The Planning Inspectorate

Appeal Decision

Site visit made on 5 February 2018

by Rachel Walmsley BSc MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 March 2018

Appeal Ref: APP/J1860/W/17/3185352
The Chalet Eastgrove, U64206 Sankyns Green, Sankyns Green, Little Witley WR6 6LQ

- 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 Christopher Bown, All Weather Developments Ltd against the decision of Malvern Hills District Council.
- The application Ref 17/00076/FUL, dated 14 December 2016, was refused by notice dated 10 April 2017.
- The development proposed is replacement dwelling of existing property known as "The Chalet."

Decision

1. The appeal is dismissed.

Procedural matter

2. Reference is made within the Appellant's Statement to a costs application being submitted 'subject to the LPA's response.' I do not have an application for an award of costs before me and therefore there is no Costs Decision associated with this appeal.

Main Issues

3. These are:

   (i) whether the proposed development accords with national and local policy concerning residential development in the countryside; and,

   (ii) the effect of the proposed development on the character and appearance of the area.

Reasons

Principle of residential development in the countryside

4. It is common ground that the appeal site is within the open countryside, outside an existing settlement. Indeed the site is a distance from the settlements of Shrawley and Holt Heath and with the exception of Eastgrove Farm which is opposite the site, it is surrounded by fields and open countryside.

5. The starting point for the consideration of this appeal is the development plan. Policy SWDP18 of the development plan[1] permits the replacement of an existing dwelling in the open countryside with another single dwelling, provided the criteria listed in the policy are met. Policies SWDP1, SWDP2 of the development plan and paragraph 55 of the National Planning Policy Framework (the Framework) promote sustainable development in rural areas, that is, with regards to housing, locating it where it will enhance or maintain the vitality of rural communities. Specifically, policy SWDP2 directs development to existing urban areas and strictly controls development in the open countryside; limiting it to the criteria listed in criterion (C) of policy SWDP2.

6. A dwelling can be defined as a single household space whereby rooms are behind a door that only that household can use. On the site is a prefabricated building which satisfies this description of a dwelling. On this basis I find that policy SWDP18 is relevant to the development proposed and being recently adopted, is a policy that I attach weight to.

7. The first of the criteria in policy SWDP18 states that the replacement of an existing dwelling in the open countryside will be permitted provided the existing dwelling is not a caravan, mobile home or subject to a temporary permission. On the site is a pre-fabricated building which is raised above and lightly fixed to a concrete hardstanding. Works have been undertaken to set the unit level on the site and a brick skirt exists around its base which connects the building to the ground, as do an access ramp and steps. The building is also connected to services.

8. Successive planning permissions have been granted for a mobile home on the site, the last of which was granted in 1996 for a period of five years. This has now lapsed and as a result there is neither extant planning consent nor a temporary permission for a mobile home on the site. However, the Certificate of Existing Lawful Use (CELU) before me confirms that the lawful use of the site is residential, with a mobile home which suggests that the building on the site is a mobile home.

9. Notwithstanding this, for a unit to be 'mobile', it is sufficient that it can be picked up intact, including its floor and its roof and put on a lorry by crane or hoist. Whilst features such as the fixings between the floor of the unit and the ground, the brick skirt, the access ramp and steps, and services indicate a degree of permanence, they could be easily detached and therefore do not affect the unit's mobility. The appellant suggests that this is not the case, that it is not a structure which could be easily moved and not within a single day. In the absence of any specific or substantive evidence to support this claim, I foresee no substantive difficulties in detaching the unit from the features identified to consider it immobile. My assessment of mobility, therefore, reiterates my finding that the unit on site is a mobile dwelling and therefore the replacement of it with a single dwelling would not meet the requirements of policy SWDP18.

10. The Appellant highlights concern for three appeal decisions which the Council uses in its evidence to support its claim that the appeal proposal would not satisfy criterion (i) of policy SWDP18. However, independently of these decisions I have found that the building on the site is a mobile home and therefore the decisions presented have little bearing on my findings.

[1] South Worcestershire Development Plan (adopted February 2016)

11. The Appellant suggests that Council Tax has been levied on the property. As Council Tax can be levied on a permanent dwelling and a mobile home, this evidence does not support the claim that the building on the site is immobile.

12. Criterion (ii) of policy SWDP18 permits a replacement dwelling provided it can be demonstrated that accommodation needs cannot be met through the alterations, extension and/or refurbishment of the existing dwelling. The appellant suggests that it is not realistic or practical to do so, however, I have no evidence that explains the accommodation needs and why alterations are not possible. Criterion (ii) has therefore not been met.

13. The evidence before me points to the proposed development meeting criteria (iii), (iv), (v) and (vi) of policy SWDP18 and in the absence of any specific or substantive evidence to suggest otherwise, I concur. Nonetheless, policy SWDP18 requires all criteria to be met. In finding that the development would fall foul of criteria (i) and (ii), the development would not constitute a replacement dwelling in the terms set out in policy SWDP18.

14. In turning to policy SWDP2, I have found that the development would not constitute a replacement dwelling and therefore the development would not satisfy criterion C of this policy which permits residential development in the open countryside provided it is, amongst other conditions, a replacement dwelling. With nothing before me to suggest that the development would meet any of the other criteria listed within criterion (C) of this policy, I find that the development would not be an acceptable form of development within the open countryside.

