
Appeal Decision

Site visit made on 24 January 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 20th February 2017

Appeal Ref: APP/C3620/W/16/3158911

Furzen Farm, Furzen Lane, Wallis Wood, Surrey RH5 5QE

- 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 Murray Shotter against the decision of Mole Valley District Council.
 - The application Ref MO/2016/0743/PLA, dated 3 May 2016, was refused by notice dated 12 August 2016.
 - The development proposed is described as 'erection of 3 new build dwellings; in the alternative to permission granted under MO/2015/0811/PNQ, 'change of use from agricultural buildings to 3 dwellings' together with the proposed demolition of residual agricultural barns around the Farmyard'.
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Decision

1. The appeal is allowed and planning permission is granted for development described as 'erection of 3 new build dwellings; in the alternative to permission granted under MO/2015/0811/PNQ, 'change of use from agricultural buildings to 3 dwellings' together with the proposed demolition of residual agricultural barns around the Farmyard' at Furzen Farm, Furzen Lane, Wallis Wood, Surrey RH5 5QE in accordance with the terms of the application, Ref MO/2016/0743/PLA, dated 3 May 2016, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr Murray Shotter against Mole Valley District Council. This application is the subject of a separate Decision.

Procedural Matter

3. Following the site visit and at my request, I sought further comments from the parties concerning the effect of the proposal on the character and appearance of the area. I have taken into account the comments provided by both of the parties in my determination of this appeal.

Main Issues

4. The main issues are, whether the proposal would be a suitable site for housing having regard to its rural location; the effect of the proposal on the character and appearance of the area; and protected species.
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Reasons

Background

5. The proposal before me follows the refusal of an application under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015 ('GPD') for the change of use from agricultural buildings to 3 dwellings which was allowed on appeal on 16 March 2016. Whilst each case must be determined on its own merits I have had regard to this previous in the determination of this appeal.

Suitable site

6. The site lies within a rural area beyond the Green Belt and is outside of any development boundary. It therefore lies in the open countryside for development plan purposes. I have not been referred to any exceptions within Policy CS1 of the Mole Valley Local Development Framework Core Strategy 2009 ('CS') or Policy ENV3 of the Mole Valley Local Plan 2000 ('LP') that the proposal would relate to and because the prior approval scheme has not been implemented and the existing buildings are agricultural, the proposal would not be for the replacement of dwellings, it would be for 3 new dwellings in the countryside.
7. Consequently, the proposal would conflict with Policy CS1 of the CS and ENV3 of the LP which set out a spatial strategy that directs new development to the most sustainable areas of the District which the majority of development will be directed and only allows development in the countryside if it is for a number of exceptions. There would also be conflict with paragraph 55 of the National Planning Policy Framework ('the Framework'). This is because the proposal would result in the provision of isolated homes in the countryside for which no special circumstances, such as the need to accommodate rural workers or the making use of a redundant or disused building, have been demonstrated.
8. However, the appeal buildings could be lawfully converted into 3 dwellings under the prior approval scheme. Regardless of the outcome of this appeal, 3 dwellings could be provided in this location and were the prior approval scheme to be implemented then the appeal development could not be carried out and vice versa. I am satisfied that the prospect of this scheme being implemented is more than a theoretical prospect and there is little before me from the Council to suggest otherwise. This fall back position is a material consideration and I attach substantial weight to it. In this particular case, it indicates to me that a decision should be made other than in accordance with the development plan, insofar as the suitability of the site for housing is concerned in terms of its location.

Character and appearance

9. Building 1 is a large building with a steel frame construction with steel columns. There are some external block walls with cladding and a roof and the building is open fronted to the south. Buildings 2 and 3 are also substantial structures and are centrally sited within the existing yard, which also contains a number of other similar buildings. The appeal site also lies within an Area of Great Landscape Value, characterised by a gently undulating topography with planted field boundaries, woodland and clusters of agricultural buildings interspersed with individual isolated dwellings.

10. The proposal would be seen against a backdrop of large mature trees and in much longer distance views, alongside an existing two storey farmhouse currently in use as a veterinary practice. The proposal would not be conspicuous from Horsham Road and Furzen Lane given the existence of mature trees and hedgerows.
11. Having been provided with the approved drawings relating to the prior approval scheme, although the Council contend the dwellings would be larger this is not evident in the plans before me. The buildings would appear to have a similar scale, mass and appearance than the existing barns. There would be very little to distinguish the proposal before me from the prior approval scheme other than minor changes to the fenestration, which, on their own, would not be incongruous and would not harm the character and appearance of the area. The proposal before me would also reduce the footprint of built development on the site.
12. Overall, the proposal would be similar to many rural barn conversions found within the area and on its own would not cause harm to the character and appearance of it. Moreover, given the similarities with the prior approval scheme I have no sound planning reasons to consider that any materially different impact would be caused to the character and appearance of the site or the surrounding area as an Area of Great Landscape Value, were the scheme before me to be implemented as opposed to that scheme or, when compared with the existing buildings on the site.
13. For these reasons, the proposal would not harm the character and appearance of the site or area. It would accord with Policy CS1 of the CS and Policy ENV3 of the LP which, taken as a whole, seek to protect the intrinsic beauty and character of the countryside, require that development adversely affecting its open character will not be permitted and that all development must be appropriate in scale, form, impact and siting.

