The Planning Inspectorate

Appeal Decision

Site visit made on 13 June 2017

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

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

Decision date: 19 July 2017

Appeal Ref: APP/W1850/W/17/3171828
Great Woodend Farm, Woodend Lane, Linton, Ross-on-Wye HR9 7SR

- 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 J Watkins against the decision of Herefordshire Council.
- The application Ref 163939, dated 31 October 2016, was refused by notice dated 14 February 2017.
- The development proposed is erection of 2no. dwellinghouses.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 2no. dwellinghouses at Great Woodend Farm, Woodend Lane, Linton, Ross-on-Wye HR9 7SR, in accordance with the terms of the application Ref 163939, dated 31 October 2016, subject to the attached schedule of conditions.

Main Issues

2. The main issues are:

   - whether the proposal would be in a suitable location;
   - the effect of the proposed development on the character and appearance of the area; and
   - whether sufficient information has been supplied to enable the effect on biodiversity, protected species and trees to be properly assessed.

Reasons

Suitability of location

3. The appeal site is part of Great Woodend Farm, located off Woodend Lane which runs between the rural villages of Linton and Gorsley, not far away. It comprises a long single storey agricultural building and a private access which is already used by residents of a collection of five barns converted to residential use to the west. A further dwelling lies just beyond the barn conversions. Therefore the buildings on the wider site, although surrounded by open countryside, are now largely residential. It is proposed to replace the long agricultural building with two detached dwellings which would utilise the existing access off Woodend Lane.

4. The Council's spatial strategy for the distribution of housing within the county is set out in policy SS2 of the Herefordshire Local Plan Core Strategy 2011-2031

(CS).[1] It seeks to focus residential development on Hereford and the market towns. In rural areas housing is delivered across 7 Housing Market Areas (HMA) referred to in policy RA1 of the CS. The appeal site is only about 0.7 km from the villages of Linton and Gorsley in the Ross-on-Wye HMA, which are identified in CS policy RA2 as settlements which will be the main focus of proportionate housing development. However, policy RA2 also specifies that that housing proposals should be located within or adjacent to the main built up area of a settlement. Despite its relative proximity to settlements where proportionate housing development is sanctioned, the location of the appeal site beyond the main built up areas means that the proposal would conflict with policy RA2 of the CS.

5. Policy RA3 of the CS states that in rural locations outside of settlements, residential development will be limited to proposals which satisfy one or more of a set of seven criteria. Whilst criterion 3 allows for the replacement of an existing dwelling (with a lawful residential use) that is comparable in size and scale, the building to be replaced in this appeal is an agricultural barn. Criterion 4 refers to the sustainable re-use of a redundant or disused building but no case has been made to suggest that the existing barn would fall into that category. As the other exceptions are not relevant, the proposal would also be in breach of CS policy RA3.

6. However, the Council advises that, despite the relatively recent adoption of the CS, it cannot currently demonstrate a 5-year housing land supply (HLS). Nevertheless, it refers an appeal decision relating to Land at Longworth Lane, Bartestree[2], endorsed by the Secretary of State, which concluded that CS policies for the supply of housing, which included SS2, RA1, RA2 and RA3, should still carry a high degree of weight in terms of the spatial strategy being pursued.

7. The recent Supreme Court (SC) judgement[3], also cited by the Council, confirmed that the weight to be given to development plan policies, in the context of a lack of a 5-year HLS, is a matter of planning judgement for the decision maker. The SC also explains that the primary purpose of paragraph 49 of the National Planning Policy Framework (the Framework)[4] is to trigger the operation of the fourth bullet point of paragraph 14, where the local planning authority cannot demonstrate a 5-year HLS.

8. Moreover, that paragraph 49 of the Framework must be seen within the context of paragraph 47, which sets the objective of boosting the supply of housing. The phrase 'policies for the supply of housing' is likely, according to the SC, to refer to policies relating to the provision of housing such as housing allocation policies as opposed to, for example, policies for the protection of the countryside. The Council and the judgement refer to this as applying a 'narrow' meaning to the definition of 'policies for the supply of housing'.

9. However, the SC makes it clear in the judgement that the important issue is not whether particular policies should be categorised as 'policies for the supply of housing' but whether the result is a five year supply in accordance with the objectives of paragraph 47. If there is no five year supply it does not matter if

[1] Adopted October 2015
[2] APP/W1850/W15/3051153
[3] Suffolk Coastal District Council v Hopkins Homes and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council [2017] UKCS 37
[4] Published 2012

that is because of policies which specifically deal with housing provision or because of other restrictive policies, it is the shortfall itself which triggers the operation of the 4th bullet point of paragraph 14.