15. Criterion (G) of policy SWDP2 favours the development of brownfield sites. Annex 2 of the Framework identifies previously developed land as *land which is or was occupied by a permanent structure.* For the reasons given above I have found that the unit on the site is not permanent. Consequently the site does not constitute brownfield land and therefore its development cannot be considered favourably in light of policy SWDP2 or other policies in the development plan that support the development of brownfield land. The Court of Appeal decision[2] presented by the appellant found that a new dwelling was acceptable given that there was a permanent structure present. I have found that the same cannot be said for the appeal site and therefore fair and reasonable comparisons cannot be drawn between the appeal proposal and the Court of Appeal decision in favour of the appeal.

16. Paragraph 55 of the Framework seeks to avoid new isolated homes in the countryside. The term 'isolated' is not defined in the Framework but in the context of paragraph 55 is it reasonable to understand it as meaning isolated from any existing settlement. Indeed the Braintree DC v SSCLG Court of Appeal Decision noted that in the context of paragraph 55 of the Framework, isolation related to the distinction between rural communities, settlements and villages on the one hand and the countryside on the other, implying that 'isolated homes in the countryside' are homes that are not in communities and settlements.

[2] Court of Appeal in Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2017] EWHC 2743 (Admin).

17. The appeal site is a notable distance from the nearest settlements of Shrawley and Holt Heath and therefore the development would be isolated. Paragraph 55 lists a number of exceptions for new isolated homes but there is nothing within the evidence before me to suggest that the development would meet the exceptions listed. I have no doubt that the dwelling proposed would be built to a high environmental specification and would be better suited to modern day living than the existing unit on the site. However, for the purposes of paragraph 55, these matters do not amount to a development of exceptional quality or innovation to comprise a special circumstance in the context of paragraph 55.

18. The appeal site is not within a reasonable walking or cycling distance of existing services and facilities. Furthermore the road which adjoins the appeal site is devoid of a pavement or ready access to a bus stop. Consequently prospective occupiers would not have access to a sustainable means of travel to access local services and facilities to meet their daily needs. Prospective occupiers, therefore, would have limited choice but to use the motor car to access everyday services, community facilities and employment. Whilst the number of vehicle movements associated with one dwelling would be minimal, the journeys would be unsustainable, contrary to the Framework which supports development that minimises the need to travel and offers a choice of modes of travel. Furthermore, given the distance of the site from Shrawley and Holt Heath and the shortcomings found for access, the support the new dwelling would give to existing services and facilities would be limited. Nonetheless, balanced against this is the acknowledgement within the Framework that sustainable transport opportunities are likely to be more limited in rural areas. Overall, therefore, I find that accessibility to services, facilities and employment opportunities from the site other than by car would be poor. The fact that the existing site may have operated without highway objection is not an indication that the site is reasonably located in the terms set out in paragraph 55 of the Framework.

19. Taking all considerations into account, I conclude that the proposed development would not constitute a replacement dwelling and would be an undesirable encroachment into the countryside. Consequently the proposal would be contrary to national and local policy concerning residential development in the countryside, namely policies SWDP1, SWDP2 and SWDP18 of the development plan, and the Framework, as indicated and for the reasons given.

Character and appearance

20. The appeal site is within the countryside and with the exception of a group of buildings opposite the site which belong to Eastgrove Farm, is surrounded by fields, trees and hedges. The appeal site, being on land higher than but close to the adjoining road is in a prominent location and the unit on it is evident in local views.

21. Whilst policy SWDP25 of the development plan is a landscape character policy, it is relevant to the development proposed insofar as it seeks development that is appropriate to and integrates with, the character of the landscape setting.

22. The form and appearance of the development proposed would intensify the presence of built form on the site. Together with any paraphernalia that naturally comes with the domestication of a site, to include hardstanding and

garden furniture, and given the building's elevated position, the development would appear overly urban compared with the site's more rural and verdant surroundings. This urbanising impact would be harmful to the intrinsic visual qualities of the countryside and therefore would detract from the character and appearance of the area and the site's landscape setting. As a result the development would conflict with policy SWDP25 of the development plan.

Other matters

23. The appellant refers to the presumption in favour of sustainable development which is set out in the Framework at paragraph 14. The presumption requires approving development proposals that accord with the development plan without delay, and where the development plan is absent, silent or relevant policies are out of date, granting permission unless the conditions at the fourth bullet point of paragraph 14 would be satisfied. There is nothing within the evidence before me to suggest that the development plan is absent, silent or relevant policies are out of date. Having found that the development would be contrary to the development plan, paragraph 14 does not apply.

24. The appellant draws my attention to the conversion of barns opposite the appeal site. In the absence of any specific or substantive evidence on this matter I can only assume that the argument is one of precedent for residential accommodation in the open countryside. However, barn conversions are a different form of development to the construction of a new dwelling and therefore the conversion of the barns does not imply that a replacement dwelling should be acceptable.

25. The appellant draws my attention to a fallback position, that of erecting a larger unit on the site without planning permission. The CELU is not planning permission, the planning merits of the use, operation or activity in the application are not relevant to a CELU. The erection of a larger unit on the site would require planning permission and therefore I do not find a plausible fallback position.

Conclusion

26. For the reasons given and having regard to all other matters raised, I conclude that the development would be contrary to the development plan when taken as a whole and the Framework. There are no material considerations to suggest a decision other than in accordance with the development plan and therefore the appeal is dismissed.

R Walmsley

INSPECTOR