
Appeal Decision

Hearing held on 30 May 2017

Site visit made on 30 May 2017

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 15 August 2017

Appeal Ref: APP/P1615/W/16/3162282

Eastwood Lodge Farm, The Chase, Woolaston, Gloucestershire GL15 6PT

- 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 and Mrs J Williams against the decision of Forest of Dean District Council.
 - The application Ref P0972/16/FUL, dated 12 July 2016, was refused by notice dated 13 October 2016.
 - The development proposed is described as "retention and alteration of barn as dwelling".
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Decision

1. The appeal is dismissed.

Procedural matters

1. As retention is not an act of development I shall treat the application as one for the alteration and use of a barn as a dwelling.
2. An obligation under Section 106 of the Town and Country Planning Act 1990 was submitted at the Hearing. I shall refer to this in more detail below.

Main Issues

2. The main issues are:
 - i) whether the proposal would comply with local and national policies restricting the location of residential development in the open countryside;
 - ii) the effect of the proposal on the character and appearance of the surrounding countryside;
 - iii) whether occupiers of the proposed dwelling would have adequate accessibility to shops and services, and
 - iv) whether the balance of arguments, including the absence of a 5 year housing land supply, favours the proposal.

Background

3. The site has a long planning history, some of which I shall refer to below, but the most relevant is that the appeal building has permission to be used as an

agricultural building, granted permission (Ref: P0171/08/FUL) on 14 November 2008, subject to a condition that when no longer needed for agricultural purposes, the building shall be permanently removed from the land. Since that time, work has been carried out on the building which led the Council to issue an enforcement notice alleging a change of use of the land to a mixed use comprising agricultural and residential use. The enforcement notice was quashed on appeal¹ due to the requirements of the notice being held to be vague and uncertain.

4. The Inspector in that appeal decision described the building as “an incomplete dwelling” and that chimes with what I observed on my site visit. The Council is considering whether to take further enforcement action.

Reasons

Housing policy

5. The appeal building, along with adjoining barns and fields, forms a small farming business, located off a private drive, in the open countryside, some distance from the nearest settlement. Policy CSP.4 of the Forest of Dean Core Strategy (CS), adopted in 2012, explains that most development is expected to take place within existing settlement boundaries, with exceptions being made for affordable housing, building conversions and some employment developments. Although the CS predates the National Planning Policy Framework (the Framework), the Inspector carrying out the examination into the Forest of Dean Allocations Plan (AP) found that the strategy is not inconsistent with the Framework.
6. It is not part of the appellants’ case that the proposed dwelling would be justified by an essential agricultural need, although it would support their business. The proposal therefore derives only very limited support from CS Policy CSP.7, which promotes economic development, subject to the location of new development being justifiable in respect of policy CSP.4. It is clear that a new dwelling in the open countryside would conflict with the aims of Policy CSP.4 to restrict most new development to within existing settlement boundaries.
7. The Council alleges that the proposal seeks to create a stand-alone residential dwelling. However, the building is an existing one which it is intended to use as a dwelling. Policy CSP.4 allows for certain exceptions to that general restrictive approach, one of which being the conversion of buildings, which is what is proposed in this case. There are no other development plan policies which provide guidance specifically on conversions, but there are other policies which relate to accessibility, which would preclude development in inaccessible locations, to which I shall refer below.
8. I have also taken national guidance into account as a material consideration. Paragraph 55 of the Framework says that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances, most of which do not apply here. One of the circumstances is where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting. However, the building is neither disused nor redundant, and thus this example of special circumstances does

¹ Ref: APP/P1615/C/15/3103262 & 3103263, dated 20 December 2016

not apply here. However, the list of special circumstances is not a closed one, and there may be other exceptional circumstances which would justify a dwelling.

9. The appellants argue that the introduction of what is now Class Q of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) amounts to a material consideration. This allows, in specific circumstances, the change of use of agricultural buildings to residential use without specific planning permission from the local planning authority, but subject to approval of details.
10. There is no dispute that the appeal building itself cannot benefit from permitted development rights. However, the existence of such rights is a material consideration; the appellants suggest that the rights and the subsequent consultation about extending such rights amount to “a direction of travel”. However, it is not appropriate for me to anticipate future changes, beyond the currently circumscribed freedom which the Order provides. Even so, and as reasoned by the Inspector in the appeals relating to Spring Farm Barn, Waltham Cross,² the underlying objective of introducing the Class Q right is to increase significantly the supply of housing, and that there would have to be some significant and identifiable harm rising from residential use to justify withholding planning permission.
11. Notwithstanding this, the proposal does not accord with the Council’s locational strategy and conflicts with Policy CSP.4 and with paragraph 55 of the Framework.

