
Appeal Decision

Site visit made on 31 October 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 8th January 2018

Appeal Ref: APP/C3105/W/17/3180578

Land forming part of Locks Barn, Thrupp, Oxon OX5 1JQ

- 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 M Smithson against the decision of Cherwell District Council.
 - The application Ref 17/00518/F, dated 3 March 2017, was refused by notice dated 9 May 2017.
 - The development proposed is the change of use from business to residential and the erection of a new dwelling and detached garage. Demolition of existing building.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. I gave both parties the chance to comment on the Judgment¹ of 15 November 2017, concerning the interpretation of the term “isolated homes in the countryside” within paragraph 55 of the National Planning Policy Framework (the Framework).
3. The Council have confirmed that part of the appeal site is within Hampton Gay, Shipton-On-Cherwell & Thrupp Conservation Area (HG, SoC and TCA). Both parties were given the chance to comment on this matter.
4. It is not disputed that the Council can demonstrate a 5 year supply of housing land (HLS). In such circumstances, the Framework at paragraph 49 sets out that relevant policies for the supply of housing can be considered up-to-date and paragraph 14 of the Framework sets out a presumption in favour of sustainable development. For decision taking this means *‘approving proposals which accord with the development plan without delay’*.

Main Issues

5. The main issues of this appeal are:
 - Whether the proposal is inappropriate development in the Green Belt for the purposes of the Framework and the development plan, including the effect on the openness of the Green Belt and the purposes of including land within it;
 - Whether the proposal would be in a suitable location having regard to local and national planning policies for housing in rural areas;
 - The effect on protected species;

¹ Braintree District Council v Secretary of State for Communities and Local Government, Greyread Limited & Granville Developments Limited [2017] EWHC 2743 (Admin)

- The effect of the development on the character and appearance of the area;
- If the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

6. The appeal site comprises part of the garden of Locks Barn, a single storey building that is used in connection with the appellant's business and for domestic storage and a gravelled access and turning area. The access is from the Banbury Road (A4260) which is a principal trunk road between Oxford and Banbury.
7. There is a paddock adjacent to the appeal site and the junction of the A4260 and Canal Road is in close proximity to the site. Part of the site is within HG, SoC & TCA and it would appear from the information before me that the nearby Lower Farmhouse is a grade II listed building.
8. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. S.72(1) of the Act requires that, in the exercise of planning powers in conservation areas, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

Whether the proposal would be inappropriate development in the Green Belt

9. Policy ESD 14 of the Cherwell Local Plan 2011-2031(LP) states that development proposals within the Green Belt will be assessed in accordance with government guidance contained in the Framework and LP Policy Villages 1. Under paragraph 215 of the Framework full weight is given to this policy in respect of its degree of consistency with the Framework.
10. Apart from certain clearly defined exceptions set out in paragraph 89 of the Framework the construction of new buildings in the Green Belt is to be regarded as inappropriate development. Such development is harmful by definition and should not be approved except in very special circumstances. The exceptions defined within paragraph 89 of the Framework include, amongst other things, the replacement of a building, provided the new building is in the same use and is not materially larger than the one it replaces.
11. However, even though part of the building can be used for storage purposes ancillary to the residential use of Locks Barn there is no dispute between the parties that a change of use would be implemented by the proposal. Therefore, the proposal would not meet this exception of paragraph 89.
12. The listed exceptions in paragraph 89 also include, amongst other things, limited infilling or the partial or complete redevelopment of previously developed sites, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than existing development. There is a permanent structure on the site and even though part of the site is a private residential garden it is not within a built-up area. As

- such, the appeal site can be treated as previously developed land as defined within the glossary of the Framework.
13. The Framework states, in paragraph 79, that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The concept of openness is related to but not entirely the same as visual prominence and it can be taken as the absence or otherwise of buildings or development.
 14. The existing building on the appeal site has an 'L' shape footprint and it has the appearance of a stable block. The appeal proposal would involve the demolition of that building and its replacement with a 1½ storey dwelling with dormers in the roof and a detached garage. The side elevation of the dwelling would front the A4260 with the front elevation facing towards Canal Road. As such it would involve the complete redevelopment of the site.
 15. The existing building is used for a vehicle transport business but the appellant has stated that the drivers rarely visit the site. At the time of my site visit there were a small number of vehicles on the appeal site. I consider that the lawful uses of the existing building could involve as much outdoor activity as a single dwelling. As a result, the proposed activities on the site associated with a domestic dwelling would have a similar impact on the openness of the Green Belt as the existing use. Moreover, based on my findings below, in relation to the character and appearance of the area, the visual impact of the proposal would be reduced by its proximity to Lock's Barn.
 16. However, the proposed development would have a significantly greater footprint when compared to that of the existing building. Even though the ridge height of the proposed dwelling would be lower than that of a 2-storey house it would be a considerably taller than the existing development on the appeal site. There is mature landscaping and trees on the site boundary with the A4260 but due to its proximity to the vehicular access the dwelling would be visible from that road. Moreover, I have no evidence before me to indicate that the trees that are not within the HG, SoC & TCA are covered by a Tree Preservation Order and as such they could be removed or reduced in height without the Council's permission.
 17. Consequently, the footprints of the dwelling and garage, their bulk and mass would lead to a significant loss of openness in terms of its spatial aspect. Even though part or the entire appeal site may be within the curtilage of Lock Barn the site is within the countryside which contains a variety of features including open farmland, agricultural buildings, dwellings and other structures. The effect of development as encroachment on the countryside may be in the form of loss of openness or intrusion. In this case, the proposal would result in a degree of conflict with the purposes of the Green Belt as through the loss of openness it would lead to an encroachment into the countryside.
 18. I therefore consider that the development would have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development. It would therefore not fall within the exception stated in the final bullet point of paragraph 89.
 19. Moreover, given the appeal site's location, the proposal could not be considered as limited infilling in a village. I have no evidence before me to show that the scheme would fulfil any of the other exceptions as set out at paragraph 89 of the Framework or the requirements of LP Policy Villages 1. As such, the