10. Therefore, even though, as the Council submit, the 5 year HLS may have improved from 3.63 years, at the time of the Land at Longworth Lane, Bartestree appeal previously discussed, to 4.39 years, there is still no 5 year HLS so the 'tilted balance' in the fourth bullet of paragraph 14 applies. Consequently, the presumption is that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

11. Planning law, as noted in paragraph 11 of the Framework, requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.[5] The Framework, including paragraph 14 where engaged, is a significant material consideration in all planning decisions.

12. A further crucial consideration in this appeal is that prior approval was given by the Council on 18 September 2015 for the proposed change of use of an agricultural building to two dwellinghouses[6], under Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). That prior approval is extant and the appellant submits that there is a strong possibility that it would be implemented should this appeal be dismissed. I see no reason to take a different view and therefore consider that the prior approval represents a realist 'fallback' position.

13. The Council asserts that the prior approval is not relevant to the appeal scheme. It refers to a Government paper[7], published prior to the introduction of the changes to the GPDO, which indicated a desire to ensure historic barns are not lost by not allowing total demolition and new build. No evidence has been presented to suggest that the agricultural building to be replaced in this appeal has any particular historical or architectural merit. Whilst Class Q relates to the conversion of an existing building, the building operations permitted in relation to such conversions, whilst restricted, can be fairly extensive.

14. I fully recognise the rationale for the Council's spatial strategy, contained in CS policies SS1, RA1, RA2 and RA3, to direct development to appropriate locations. However, the implementation of the prior approval would result in two residential dwellings at the location, which would be essentially the same outcome as the appeal proposal. The appellant further advises that the dwellings would be a similar size and offer the same amount of accommodation with no increase in the likely number of occupants, which has not been disputed by the Council.

15. The supporting text of policy RA3 of the CS refers to avoiding the provision of new isolated homes, reflecting similar terminology in paragraph 55 of the Framework. Although the appeal site is not within or adjacent to the built up area of the settlements of Linton and Gorsley, it is located between them and,

[5] s38(6) Planning and Compulsory Purchase Act 2004 and s70(2) Town and Country Planning Act 1990
[6] Ref 152209/PA4
[7] 'Greater flexibilities for change of: Report on responses to the consultation' (March 2014)

according to the Council, is only about 0.7km from each of them. Whilst Woodend Lane is relatively narrow and like many country lanes does not have a dedicated footway, given the relatively short distances involved, I see no reason why, despite the gradients leading to Linton, at least some journeys of future occupiers to nearby settlements would not be on foot or by bicycle. Therefore, I do not consider that there would be total reliance on the private motor car. In any event the position would be the same for the 'fallback'.

16. Furthermore, the existing barn is not an isolated building. Rather, it is near a public highway on a site comprising five existing residential barn conversions with a further dwelling beyond them to the west.

17. As previously referred to, policy RA3 does allow for the replacement of an existing dwelling (with a lawful residential use) that is comparable in size and scale in rural locations outside of settlements. In theory therefore, as the appellant submits, if the prior approval were implemented, a subsequent planning application could be made to replace the dwellings. Whilst it is accepted that such an application would not be guaranteed permission and that, practically, it may be an unlikely scenario for financial reasons, it again illustrates that the same or a similar result could ultimately be achieved because of the extant prior approval.

18. The appellant has drawn my attention to a number of appeal decisions where permitted development rights were afforded weight.[8] The most relevant decision relates to Great Waspes Farm issued on 24 January 2017.[9] That case also involved a Class Q prior approval 'fallback'. The Inspector considered the fallback of 'critical importance', which ultimately outweighed conflict with the development plan. I find the facts very similar to those in the appeal before me and the line of reasoning persuasive. Therefore, I give that decision significant weight in my deliberations.

19. With regard to the Land at Longworth Lane, Bartestree appeal decision, already referred to, it concerned an application for outline planning permission for up to 100 dwellings, which would have had a significant impact on the Council's spatial strategy, whereas I do not consider that an appeal relating to 2 dwellings would, overall, undermine the Council's spatial strategy. Especially, in a context where prior approval for two dwellings exists.