Character and appearance

12. The site lies in an attractive area of countryside, characterised by a patchwork of arable and pasture fields, along with a significant number of areas of woodland. Isolated farmhouses are scattered around the area, and there is some sporadic residential development elsewhere.
13. The existing building is a two storey timber clad structure which has an agricultural appearance. The submitted plans show that the external changes that are proposed would be the insertion of windows and doors in all four elevations, plus the addition of a central chimney stack in a mid-ridge position. However, these changes would make the building an obviously residential one, whereas at present the limited number of openings, at ground floor level only gives the building a more utilitarian appearance, in keeping with the agricultural setting.
14. A residential curtilage, which would be likely to incorporate garden planting and domestic paraphernalia would also reinforce a domestic appearance and would contrast with that of a farmyard. Even if permitted development rights were to be withdrawn, garden planting, washing lines and the placing of tables and chairs and other domestic items would not be the subject of control and their appearance would add to the incongruity of a residential presence in an otherwise rural location. I consider that this would also result in some modest harm to the character and appearance of the surrounding countryside.
15. Additional landscaping could help to screen the building and the garden, but it would be likely to take several years before it could act as a substantial screen,

² Refs: APP/W1905/C/12/2188168 and APP/W1905/A/13/2203894

and would probably not hide the fact that a dwelling existed on the site. Moreover, in my experience it is difficult to achieve planting which has the effect of screening development whilst at the same time appearing compatible with a farming and woodland landscape.

16. The site is in full view of an adjacent public footpath, which has a loop around the south-east of the appeal site. However, the footpath runs along a moderately steep hillside, terminating at a dead-end not far from the site to the west. The appellants say that the footpath is not used and the absence of the usual wear found on well-used paths reinforces this. As it is a dead-end, with the attraction of more popular through-route footpaths nearby, I consider it unlikely that many people would see the site from that public viewpoint.
17. From further afield, the site is well-screened by topography and planting so that there are no public viewpoints and few private ones. The fact that the building would not be seen by many people does not justify allowing harmful development, but merely limits the harm that would be caused. I therefore conclude on this issue that the proposal would harm the character and appearance of the surrounding countryside and would conflict with CS Policy CSP.1 which deals with design and environmental protection and enhancement, and amongst other things, requires that important characteristics of the environment must be taken into account.
18. It would also conflict with Policies AP 1 and AP 4 of the submitted AP, which respectively deal with sustainable development and design. One of the tests of sustainability set out in the explanatory text to Policy AP 4 is how well the proposal is integrated into the character of the area. Although the plan has not yet been adopted, it has been the subject of an Inspector's Examination, and he has published his preliminary findings, to which the Council has responded and proposed modifications. The Inspector expressed no concerns about the soundness of Policy AP 1, or the design thrust of Policy AP 4, and therefore, because of the advanced stage that the plan has reached towards adoption, I afford the relevant policies significant weight.

Accessibility

19. The site lies well away from any settlement; Park Hill is nearby, but this is a scattered collection of dwellings, and the nearest village with any services is well beyond a reasonable walking or cycling distance. There is a bus-stop at the junction of Park Hill Lane and the B4228, some 750m or so to the west, where bus services to Coleford and Chepstow can be found, but it has only one service a day, and does not operate at weekends. Moreover, the bus-stop could only be reached by using unlit, unsurfaced footpaths, crossing woodland, and along a narrow, unlit road lacking a footway. In my view, this would not offer a safe, convenient or attractive route to get to the bus stop, and in the dark or in poor weather would be unlikely to be used.
20. The appellants told me of the Lydney Dial-a-Ride mini-bus service which picks up passengers by arrangement and takes them to nearby towns. I was told that the mini-bus would pick-up and collect at the site, so that there would be no need to travel to the main road or bus-stops. I recognise that this would be a valuable service for occasional trips, but the timing of such trips would no doubt be at the discretion of the operators, and would not be suitable as a means to get to work or to go out in the evening. Thus whilst it offers a genuine means of making some trips as an alternative to the use of the car, I

consider that its limitations would mean that there would still be heavy reliance on the use of the car.

