or not there would be any significant impacts over and above the permitted scheme.
18. The proposed scheme is for the same number of units as the permitted scheme. The intended future occupiers of the respective schemes would be likely to have a high dependency on the private car because of the site's location relative to the nearest services and facilities, and the local highway conditions. As a consequence, there would be a high probability that the likely number of vehicle movements to and from the site would be the same.
19. The proposal would result in the loss of an employment site, but so would the permitted scheme. In terms of the effect on the local economy from the respective schemes and the expenditure of the schemes' intended future occupiers, this would be likely to be similar, given the likely number of occupiers of the dwellings, and the jobs created during the construction phases. The proposal's impact on the local economy would be unlikely to be materially different to the permitted scheme.
20. I am unable to assess the scheme's impact on the character and appearance of the area as matters of layout, design and landscaping are not before me. However, I note that the Council considered that the layout of the site and indicative design were acceptable. Indeed, within the delegated officer report it states that 'the proposed site layout suitably respects the local area', and that 'the proposed appearance of the dwellings is considered to be adequate and the proposed materials are considered appropriate'. Such matters would in any event be controlled by the Council in the first instance as part of a subsequent planning application. I have no reason to doubt that a suitable scheme could be designed which would not have a greater impact on the character and appearance of the area over and above the permitted scheme.
21. In light of the foregoing, I find that the proposed scheme would not have any demonstrably noticeable impacts over and above those associated with the permitted scheme. Any difference would be unlikely to be discernible.

Planning Balance

22. The appeal proposal would conflict with the settlement hierarchy established by Policy COM2 of the RLP. Further harm would be caused as a result of the loss of an employment site. These policies are considered to be up-to-date because the Council can demonstrate a five-year supply of deliverable housing sites, and the policies are consistent with the relevant policies of the Framework.
23. However, the appellant's fall-back position to change the use of the existing buildings upon the site is a very real possibility. The effects of the appeal proposal would be unlikely to be discernible over and above the permitted development scheme for the reasons given. I regard the likely residential use

of the site, a material consideration which would, in this case, justify making a decision which is not in accordance with the development plan.

Conditions

24. The Council has provided me with a number of conditions that it would wish to see imposed in the event that the appeal is allowed. I have considered these against the guidance on conditions in the PPG and the Framework. A condition is necessary to ensure that the development is carried out in accordance with the approved plans. To ensure a suitable access to the site, a condition is necessary requiring this to be provided. In the interests of the character and appearance of the area, conditions controlling the scale of the new dwellings, and tree protection are necessary. In the interests of biodiversity, conditions are necessary in respect of bat habitat enhancement and mitigation for nesting birds.
25. Conditions relating to car parking and cycle provision, refuse and recycling, controlling materials and what should be included as part of a subsequent landscaping scheme are not necessary at this outline stage, given the matter for which approval is sought.

Conclusion

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

R C Kirby

INSPECTOR

SCHEDULE:

CONDITIONS

1. Approval of the details of the layout, scale and appearance of the buildings and the landscaping of the site (herein after called "the reserved matters") shall be obtained from the local planning authority in writing before the development is commenced.
2. Applications for the approval of all the reserved matters referred to herein shall be made within a period of three years from the date of this permission.
3. The development to which the permission relates shall be begun not later than whichever is the later of the following dates:
 - i) five years from the date of this permission: or
 - ii) two years from the final approval of the said reserved matters, or, in the case of approval on different dates, the final approval of the last such matter to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plan, insofar as it relates to access: dwg.no 02.
5. No dwelling hereby approved shall be occupied until the means of access to the site has been provided in accordance with the access details shown on drawing 02.
6. The dwellings hereby approved shall be designed to fall within the scale parameters set out in paragraph 3.6 of the Planning Statement by Richard Bagnall (undated).
7. No development shall take place (including site clearance and any other preparatory works) until a scheme for the protection of trees to be retained has been submitted to and approved in writing by the local planning authority. Such a scheme shall include a plan showing the location and specification of tree protective barriers. Such barriers shall be erected prior to any other site operations taking place. Notice of at least three working days shall be given to the local planning authority that it has been erected.

The approved tree protection measures shall be maintained and retained for the full duration of works or until such time as agreed in writing with the local planning authority. No activities, material storage, placement of site huts or other equipment what-so-ever shall take place within the barrier.

All service routes, drain runs, soakaways or excavations in connection with the development hereby permitted shall remain wholly outside the tree protective barrier.

8. No dwellings shall be occupied until bat habitat enhancements have been installed in accordance with the details set out in the Ecology Report by KP Ecology dated June 2016.

9. The development hereby approved shall be carried out in accordance with the mitigation measures for protection of nesting birds set out in the Ecology Report by KP Ecology dated June 2016.