

Appeal Decision

Site visit made on 4 July 2017

by M C J Nunn BA BPL LLB LLM BCL MRTPI

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

Decision date: 9th August 2017

Appeal Ref: APP/J2210/W/17/3172872

Boarded House Farm, Canterbury Road, Herne Common, CT6 7LG

- 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 S Westley against the decision of Canterbury City Council.
 - The application Ref CA/16/00358, dated 11 February 2016, was refused by notice dated 21 October 2016.
 - The development is described as 'change of use from office to two bedroom residential dwelling'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Canterbury District Local Plan ('the Local Plan') was adopted on 13 July 2017 and replaces the 2006 Canterbury District Local Plan. The parties' views were sought on any implications for this scheme, and the comments received have been taken into account in my decision. I have assessed the appeal on the basis of the 2017 Local Plan.
3. The development has already occurred. The Council has described the application as retrospective. The retention of a use or development is not development as defined in the relevant planning legislation. Therefore, I have assessed the appeal on the basis of the original act of development.

Main Issues

4. The main issues are: (i) whether the scheme would comply with national and local policy regarding dwellings in the countryside; (ii) whether the dwelling would provide satisfactory living conditions for its occupiers, having regard to outdoor amenity space, and noise and disturbance; (iii) the effect on the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar Site.

Reasons

Background

5. The appeal building is located within a site used for various commercial purposes including plant and equipment hire, as well as the processing of
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demolition waste. Within the site there are soil heaps, piles of rubble, machinery and other assorted paraphernalia. On the opposite side of Canterbury Road is a business park. There are also a limited number of residential properties along the road, although the wider area comprises open countryside.

6. The building subject of this appeal was granted permission in March 2005 for: *erection of office/toilet building*¹. I understand the appellant and his family subsequently moved into it when the dwelling in which they were living collapsed. At my site visit, I saw the building was fitted out as a house with a kitchen, sitting room, bedrooms, bathroom and toilet. However, it is not clear who currently resides at the property. An enforcement appeal relating to the change of office to mixed use comprising office and residential use on the land was dismissed and the enforcement notice upheld in December 2011². A 'prior notification' application to convert the building from offices into a two bedroom dwelling was refused by the Council in November 2013³.

Local and National Policy

7. Notwithstanding its commercial nature, the site falls within designated countryside. The National Planning Policy Framework ('the Framework') states that isolated homes in the countryside should be avoided, unless there are special circumstances. These include, amongst other things, the essential need for a rural worker to live permanently at or near their place of work in the countryside; or where the development would re-use redundant or disused buildings and would lead to an enhancement to the immediate setting.
8. Policy SP4 of the Local Plan sets out the strategic approach to the location of development. A hierarchical approach is identified whereby development is to be principally focussed in the urban areas of Canterbury, Herne Bay and Whitstable, but with some development in rural service centres and local centres. Within the defined countryside, development will only be permitted if required for agriculture or forestry.
9. Policy HD4 relates to new dwellings in the countryside (including re-use of existing buildings). It largely follows the criteria for new dwellings set out in Paragraph 55 of the Framework. Amongst other things, it states that dwellings will only be granted where there is an essential need for a rural worker to live permanently on site. The policy also requires that an independent report be produced demonstrating the need for the dwelling and the financial viability of the business. The policy also allows proposals that would re-use redundant and disused buildings and lead to an enhancement to the immediate setting.
10. With regards to Policy HD4, it has not been demonstrated that there is an essential need for a rural worker to live on the site. The appellant mentions security, and supervision of machinery, but there is no explanation why an on-site presence is essential. No independent report has been produced justifying the need for on-site living, nor evidence relating to the financial viability of the business, as required by Policy HD4. Although the building has been used unlawfully for residential occupation, it does not follow that it can be regarded

¹ CA/05/00180

² APP/J2210/C/11/2149467

³ CA/13/01831/PAJ

as redundant or disused in terms of the policy. There is nothing to indicate that the scheme would lead to the enhancement of the immediate setting, notwithstanding the small amenity area around the building.