Suitability of the highway network

21. The site is reached by a private drive leading off a narrow winding lane before linking to Park Hill Road, which itself is narrow and unlit. The proposal would result in some net increase in traffic along roads which in places are narrow, with poor forward visibility and with few places to pass.
22. Two previous appeal decisions have considered the suitability of the highway network to serve developments on the appeal site. In 2005³, a proposal for a mobile home was found to be unacceptable, and one of the reasons for dismissing the appeal was that the approach roads were inadequate to serve the development. However, an extension to an agricultural building to accommodate livestock was allowed in 2011⁴, with the Inspector finding that the intensification of the use of the access by large vehicles would not compromise highway safety.
23. In this case, the dwelling would result in some increased use of the approach roads, mainly by cars, over and above the daily use that results from the appellants' attendance at the site in connection with the farming business. I note that the highways objection from a neighbour relates mainly to the use of the large vehicles, which would be largely unaffected by the residential proposal.
24. I recognise that the local highway conditions are not ideal, but drivers already need to exercise extreme care when negotiating the parts of the roads where they are narrow or where visibility is limited, and in my view, the small amount of additional traffic likely to be generated by the proposal would only add to existing highway safety risks to a small degree. Whilst some harm would result, it would be insufficient to dismiss the appeal on this ground. Although I understand that the Highway Authority does not normally comment on applications of this nature, unless requested by the Council to do so, the absence of an objection reinforces my conclusion on this ground.

Planning balance

25. The appellants submitted a planning obligation at the Hearing which undertakes not to exercise permitted development rights under Class Q of the Order in respect of the change of use of the two linked barns sited close to the appeal building. No prior approval under Class Q has been granted for such a change of use, and the Council argues that it is not certain that such an approval would be forthcoming. Clearly, such an obligation would have considerably more force if an approval had already been obtained. Whilst I saw nothing on my visit that stood out as an obvious impediment to granting approval, I have no details of any proposal and in any event this is not a matter before me, and I cannot prejudge the outcome of any application.
26. Moreover, the change of use of the barns would have a severe impact on the ability of the appellants to run their agricultural business. From what I was told at the Hearing, the business is a healthy one, and has benefited from substantial financial investment, and there was no indication of any intention to

³ Ref: APP/P1615/A/04/1151278

⁴ Ref: APP/P1615/A/11/2150531

cease farming the land in the short or medium term. Thus, the likelihood of a Class Q fallback being implemented, even if approval were forthcoming, does not appear to me to be realistically compatible with the appellants' intentions. This limits the weight that I attach to the obligation.

27. The Council is unable to demonstrate a 5 year supply of housing land. In such circumstances paragraph 49 of the framework says that policies for the supply of housing are to be considered out of date. Paragraph 14 in turn says that where policies are out of date, planning 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; or where specific policies in the Framework indicate development should be restricted.
28. There are no specific policies in the Framework which indicate that development should be restricted. Thus, the "tilted balance" in favour of granting permission applies. No-one at the Hearing could tell me the extent of the 5 year supply shortfall, other than it being a longstanding one, but in any event the addition of one dwelling to the supply would make only a very modest contribution. On the other hand, small dwellings in rural areas are likely to be few in number, and demand for them is likely to be high. I therefore attach modest weight to the contribution that an additional dwelling would make. For the reason explained above, I attach only small weight to the planning obligation offered by the appellants.
29. The proposal would also result in some economic benefits from the support it would offer to the appellants' farming business, and from the payment of Council Tax and the New Homes Bonus and I afford these some small weight.
30. Set against these considerations is the conflict with the development plan in respect of the location of new development, the harm to the character and appearance of the countryside and the unsatisfactory accessibility of shops and services to occupiers of the proposed dwelling. There would also be some small harm in respect of highway safety. As a result, the environmental and social roles of sustainable development would not be fulfilled.
31. I referred above to the proposition that in the light of the Government's aim to boost significantly the supply of housing, and its approach to the conversion of agricultural buildings, there would have to be some significant and identifiable harm rising from residential use to justify withholding planning permission. In my view, that harm exists in this case. These adverse impacts would significantly and demonstrably outweigh the benefits identified. When looked at in the round the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including those of the Framework.

Other matters

32. Two species of bat have been found to roost at the appeal site, and their habitats would be likely to suffer from some degree of disturbance from the work involved in implementing the proposal. All bats are designated as European protected species. The parties agree that if the appeal were to succeed on other grounds, the need for the dwelling would be shown and that the derogation tests set out in Regulation 53 of the Conservation of Habitat and Species Regulations 2010 would be met. A licence to carry out the works

involved in the development would be likely to be granted, and thus planning permission could be forthcoming, subject to a condition to mitigate the impact on bats.

33. The corollary is that if the appeal were to fail on other grounds, the need for the development would not be shown, and the interference with the bats' habitat could not be justified. It would be tautological to consider this matter as part of the planning balance, as the outcome on this issue is dependent on the outcome of that balance. As I have found that the appeal should fail on these other grounds, the need is not justified and the Regulations provide that permission should not be granted in such circumstances.

Conclusion

34. For the reasons given the proposal is unacceptable and the appeal should fail.

JP Roberts

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

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FOR THE LOCAL PLANNING AUTHORITY:

Stephen Colegate BA(Hons),
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Forest of Dean District Council

DOCUMENTS

1. Planning obligation submitted by the appellants
2. Plan showing footpath links submitted by the appellants