Protected species

14. The Council's second reason for refusal relates to insufficient information to satisfactorily demonstrate that the proposal would not affect protected species. The appellant has not undertaken any additional work other than submission of a biodiversity checklist, because this was not an issue raised by the Inspector in granted permission in March 2016. Although the Council do not clarify what species may be affected it is incumbent on me to consider whether there is a reasonable likelihood of protected species being present and would be affected by the development.
15. From what I saw on my site visit the buildings do not offer a suitable habitat for protected species, being open sided barns with no features that would make suitable sites for bat roosts and there was no evidence of nesting birds. On the evidence before me, there is no reasonable likelihood of other protected species being present or affected by the proposal.
16. I conclude, therefore, that it is unlikely that the proposal would result in loss or harm to protected species and it would not result in a breach of the protection afforded to a European Protected Species, the Habitats Directive, or Natural England Guidelines. Accordingly, it would accord with Policies CS15 of the CS or ENV15 of the LP which, seek to conserve and enhance biodiversity and ensure

sites, species and habitats protected in accordance with European and national legislation.

Other Matters

17. The Council refers to the fact that it can demonstrate in excess of a five year housing land supply. Whatever the case may be, this matter does not determine the materiality or otherwise of an extant prior approval and I do not find that it is determinative in this appeal, given my findings in relation to the main issues.

Conditions

18. I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. A condition is required to ensure compliance with the approved plans as this provides certainty. Conditions requiring details of the external materials, boundary treatments are also necessary, to ensure the satisfactory appearance of the development and in order to protect the character and appearance of the area. I have combined the requirements this into a single condition. In the interests of sustainability it is also reasonable to include a condition relating to the energy efficiency of the proposed dwellings.
19. To ensure that risks from land contamination to future users of the land and buildings are minimised, a condition relating to investigation, remediation, verification and monitoring and maintenance of any contamination is necessary. To prevent the increased risk from flooding, I have imposed a condition requiring details of a sustainable surface water drainage system to be agreed. Although the Council have requested details of hard surfacing, this would appear to be for similar aims and I have not therefore imposed it.
20. In order to protect the character and appearance of the building and the area, a condition is also necessary to restrict permitted development rights. Given the extent of land to which the application relates¹ I am satisfied that some extensions under Class A² could be erected. I am mindful that such rights should only be removed in exceptional circumstances but in this case were such further extensions and alterations allowed without consideration, it could undermine the basis of my decision, given my findings in terms of the similarities between the prior approval scheme and the proposal before me, in addition to my findings in relation to character and appearance.
21. Given the nature of the development and in order to protect the living conditions of future occupiers, a condition is required to restrict further windows. Because dormer windows and roof lights would be covered by the removal of Classes B and C, as set out in condition 8 of this permission, I have deleted these requirements.
22. Conditions 3, 4 and 5 are conditions precedent and I am satisfied that such conditions are fundamental to the development to ensure that development does not occur until such matters are resolved, in the interest of a combination of the effects on the character and appearance of the area, sustainability and pollution and public health.

¹ 10558.S.B

² The Town and Country Planning (General Permitted Development) (England) Order 2015.

Conclusion

23. I have found that the proposal would conflict with the development plan and the Framework in terms of its suitability as a site for housing because of its location. However, the existence of a genuine fall back position means that this conflict is outweighed and is not sufficient to justify dismissal of the appeal. Furthermore, the proposal would not harm the character and appearance of the appeal site or its surroundings and would not harm protected species. Having considered all other matters raised, including the concerns of Abinger Parish Council, I therefore conclude that in this particular case, the appeal should be allowed.

Richard Aston

INSPECTOR

SCHEDULE

CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans: 10558.S.A, 10558.3.A, 10558.1.A, 10558.4.A, 10558.2.A, 10558.7.A, 10558.5.A, 10558.8.A, 10558.6.A and 10558.S.B.
- 3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted and details of proposed boundary treatments have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall commence until details of how the development shall incorporate the generation of energy from renewable and low carbon sources sufficient to off-set at least 10% of estimated residual energy demand of the development on completion, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 21 days of the report being completed and approved in writing by the local planning authority.
- 6) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the

local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement, improvement or alteration of the dwellings and no addition or other alterations to their roofs shall be erected, constructed or take place other than those expressly authorised by this permission.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows other than those expressly authorised by this permission shall be constructed on any of the elevations of the dwellings hereby permitted.

-----END OF CONDITIONS-----