11. Policy HD5 deals with the conversion of rural buildings to residential use. Conversion is only allowed if various criteria are satisfied. The supporting text⁴ to the policy makes clear that new housing in the countryside is subject to strict control, and residential conversion will only be allowed in exceptional circumstances, and where every reasonable effort has been made to secure suitable alternative re-use. Whilst the scheme may accord with certain aspects of the Policy (in terms of design, and in that no major reconstruction, extension or additional buildings are necessary), it fails to comply with other criteria.
12. In particular, there is no supporting statement that the building has been continuously actively marketed for a year for suitable alternative re-uses, such as business, tourism or community uses; nor is there evidence that the residential conversion is a subordinate part of a scheme for an appropriate business, tourism or community re-use, or that it meets an identified local housing need. It would also conflict with other policies of the plan, which restrict residential development within the designated countryside.
13. Although there is a concentration of commercial premises on the opposite side of the road, as well as a limited number of dwellings in the vicinity, the surrounding area is countryside remote from any established urban area. Therefore, the building cannot be regarded as in a sustainable location. The appellant mentions a number of facilities within walking distance including two cafes, two garages, a hairdressers, pet shop and DIY shop. There are also bus stops close by. That said, any residents of the dwelling are likely to be highly reliant on the use of a car for many journeys to reach a range of shops and local services, and other essential facilities. One of the overarching aims of the Framework is to achieve sustainable patterns of development. This scheme would not achieve that objective.
14. To sum up on this issue, the appellant has submitted little evidence to support making an exception to national and local policy regarding dwellings in the countryside. The scheme would not meet the sustainable objectives of the Framework, and would be contrary to Policies SP4, HD4 and HD5 of the Local Plan.

Living Conditions – future occupiers

15. The Council has not cited any minimum standards for private amenity space. The submitted plans show an area of land identified as '*proposed curtilage of dwelling*'. This comprises narrow strips of land along each side of the building. These areas would not provide a high quality amenity space for the residents of the dwelling, especially given the proximity of industrial and commercial uses including processing demolition waste.
16. The proximity of these uses, and location of the building directly abutting the main site entrance, gives rise to the potential for noise and disturbance. This is not a location that provides satisfactory living conditions for normal residential occupation. I reach this view notwithstanding that the building is of modern

⁴ Paragraph 2.63

construction, double glazed with high levels of insulation. The appellant argues that the business opens from 7am to 5pm on weekdays when most people are at work, and so residents would not experience any noise. However, it cannot be guaranteed that residents would not occupy the building during the day.

17. Overall, I find that the scheme would not provide satisfactory living conditions for occupiers, and would conflict with Policy DBE3 of the Local Plan, which requires regard to be had to occupiers' amenity.

Effect on SPA/Ramsar Site

18. According to the Council, Natural England (NE) has published advice indicating that the proposal may affect the integrity of the Thanet Coast and Sandwich Bay SPA and Ramsar Site. The proposal may, either individually, or in combination with other developments, result in increased recreational disturbance to these protected sites. European legislation requires a precautionary approach when considering the impact of a proposal on a site of international importance to nature conservation.
19. The appellant is of the opinion that the use of the building for its lawful office use would have a greater impact on the SPA. However, NE is clear that mitigation is required in respect of residential schemes. No completed planning obligation is before me and no alternative mitigation has been proposed. In the absence of any mitigation, I cannot be certain that the proposal would not adversely affect the integrity of the SPA and Ramsar Site. As such the proposal would conflict with Policies SP6 and LB5 of the Local Plan which together restrict developments that could adversely affect the integrity of such sites.

Other Matters

20. It is not clear whether the appellant currently resides at the appeal building. If he does, I recognise that dismissing the appeal would potentially interfere with his rights under Article 8 of the Human Rights Act. This sets out the right to respect for private and family life and the home. However, this is a qualified right and requires a balance between the rights of the individual and wider community interest. In addition, the appellant mentions that within the larger site, he is intending to resume construction on a six bedroom house, and that he is also intending to convert a barn into two residential units.
21. Having regard to the legitimate and well-established planning policy aims to protect the countryside, to achieve patterns of sustainable development, to have regard to the legal duty in respect of protected habitats and species, as well as the potential future availability of alternative accommodation, a refusal of permission would be proportionate and necessary in the circumstances. It would not, therefore, result in a violation of the appellant's rights under Article 8.
22. I note the appellant's frustrations in dealing with the Council, and the delays which have arisen. I also note that the Council has not raised objections in terms of the effect of the scheme on the character and appearance of the area. I have taken into consideration the Government's policy objective to boost significantly the supply of housing. However, these factors do not alter my view that this scheme would be unacceptable in this location.

Conclusion

23. To sum up, the proposal conflicts with national and local policy regarding dwellings in the countryside. It does not provide satisfactory living conditions for future occupiers, having regard to outdoor amenity space, and noise and disturbance. No mitigation is proposed in respect of the Thanet Coast and Sandwich Bay SPA and Ramsar Site. I am satisfied refusal of permission would be proportionate and necessary having regard to Article 8 of the Human Rights Act. Therefore, for the reasons above, I conclude that the appeal should be dismissed.

Matthew C J Nunn

INSPECTOR