proposal would constitute inappropriate development within the Green Belt. The proposal would be harmful to the openness of the Green Belt and would conflict with the purpose of including land within it. This harm would be in addition to that arising from the inappropriate nature of the development.

Suitable location

20. There is no dispute between the parties that the site is within the countryside for the purposes of planning policy. The intention of saved Policy H18 of the Cherwell Local Plan 1996 (CLP) is to ensure that the countryside is protected from sporadic development. New dwellings in the countryside are therefore restricted to those essential for agriculture or other existing undertakings, or rural exception sites. I have no evidence before me to indicate that the proposal would comply with this policy. The CLP pre-dates the Framework, which requires that policies are given weight according to their degree of consistency with it (paragraph 215).
21. Whilst CLP Policy H18 is somewhat reflective of the special circumstances set out in paragraph 55 of the Framework for 'new isolated homes in the countryside'. However, for homes that are not isolated, the Framework recognises that rural housing can contribute to sustainable development where it would enhance or maintain the vitality of rural communities. This policy does not recognise this opportunity and it is therefore more restrictive in this respect. As such, I find that the conflict with CLP Policy H18 should be given limited weight.
22. Nevertheless, LP Policy ESD 1 states that measures will be taken to mitigate the impact of development within the District on climate change and that at a strategic level this will include distributing growth to the most sustainable locations as defined in the Local Plan. It also seeks to deliver development that reduces the need to travel and which encourages sustainable travel options. This reflects one of the Framework's core planning principles which is to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling. I acknowledge that the Framework also states that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Under paragraph 215 of the Framework full weight is given to LP Policy ESD 1 in respect of its degree of consistency with the Framework.
23. Kidlington and Shipton-on-Cherwell are settlements with services and facilities and they are within walking and cycling distance of the appeal site. I have little evidence in relation to public transport options but I noted that there are bus stops within an easy walking distance of the site and that Oxford Parkway railway station is within cycling distance. However, the A4260 is a very busy road and is mainly unlit until the outskirts of Kidlington as such it is not an attractive environment for walking or cycling especially after dark. I note that there are alternative routes along the nearby canal and Canal Road to Shipton-on-Cherwell but again these are mainly unlit and whilst they may be attractive as recreational routes they would largely be used in daylight hours.
24. Taking into account all of the above I consider, even though there are some alternative options, that any future occupiers of the dwelling would be likely to rely on the private motor car to access day-to-day services, facilities and employment opportunities. Moreover, as stated above the proposal would be in conflict with LP Policy Villages 1.

25. As the dwelling would be close to existing built development I do not consider that it can be treated as an isolated location. Paragraph 55 of the Framework sets out that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. However, the contribution one new dwelling would make to the vitality of the rural community would be small.
26. Consequently, I consider that the site would not be in a suitable location as it would conflict with LP Policy ESD 1 and LP Policy Villages 1. It would also conflict with CLP Policy H18. However, for the reasons given above the conflict with CLP Policy H18 has limited weight.