20. The effect of the proposed development in relation to its location would be no different from the effect of the implementation of the prior approval. Therefore, although there would be conflict with aspects of CS policies SS1, SS2, RA2 and RA3 and with paragraph 55 of the Framework, the harm arising is outweighed by the extant prior approval. Furthermore, given that the proposal would replace an existing building, be proximate to other dwellings and relatively near settlements with some services and facilities, I do not consider that the actual harm as a result of its location would be significant. Consequently, I conclude that the proposal would be in a suitable location.

Character and appearance

21. The long single storey agricultural building, which would be replaced, runs from the south west to north east and appears to be constructed of plywood panels and a corrugated sheet roof with a timber clad gable. As already established,

[8] APP/P1805/A/09/2103765 and APP/J1860/A/12/2177088
[9] APP/D3830/W16/3156030

there is no evidence to suggest that its utilitarian form has any particular architectural merit or historic significance. It has little in common with the nearby barn conversions.

22. Although in an elevated position, it is set well back from Woodend Lane to the east of the private access road. It is also substantially screened by trees and dense vegetation. The two proposed dwellings would be within the same linear footprint of the building to be demolished. The submitted plans indicate that the existing conifers at the northern end of the site would be retained whilst other vegetation would be selectively thinned keeping some screening and providing car parking.

23. Whilst the new dwellings would be two-storey, the upper floor would be built into the roof served by dormer windows, and the land level of the bank on which the agricultural building is sited would be reduced. The combination of the set-back from the highway, orientation of the dwellings, lower ground level and screening, which could be secured by condition, would mean that the development would not be prominent in the landscape and there would be limited public views.

24. The stone barn conversions opposite the appeal site are attractive and high quality, incorporating original features such as arrow-slit windows. However, whilst the proposed dwellings do not attempt to be reproduction barn conversions, their modest height, gabled dormer windows and arched head details above windows and doors reflect some of the characteristics of rural cottages. Moreover, the dwelling on the same site, just to the west of the barn conversions, appears to be a more domestic-looking residence. That building is also part of the character of the area relevant to CS policies LD1 and SD1. Furthermore, the proposed dwellings would complement each other as each is designed as a mirror image.

25. Although some concern has been expressed about the proposed red brick construction, I saw other red-brick buildings of various designs in the wider area. In any event, materials to be used in externally facing walls and roofs could be controlled by condition. Whilst the replacement of an agricultural building with residential dwellings inevitably leads to some level of domestication of the countryside, there are already dwellings on Great Woodend Farm and in the local area of more than one style. Therefore, I take a different view from the Council and find that the relatively modest scale, height, proportions and massing of the proposed dwellings respects surrounding development and makes a generally positive contribution to the architectural diversity and character of the area.

26. Although I do not have full details for the prior approval scheme, I give some weight to the appellant's contention that the constraints involved in converting the existing functional agricultural building, would be likely to impact on the quality, in terms of design and appearance, of any resulting dwellings. I also note that, according to the submitted plans, the proposed two storey dwellings would be no higher than the building to be replaced.

27. Overall therefore, I conclude that the proposal would not harm the character and appearance of the area. Consequently, there would be no significant conflict with policies LD1 or SD1 of the CS, which, amongst other things, seek to ensure that development proposals demonstrate that the character of the landscape and townscape has positively influenced their design, scale, nature

and site selection. Moreover, that they should maintain local distinctiveness through incorporating local architectural detailing and materials, respecting the scale, height, proportions and massing of surrounding development, whilst making a positive contribution to the architectural diversity and character of the area.

Biodiversity, protected species and trees

28. Whilst noting the comments of the Council's Ecologist requesting a Tree survey and Ecological survey, the Council Officer's report states that: *'While this will form a reason for refusal, the Council appreciate that this may be able to be easily overcome'.* Although I agree that it would have been preferable for such information to have been supplied with the application to enable it to be assessed against CS policies LD1 and LD2, I also note that no further information was requested from the appellant. However, I am satisfied that the requirement could be dealt with by the imposition of appropriate conditions.

Other Matters

29. In addition to the issues already discussed, it is suggested that the proposal would result in overlooking of some of the adjacent barn conversions, unlike the extant prior approval. However, given that the dwellings would be on the same alignment as the existing agricultural building, albeit at a lower level, I consider that there would be sufficient distance between the proposed development and habitable rooms of adjacent properties. Although some garden areas may be overlooked to a limited extent, because of the open nature of parts of the barn conversion development, they are already subject to overlooking from the private road and other existing properties. There could also be some mitigation by appropriate landscaping secured by condition. Therefore, I do not consider that the changes associated with the proposal would have a significant adverse effect and it does not lead me to alter my decision.

