The Planning Inspectorate

Appeal Decision

Site visit made on 14 March 2017

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 24th March 2017

Appeal Ref: APP/F0114/W/16/3163432
Parcel 7259, Hayeswood Road, Timsbury, Bath, Somerset BA2 0HH

- 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 Valentino Muja against the decision of Bath & North East Somerset Council.
- The application Ref 16/01286/FUL, dated 17 March 2016, was refused by notice dated 19 May 2016.
- The development proposed is described by the appellant as a "retrospective full application for planning permission for building works to agricultural building and continued implementation of residential conversion works in accordance with plans permitted by 15/01268/ADCOU."

Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant's representations include his case that the proposed development comprises no more than the conversion of the existing barn to residential use, as per the prior approval dated 8 May 2015 (LPA Ref 15/01268/ADCOU). The Council considers that this approval no longer applies because the extent of the works that have taken place exceed those approved under that permission. I note that the appellant has recently appealed the Council's non-determination of an application for a Lawful Development Certificate (LPA Ref 16/05624/CLEU)[1]. However, this appeal is against the refusal of planning permission and must, by statute, be determined in accordance with development plan policy unless material considerations indicate otherwise.[2]

Main Issues

3. The main issues are whether:

   a) the barn is incapable of conversion without substantial reconstruction,

   b) the site is remote from services, and

   c) its residential use would accord with Green Belt policy and harm the openness of the Bristol and Bath Green Belt.

[1] APP/F0114/X/17/3170735
[2] S70(2) of the Town and Country Planning Act 1990 & S38(6) of the Planning and Compulsory Purchase Act 2004

Reasons

Is the barn capable of conversion?

4. There was a barn on the site but it does not exist now. As the parties agree, the ground levels have been excavated, foundations and new dwarf block walls and plastic drain runs installed. The metal framework of what was clearly the original barn, as confirmed by the Council's photograph of the original barn in 2014 before the work commenced, has been raised in height by bolting it to new sections of steelwork which protrude about a metre above the ground. But the works required to provide a dwelling in this position, including the above retrospective works, could not by any stretch of the imagination be described as conversion works. On the contrary they would constitute a new building, which is why planning permission is required, hence this appeal.

5. 'Saved' Policy ET.9 of the Bath and North East Somerset Local Plan 2007 (LP) states, in subsection 3) b), that conversion of a building to a new use will be permitted unless it is not capable of conversion without substantial or complete reconstruction. For the above reasons the proposed development would fail to comply with this Policy.

Is the site remote from services?

6. The site is part of a field in the open countryside. Although Hayeswood Road has no footway the appellant has shown a footpath linking the site entrance to a point near the south west corner of his wider land ownership opposite the point where the footpath into High Littleton begins, next to the bus stop on the corner of the main road (A39).

7. However, such a footpath would run along a line of mature trees next to the road which contribute to the amenity of the area and which should be preserved. It would in theory be possible to run a footpath further into the site but that is not what is proposed. In any case, at the western end of the appellant's field the land is at a considerably lower level than the road, which would make the creation of such a route difficult and expensive and, ultimately, probably of limited use except to all but the fittest likely users of it.

8. As such I discount the use of such a footpath in linking the site to the bus stop and footway on the main road. This would mean that in all likelihood pedestrians from the site would have to walk along Hayeswood Road, which is unlit and has no footway. In my opinion this would be unlikely to happen, especially at night, because it would be hazardous.

9. There is a reasonably good bus service into High Littleton and onwards toward Wells from the corner bus stop and there is a footway all the way into High Littelton from this point. But, having driven between the site and the shop in the village I can confirm that this is a distance of very nearly one mile. The appellant's plan showing that it is 920 metres along the Public Right of Way footpath to the edge of High Littleton is irrelevant because the shops and other facilities are near the centre of the village, which is further away.

10. The public footpath is also unlit and likely to be muddy for much of the year and as such is unlikely to be a route that would realistically be used to access village facilities. In any case these facilities are very basic and in reality residents of the site would need to access better shopping and other facilities in

Bath, Radstock or Midsomer Norton on a regular basis, for which they would need a private car.

11. For these reasons I conclude that the site is remote from services. It would be contrary to Section 5) of LP Policy ET.9, which states that conversion of a building to a residential use will be permitted unless the applicant has not made every reasonable attempt to secure suitable business re-use and it is in a position isolated from public services and community facilities. This is of course notwithstanding that the 'barn' is incapable of conversion without substantial or complete reconstruction.

Green Belt issues

12. The Council considers that the conversion and domestic use of the 'barn' in this prominent rural location would result in a proliferation of domestic activity with associated clutter and paraphernalia to the detriment of visual amenity and the openness of the Green Belt.

13. I acknowledge that the site was last used agriculturally and that there could be outside storage of farm equipment, which could affect the openness of the Green Belt. But this is the authorised use of the site and farming activity is a common use in Green Belts. I also acknowledge that the proposed building would be similar in volume to the original barn on the site.

14. Paragraph 79 of the National Planning Policy Framework (NPPF) makes clear that one of the fundamental aims of the Green Belt is to keep land permanently open. NPPF paragraph 89 states that the construction of new buildings in the Green Belt is inappropriate and that replacement buildings of the same size are only acceptable as an exception if their use is the same. That would not be the case with the proposed residential use. The proposed development would therefore be inappropriate development in the Green Belt.

15. Whilst in theory a condition on any permission could preclude any extensions to the proposed dwelling and to any incidental domestic outbuildings such as garage or storage buildings such a condition would not, in my view, be reasonable. Anyone living in the appeal dwelling should have a legitimate expectation that they could use the site for its full domestic purpose, which should in my view not preclude such incidental structures or extensions. However, these would compromise the openness of the Green Belt and so would not be appropriate in this location. As such the proposal would conflict with the aim of keeping the Green Belt open, contrary to NPPF paragraph 79.

16. LP Policy ET.9 subsection 7) also reflects national policy and the proposed development would conflict with it for the same reasons as set out above. Policy CP8 of the Bath and North East Somerset Core Strategy (adopted in 2014) states that the openness of the Bristol and Bath Green Belt will be protected from inappropriate development in accordance with national policy. The proposed dwelling is also therefore contrary to this Policy.

Other Matters

17. The appellant contends that withholding planning permission would breach his human rights and cause him significant personal and financial harm. In particular it would breach Article 1 of the First Protocol (protection of property) and Article 8 (respect for private and family life).

18. In respect of Article 8 this would plainly not be the case because the appellant is not currently living at the site. In respect of Article 1 of the First Protocol the interference in such rights through the statutory planning system has been held by the courts to be justified in the wider public interest. Failure to grant planning permission is justified for the reasons set out above and proportionate and so does not amount to a violation of the appellant's property rights.

19. I acknowledge the personal and financial circumstances of the appellant but such circumstances do not outweigh the conflict with development plan and national planning policy as set out above. Investing in land and buildings is not without risk and there is no onus on the planning system to mitigate such risk by granting permission in the circumstances outlined by the appellant or similar circumstances where such investment may ultimately result in financial loss. Indeed, if this was the case the planning system would be ineffective in delivering its purpose of achieving sustainable development.

Conclusion

20. For the reasons given above I conclude that the appeal should be dismissed.

Nick Fagan

INSPECTOR