The Planning Inspectorate

Appeal Decision

Site visit made on 26 June 2018

by B Bowker Mplan MRTPI

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

Decision date: 9 August 2018

Appeal Ref: APP/H1840/W/18/3197006
Le Hollier, Stockwood Lane, Little Inkberrow, Inkberrow B96 6ST

- 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 Nick Muscott against the decision of Wychavon District Council.
- The application Ref 17/01085/FUL, dated 25 May 2017, was refused by notice dated 3 October 2017.
- The development proposed is described as '*replacement self build dwelling of building design as approved via PP/16/02350*'.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Nick Muscott against Wychavon District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. In the interests of clarity, the description of development used above is taken from the appeal form and decision notice.

4. During the appeal, the revised version of the National Planning Policy Framework (the Framework) was published. Comments were sought from the parties regarding the effect of this matter on the appeal proposal. The appeal has been determined accordingly.

5. The appellant submitted a revised ecological report during the appeal process. As the additional report seeks to ensure that an element of the evidence base not in dispute between the parties is up to date, I do not believe that any party would be unfairly prejudiced by determining the appeal with regard to it. The appeal has been determined accordingly.

Main Issue

6. The main issue is whether the proposal would be a suitable form of development having regard to development plan policy in respect of replacement dwellings.

Reasons

7. The appeal site comprises a two storey detached dwelling and associated domestic curtilage to its sides and rear. The property is surrounded by detached and semi-detached dwellings to the north, south and east, and countryside in the wider area. For planning purposes the site is beyond any defined development boundary and as such is within the open countryside as defined under Policy 2 of the South Worcestershire Development Plan (SWDP). Policy SWDP 2 criterion C sets out that development in the open countryside will be strictly controlled and will be limited to certain exceptions. Of relevance to the proposal is the exception cited within Policy SWDP 2 criterion C relating to replacement dwellings (Policy SWDP 18).

8. Policy SWDP 18 sets out that the replacement of an existing dwelling in the open countryside with another dwelling will be permitted subject to a number of criteria. Of relevance to the Council's concern is (ii) where it can be demonstrated that accommodation needs cannot be met through the alteration, extension and/or refurbishment of the existing dwelling; (iii) the replacement is not disproportionately larger than the existing dwelling and will not exceed the size of the original footprint by more than 30%; and (iv) the proposal is positioned on the footprint of the existing dwelling, unless there are visual, landscape or highway safety or other environmental grounds to justify an alternative location within the existing curtilage.

9. The Council also cite Policy SWDP 1 which sets out that the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the Framework and that development that accords with policies in the SWDP will be approved unless material considerations indicate otherwise.

10. Beginning with criterion ii) of Policy SWDP 18, an application[1] for alterations and extensions to the existing dwelling' has been granted permission at the site. In the context of cited case law[2], the appellant sets out that the previous extant permission at the site is a fall-back position that has a real prospect of being implemented given the current condition of the site. However, the appellant states that if the previous permission was a viable and realistic alternative to a replacement dwelling, then it would have been pursued. Whilst the evidence indicates that the cost of the proposal is likely to be less than altering and extending the existing dwelling, no substantive evidence is before me to indicate that the fall-back position is unlikely to be implemented. In this light, I afford significant weight to the fall-back position set out by the appellant.

11. The Council state that they have little evidence to dispute the modernisation costs set out, but they highlight that as the property is not rendered, the related cost would not be incurred. The appellant highlights that VAT exclusions would be applied to new builds, and as such the proposed replacement dwelling would be the less costly option. Moreover, the policy requires consideration of whether the accommodation needs can be met by the alteration, extension and/or refurbishment of the existing dwelling.

[1] Council Ref W/16/02350/PN.
[2] Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314.

12. In this light, the appellant states that it was recently discovered that the existing house does not have any substantive foundations, which raises serious structural problems with the proposed repair works. It is also put to me that the previous proposal would not address the flooding problems previously experienced, that the property has damp problems and is constructed of single brick walls. I also understand that the existing dwelling is deemed to be uninhabitable by the Council tax department. However, I agree with the Council that these works would likely be necessary for the modernisation of many properties in the same era. Whilst the parties disagree on whether the site is subject to flood risk and despite the difference in levels between the highway and site, I understand that the previous application proposed to overcome flooding issues through raising the ground floor level.

13. Although the previous permission would raise both internal ceilings, no substantive evidence is before me to demonstrate that building regulations or the accommodation needs of the applicant would not be met as a result. It is set out that the appellant's accommodation needs are to design and self-build a carbon neutral home which cannot be achieved through a refurbishment of the existing dwelling. However, no substantive evidence has been submitted to demonstrate that the existing dwelling and previous proposal could not achieve high levels of sustainability and energy efficiency if appropriate measures were taken. Furthermore, as set out by the Council, the proposal has the same floor plan and is of the same size as the previous application.

14. With reference to the reasoned justification text of Policy SWDP18, it is contended that refurbishment is encouraged and as such is not an obligation under the policy. However, criterion ii) is clear on the approach of the policy in this respect. Taking the above into account, it has not been demonstrated that accommodation needs cannot be met through the alteration, extension and refurbishment of the existing dwelling.