30. I take a similar view with regard to overshadowing as, according to the plans, the reduction in ground levels would mean that the new dwellings would be no higher than the existing agricultural building. Therefore, there would be no significant change in terms of overshadowing. Matters regarding land ownership were raised by some parties but they would be a private matter between the relevant parties and not within my jurisdiction. In any case, I understand that the red line on the location plan appeared to generate those concerns has been amended.

31. It is suggested that additional cars parked to the side of the existing private access road would present a safety hazard, especially if children were to occupy the dwellings which have relatively small front gardens. The Council has not raised concerns regarding highway safety in their assessment and the access road itself is private. There are already fenced garden areas adjoining it. If fencing or some other form of enclosure were considered necessary, it could be incorporated in a suitable landscaping scheme secured by condition. The private access is also of a reasonable width and I do not consider that the additional traffic generated by two dwellings would significantly affect it. The condition of Woodend Lane has been referred to. Ultimately the surfacing of public roads is a matter for the relevant highway authority. Therefore, those matters do not lead me to alter my decision.

32. Concerns have been expressed about provision of foul and surface water drainage. Such aspects could be satisfactorily dealt with by condition. Flood risk has also been referred to in relation to the existing access road and Woodend Lane. The Council have not expressed concern regarding flooding in the area and advise that the appeal site is located in Flood Zone 1, which is the lowest risk category and generally means that no formal flood risk assessment is required. There is no independent professional evidence before me to suggest that a significant flood risk is present. The scheme to deal with surface water drainage should ensure that any existing situation should not be exacerbated.

Conditions

33. The Council has suggested conditions which I have considered, making minor amendments if necessary to ensure compliance with the tests contained in the Planning Practice Guidance. A condition setting a time limit for commencement of the development is required by statute. It is appropriate that there is a condition requiring the development to be carried out in accordance with the approved plans for certainty. Conditions relating to materials and soft and hard landscaping are necessary to protect the character and appearance of the area. A water efficiency condition is appropriate to comply with the police SD3 of the CS and to contribute towards sustainability.

34. A condition referring to car parking is required in the interests of highway safety. A discrepancy between the application form, which referred to a total of 6 parking spaces and the block plan which only indicates 5, was referred to in the Council Officer's Report, which indicated that a minimum of 3 parking spaces per dwelling was necessary to accord with the Council's parking standards. As the proposed dwellings are 4 bedroom and there is sufficient space on site, I consider that such a provision is necessary. The Council's suggested conditions did not reflect that requirement and I have, therefore, amended them accordingly.

35. A cycle parking condition is appropriate to encourage use of alternative modes of transport. Conditions relating to trees and root protection areas along with a habitat enhancement scheme are necessary to safeguard, where possible, existing trees and to make appropriate provision for protected species and habitats. Conditions relating to foul and surface water drainage arrangements are necessary to ensure appropriate systems are in place to reduce the risks of flooding and pollution.

Conclusions

36. The proposal would provide some economic benefits during the construction period and from the contribution made to the local economy by future occupiers. In social terms, there would be a contribution to the supply of housing in an area where the Council has still not achieved a 5-year HLS. Future occupants would contribute towards the viability of services and facilities in nearby villages. Environmentally, detailed information and habitat enhancement, landscaping can be secured by condition which is an advantage over the extant prior approval which has no such comparable conditions.

37. Whilst the Council suggests that the benefits associated with construction would arise with any development, that relies on another scheme gaining approval and being implemented. It further suggests that two dwellings would

constitute a very modest contribution to housing supply. However, the 5-year HLS requirement is a minimum rather than a cap and all such contributions have value, particularly in the context of a lack of a 5-year HLS. For reasons already given, I have taken a different view from the Council regarding alleged harm to the character of the landscape or nearby buildings.

38. Although I have found conflict with aspects of development plan policies relating to location, taking account of the fallback position, I do not consider that the adverse effects of the proposal overall would significantly and demonstrably outweigh the benefits.

39. For the reasons giving 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 begun before the expiration of three years from the date of this decision.

2) The development shall be carried out strictly in accordance with the approved plans: drawings titled Location Plan, Block Plan, Typical Section as Proposed, End Elevation as proposed, Proposed Ground Floor Plan, Proposed First Floor Plan, Rear Elevation as Proposed, Front Elevations as Proposed and Sketch View from South West, except where otherwise stipulated by conditions attached to this permission.