Protected species

27. The Council's Ecologist recommended that an Ecological Appraisal (EA) be undertaken before a determination was made in relation to the planning application. This was based on the fact that there appeared to be suitable habitats within the existing building and the site for bats and Great Crested Newts. Based on my observations at the site visit I have no reason to dispute this. An EA was not requested from the appellant as the application was to be refused on other grounds.
28. Paragraph 99 of Circular 06/2005² advises that the presence or otherwise of protected species and the effect new development might have upon them should be established before planning permission is granted and the need for ecological surveys should generally not be left to conditions imposed on planning permissions. However, paragraph 99 goes on to advise that '*... developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development*'.
29. The appellant has stated that he has never seen bats in the area or any bat droppings in or around the existing building and that he is prepared to fix 2 bat boxes to any of the trees on the wider site. However, no EA or surveys have been submitted with the appeal. Moreover, even though the appellant has never seen bats or their droppings in the area this is not supported by any survey data and the Council's Ecologist is also concerned in relation to the potential impact on other protected species.
30. On the available evidence, and having regard to the provisions of paragraph 99 of Circular 06/2005, I conclude that there is a reasonable likelihood of protected species being present and affected by the development and therefore an ecological survey should be required. As such, I am unable to conclude that the proposal would not cause any demonstrable harm to a protected species or its habitat. Accordingly, the proposal would conflict with LP Policy ESD 10 which, amongst other things, seeks protection and enhancement of biodiversity and the natural environment and it states that relevant habitat and species surveys and associated reports will be required to accompany planning applications which may affect a site, habitat or species of known or potential ecological value.

Character and appearance

31. The dwelling would reflect the materials and design of the vernacular architecture of the surrounding area even though the dormer windows are

² Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system

larger, in my experience, than those found on traditional cottages. The existing building is of a design that is typical of many stables in the countryside and therefore it has a neutral impact on the character and appearance of the area. As stated above, the proposal would introduce additional built form on the site and that some of the existing trees on the boundary of the site could be removed or reduced in height. The increase in built form would be appreciable in views along the existing access but the garage would be largely screened by the existing landscaping.

32. The proposal would introduce residential activity and paraphernalia to the site, including the formation of a garden. However, due to its close proximity and the landscaped garden between the appeal building and Locks Barn, the site visually has some affinity to the residential curtilage of Locks Barn. Consequently, whilst the development would extend the line of dwellings towards the A4260 its close proximity to Locks Barn would limit the urbanising effect and the overall rural character and appearance of the area would be maintained.
33. Whilst the Council make no reference in their reason for refusal to the effect of the works on the character and appearance of HG, SoC & TCA or the setting of the nearby listed building, as a statutory consideration, I am required to have regard to these matters when determining the appeal.
34. The site is partially within the HG, SoC & TCA but the dwelling would be just outside its boundary. From the details available to me I consider that the significance of the HG, SoC & TCA is largely drawn from the historic buildings that it contains together with the use of materials, pattern of development and the relationship of buildings to the spaces around them and the adjacent canal.
35. Taking into account my findings above in relation to the rural character and appearance of the area I consider that the proposal would have a neutral impact on the HG, SoC & TCA and its setting. Accordingly, the proposal would preserve the character, appearance and significance of the HG, SoC & TCA and meet the expectations of the Act.
36. Lower Farmhouse appears to be a grade II listed building. From the details available to me I consider that its significance is largely derived from its form, historic fabric and particular architectural features. I have no evidence before me as to whether the listed building is still associated with an agricultural use and the majority of its associated outbuildings, including Locks Barn, appear to have been converted to residential use. As such, the perception of the original function of these buildings has been eroded.
37. There is no evidence before me to indicate that there is any intervisibility between the farmhouse and the appeal site or to indicate that the appeal site had any formal relationship with the farmhouse. Accordingly, I consider that the appeal site contributes little, if anything, to the significance of the listed building or its setting. As such, the ability to appreciate and understand its significance would not be materially affected by development of the appeal site. I find, therefore, that the special interest and significance of the listed building, and its setting, would be preserved.
38. In conclusion, I consider that the proposal would preserve the character and appearance of the area and in this respect it would comply with LP Policy ESD 15 which, amongst other things, seeks development that will complement the character of its context.

Other considerations

39. The appellant submits that the dwelling has been designed to make provision for a disabled person to enable an elderly relative to continue to live with him. Furthermore, the dwelling would enable him to continue to live close to friends and relatives. I understand the wishes of the appellant to continue to live on the site but little weight can be attached to such personal circumstances.
40. The development would be designed to be energy efficient and all waste would be recycled. Landscaping and other measures could increase the amount of foliage on the site. These would be limited benefits.
41. The development would result in economic benefits through the activity associated with the construction and occupation of the dwelling but these benefits would be limited. The occupation of the dwelling would make a small contribution to the vitality of the rural community. The dwelling would also have a social benefit by making a small contribution to the housing supply.
42. The Council did not object to the proposal in relation to the living conditions of the neighbouring occupiers or highway safety. I have found that the proposal would not harm the character and appearance of the area and would preserve the significance of the designated heritage assets. However, a lack of harm in these respects is a neutral consideration that does not weigh in favour of the proposal.

Conclusion

43. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
44. For the reasons given above, I find that the totality of the other considerations do not clearly outweigh the Green Belt harm and the other harm in relation to the unsuitable location and protected species. As a result there is conflict with the development plan and the Framework as a whole. Consequently, the very special circumstances necessary to justify the development do not exist.
45. Having had regard to all other matters raised, it is concluded that the appeal should be dismissed.

D. Boffin

INSPECTOR