15. Turning to criteria iii) of Policy SWDP 18, based on the Council's calculations, the footprint of the proposal would exceed the size of the existing dwelling by approximately 61%. However the proposal would be similar in size and scale to the approved extended dwelling. The parties disagree on whether the policy reference to 'existing dwelling' would encompass the property as extended by the extant permission at the site. My attention has also been drawn to the reasoned justification text of the policy which sets out that the replacement of existing dwellings with much larger properties can affect the character of a rural area and that the main justification for retaining small dwellings is on design grounds. In this light, I note that the Council raise no concern on design grounds or regarding the effect of the proposal on the character and appearance of the surrounding area. Furthermore and as set out above, I have afforded the noted fall-back position at the site significant weight. Drawing the above together, the proposal would not harm the objective that underpins this particular criterion.

16. Turning to criteria iv) of SWDP Policy 18. The proposed replacement dwelling would be set further away from the highway than the existing dwelling but within the existing curtilage. To support the alternative location, the appellant states that the proposal would reduce the visual impact of the dwelling and allow the existing hedgerow to mature, resulting in a positive effect on the street scene. The submitted drawings also indicate that the visibility splay associated with the fall-back position at the site would result in a loss of front

boundary hedgerow. In this light, it is put to me that the new replacement hedgerow associated with the proposal represents significant justification on visual and landscape grounds for its relocation. However, whilst the site occupies a rural location, the loss of hedgerow, potential use of a fence or wall, and proximity of the existing dwelling to the highway would not look unusual or visually harmful in the context of properties in the surrounding area.

17. As such I cannot agree that the replacement hedgerow represents significant visual and landscape grounds or benefits to justify the relocation of the property. Nor has any substantive evidence been submitted to demonstrate that the absence of a hedgerow would result in harm to the living conditions of occupants, with reference to noise, vibration, sun/daylight and privacy.

18. In addition, as the previous application suggests that flooding issues can be dealt with by raising the floor level, the relocation of the dwelling on this basis has not been fully justified. In reaching this view, I note that no concern has been raised by the Council regarding the effect of the proposal on the character and appearance of the area or on the living conditions of neighbouring properties. However, based on the reasons given above, the case put forward does not justify an alternative location for the replacement dwelling. Nor can I agree that, as the reasoned justification for the policy does not provide any explanation for requiring replacement dwellings to be on the same footprint, criterion iv) is onerous. Taking the above into account, the proposal would conflict with Policy SWDP 18 criterion iv).

19. In reaching this view, I have afforded significant weight to the fall-back position described by the appellant in determining the appeal. No harm has been identified in respect of the character and appearance of the area or on amenity grounds and the Council do not identify conflict with SWDP policies 21 and 25. In addition, based on the reasons given above, the proposal would not offend the objectives that underpin Policy SWDP 18 criterion iii), and the Council raise no concern in respect of criteria i), v), vi) and vii). It is also put to me that it is rare that an application complies with every criterion of every policy in the development plan and that no conflict with other policies in the development plan or actual harm has been identified. Nonetheless, the proposal would conflict with Policy SWDP 18 criteria ii) and iv), thus the policy of most relevance to the proposal, with consequent conflict with policies SWDP 1 and 2. As such the proposal would be contrary to the development plan when taken as a whole.

20. It is put to me that as the Council do not have a policy relating to self-build residential development or land allocated for such purposes where there is an unmet need, the development plan is silent on this matter. An appeal decision[3] is cited wherein as the relevant development plan was considered silent on self-build development, paragraph 14 of the 2012 Framework was engaged. I also understand that the appeal proposal was described and advertised as a self-build development and note that the Council has a duty to grant planning permission under the Self-Build and Custom Housebuilding Act 2015 as amended by the Housing and Planning Act 2016. However, the cited appeal relates to a different development plan and version of the Framework. Moreover, unlike the cited appeal, no secure means are before me to ensure that the proposal proceeds on a self-build basis. This limits the weight I can

[3] APP/X220/W/17/3176895.

afford to the proposal as a self-build development. On this basis, the proposal would not engage paragraph 11 of the Framework.

21. Therefore the proposal would not be a suitable form of development having regard to development plan policy in respect of replacement dwellings. Consequently the proposal would not accord with SWDP policies 1, 2 and 18, the requirements of which are set out above, and the development plan taken as a whole.

Other Matters

22. Section 38 (6) of the Town Planning and Compulsory Purchase Act 2004 (TCPA) states that if regard is to be had to the development plan for the purpose of any determination to be made under the planning acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. This is reflected at paragraph 2 of the Framework.

23. A number of benefits are associated with the proposal including its re-use of a brownfield site for residential purposes, support to demolition/construction employment and ecology measures. In addition, the fall-back position at the site as set out by the appellant attracts significant favourable weight in the planning balance. However for the reasons given above, I afford limited weight to the visual improvements, existing structural condition of the property, the flooding grounds, sustainability/energy efficiency, and self-build benefits in the planning balance.

24. The proposal is not located in an area subject to a national or local designation and no harm has been identified in relation to other material considerations such as character and appearance and neighbouring living conditions. I also note that the development is not a commercial venture and that the Council cite no conflict with the Framework in the reason for refusal. However an absence of harm can only be considered as a neutral factor in the planning balance. In addition, I cannot agree that the current condition of the property detracts from the character and appearance of the area.

25. The primacy of the development plan is established in Section 38 (6) of the TCPA and at paragraph 2 of the Framework. In this case, the combined weight afforded to the material considerations set out above does not outweigh the considerable weight afforded to the conflict of the proposal with the development plan when taken as a whole.

Conclusion

26. For the reasons given above, and having taken all matters raised into account, I conclude that the appeal should be dismissed.

B Bowker

INSPECTOR