3) With the exception of any site clearance and groundwork, no further development shall take place until details or samples of materials to be used externally on walls and roofs 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) Prior to the first occupation of the development a scheme demonstrating measures for the efficient use of water as per the optional technical standards contained within Policy SD3 shall be submitted to and approved in writing by the local planning authority and implemented as approved.

5) With the exception of any site clearance and groundwork (excluding any works to retained features), no further development shall commence on site until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The details submitted should include:

   Soft landscaping

   a) A plan(s) showing details of all existing trees and hedges on the application site. The plan should include, for each tree/hedge, the accurate position, species and canopy spread, together with an indication of which are to be retained and which are to be removed.

   b) A plan(s) at a scale of 1:200 or 1:500 showing the layout of proposed tree, hedge and shrub planting and grass areas.

c) A written specification clearly describing the species, sizes, densities and planting numbers and giving details of cultivation and other operations associated with plant and grass establishment.

Hard landscaping

a) Existing and proposed finished levels or contours.

b) The position, design and materials of all site enclosure (e.g. fences, walls).

c) Car parking layout, to include a minimum of 3 car parking spaces per dwelling, and other vehicular and pedestrian areas.

d) Hard surfacing materials

6) The soft landscaping scheme approved under condition 5 shall be carried out concurrently with the development hereby permitted and shall be completed no later than the first planting season following the completion of the development.

The landscaping shall be maintained for a period of 5 years. During this time, any trees, shrubs or other plants which are removed, die or are seriously retarded shall be replaced during the next planting season with others of similar sizes and species unless the Local Planning Authority gives written consent to any variation. If any plants fail more than once they shall continue to be replaced on an annual basis until the end of the 5-year maintenance period.

The hard landscaping shall be completed prior to the occupation of the development hereby permitted

7) Prior to the first occupation of any dwelling to which this permission relates an area for car parking shall be laid out within the curtilage of that property, in accordance with the hard landscaping scheme referred to under condition 5, which shall be properly consolidated, surfaced and drained, in accordance with details to be submitted to and approved in writing by the local planning authority and those areas shall not thereafter be used for any other purpose than the parking of vehicles.

8) Within 8 weeks of the first occupation of the development hereby approved a scheme for the provision of covered cycle parking on site shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The cycle parking shall be installed and made available for use in accordance with a timescale to be agreed in writing by the local planning authority.

9) Prior to commencement of development, plans and particulars, in accordance with BS5837: 2012 – Trees in relation to design, demolition and construction, shall be submitted to and approved in writing by the local planning authority. This should include :

a) A topographical survey. This shall include all trees present on the site that are over 75mm stem diameter, measured at 1.5 m above ground level. Trees over this size growing on land adjacent to the site, whose branches overhang the site boundary, shall also be included.

b) A tree survey. This shall include details of all trees included in the topographical survey. A schedule to the survey shall provide a reference number (to be recorded on the tree survey plan), species, height in metres, stem diameter in millimetres at 1.5 metres above ground level, branch spread

in metres, height in metres of crown clearance above adjacent ground level, age class, physiological condition, structural condition, preliminary management recommendations, estimated remaining contribution in years and retention category grading.

c) A tree constraints plan. This shall include details of the below ground constraints, represented by defined Root Protection Areas and the above ground constraints that the trees pose by virtue of their size and position.

d) An Arboricultural Implications Assessment. This shall identify, evaluate and mitigate where appropriate the extent of direct and indirect impacts on existing trees that may arise as the result of any site layout proposal.

e) An Arboricultural Method Statement. This shall provide a methodology for any aspect of development that has the potential to result in loss or damage to a tree. It will include details of a monitoring regime of ongoing development operations by a qualified arboriculturalist to ensure full compliance with the Arboricultural Method Statement and the approved Tree Protection Plan.

f) A Tree Protection Plan. This shall include details of trees selected for retention, trees selected for removal, the location of protective barriers and any other physical protection measures, design details of the proposed protective measures and areas of structural landscaping to be protected from construction operations, to prevent soil compaction.

10) Prior to commencement of the development, a detailed habitat enhancement scheme should be submitted to and be approved in writing by the local planning authority, and the scheme shall be implemented as approved.

11) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.

12) 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.

END OF SCHEDULE