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

Decision date: 11 September 2018

Appeal Ref: APP/J1860/W/18/3196575
Land and buildings, Allsetts Farm, Broadwas-on-Teme WR6 5NS

- 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 Paul Brooks against the decision of Malvern Hills District Council.
- The application Ref 17/00163/FUL, dated 20 January 2017, was refused by notice dated 24 August 2017.
- The development proposed is alteration and extension of existing B1 units and the construction of two units of live accommodation (part retrospective) to form two live-work units (sui generis).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the interests of clarity, the description of development used above is taken from the appeal form. Revised drawings[1] have been submitted by the appellant as part of the appeal. As the revised plans propose minor changes only, including alterations to the internal layout, roof design (with connecting open roof) to the accommodation buildings and an overall reduction in floor space for the work units, I do not believe that any party would be unfairly prejudiced by determining the appeal with regard to them. The appeal has been determined accordingly.

3. 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.

4. Late evidence[2] submitted by the appellant relating to a planning permission granted at land adjacent Oak Farm, Bevere is dealt with below.

Main Issues

5. The main issue are:

[1] Revised drawing reference numbers 1622/020A, 1622/021A, 1622/022A, 1622/023A, 1622/024A. The appellant confirmed that these revised plans should be considered alongside the submitted location plan and drawing reference numbers 1622/005 and 1622/006.
[2] An email dated 7 September 2018 with attached decision notice, site plan and delegated report for planning application ref 18/00849/FUL determined by Wychavon District Council.

- The effect of the proposal on the character and appearance of the surrounding area;
- Whether the loss of employment use associated with the proposal would meet the requirements of development plan policy; and,
- Whether the proposal would accord with development plan policy in respect of live/work accommodation, including the access future occupants of the development would have to services, shops and facilities.

Reasons

Character and appearance

6. The appeal site comprises two partly constructed buildings and steel-portal frame buildings, with traditional farm buildings converted to residential use and a farmhouse to the immediate east. The site is surrounded by open fields which allow views of the site from a number of public viewpoints, including from sections of the road to the west and from the surrounding public right of way to the north west and adjacent to the site. Despite the residential use at the site and related domestic paraphernalia, including the replacement farmhouse, the site is seen as a small group of buildings from the surrounding area.

7. The Council draw my attention to the location of the site within the Principal Timbered Farmlands Landscape Character Type and state that the Worcestershire Farmsteads Character Statement guides that historic farmsteads and their buildings are seen as an integral part of the rural landscape. In addition, as set out by the Inspector dealing with the previous appeals[3] at the site, small farmsteads or groups of buildings are a particular feature of this part of the countryside and the site has an affinity with its rural setting, functioning as a small cluster of former rural and agricultural buildings. A Landscape Statement has been submitted as part of the appeal documentation. However, I have no substantive evidence to disagree with the cited underpinning evidence and findings of the previous Inspector in this respect. Thus, taking the above into account and based on my site visit observations, the site is located in an area that has a rural and open countryside character.

8. The proposed accommodation seeks to reflect the farmstead layout and it is contended the proposal would be seen as a natural inclusion within the farm complex. The revised design has reduced the bulk and mass of the proposed accommodation. In addition, unlike the previous appeal proposal, two units of accommodation are proposed (rather than four dwellings), with the B1 use buildings retained. Despite these changes, owing to the combined mass and domestic design, the accommodation units would be a prominent feature when viewed from surrounding public vantage points. Whilst hipped roof designs are utilised in the surrounding area, the design, mass and scale of the proposed accommodation would appear incongruous in the context of the rural and open countryside character of the surrounding area. Furthermore, vehicular parking and domestic paraphernalia would be associated with the accommodation. Whilst the site is not located within a designated landscape area, the resultant harm of the proposal to the rural and open countryside character of the area

[3] APP/J1860/W/16/3156800 & 3156801.

would be significant. This would be noticeable from the public viewpoints identified above.

9. Owing to local topography and the scale of the proposed accommodation, I am not convinced that a landscaping scheme, including hedgerows and trees, would fully mitigate and prevent the harm identified above and thus enhance landscape character as contended. Nor would the solar farm be comparable in effect, in the context of the height, design and scale of the proposed accommodation and its resultant impact on the rural and open countryside character of the area. I also note that the previous Inspector considered that the solar farm was not sufficient justification to allow intrusive development, as would be the case in the appeal before me.

10. Based on the evidence before me, I am unable to make a definitive finding in respect of the fall-back position at the site. This aside, the fall-back use of the site for unrestricted open storage as contended by the appellant and the support of the CPRE to the previous application would not justify the harm identified above. Nor would the fall-back position of reinstating[4] the building demolished justify the harm identified above, which based on the evidence submitted, comprised a building with an agricultural appearance, thus a feature not incongruous in a countryside setting. Parking provision and hard paving associated with a previous permission[5] cited at the site would not be similar in impact to the appeal proposal nor justify the harm identified. The nearby pylon identified as a detractor by the appellant would also not justify the harm identified above.

11. Taking into account the scale and agricultural appearance of the proposed commercial buildings and subject to appropriate wall and roof materials, this element of the proposal would not harm the rural open countryside character of the area. However, an absence of harm in this respect would not justify the harm identified above in relation to the proposed 'live' accommodation.

12. Therefore the proposal would have a harmful effect on the character and appearance of the surrounding area. Consequently the proposal would not meet the requirements of South Worcestershire Development Plan (SWDP) policies 21 and 25, and paragraphs 127c, 130 and 170b of the Framework. Combined these policies seek to ensure development is of a high quality design, recognises the intrinsic character and beauty of the countryside, and is sympathetic to local and landscape character.

Loss of employment use

13. The Council's calculation of net loss of B1 floor space contained within its Delegated Report related to the proposal as submitted at the planning application stage. However, I note that the revised plans have reduced the work area proposed. This aside, the Council also identify that the proposal would result in the gross loss of approximately 450 square metres of B1 floor space. Of relevance, Policy SWDP 12 B seeks to help promote rural regeneration across south Worcestershire by safeguarding existing employment sites in rural areas for employment generating uses during the plan period. The policy goes onto say that proposals to change the use of such sites to any

[4] The Landscape Statement and Planning Statement notes that substantial buildings were on the site prior to demolition which would be sought to be replaced if the enforcement appeal was unsuccessful as a fall-back position.
[5] As set out at appendix A1 of the appellant's Appeal Statement.

non-employment generating purpose will need to demonstrate that the site has been actively marketed for at least 12 months and that it is no longer viable for an employment generating use, with details of what is required of a marketing exercise contained in Annex F.

14. The submitted supporting agent letter and survey of commercial property contends that there is a limited market for the accommodation at the site, which is suitable for storage only. With reference to the survey, the appellant states that there is an oversupply of low grade commercial buildings in rural areas. The appellant also states that the proposal would make the investment needed to bring the appeal buildings into employment use attractive and that the site is unlikely to be taken up for business use in the foreseeable future as there is alternative more accessible and a higher standard of property available. Furthermore, the appellant asserts that a live-work development will expand the choice of business premises rather than competing with the existing over supply. The Council set out that the commercial property survey was also submitted as part of the previous appeal[6] at the site. The previous Inspector considered that there was no evidence to show that the buildings had been offered for lease or sale for a period of at least 12 months, and that no market testing had been carried out. The Inspector considered the evidence presented did not substantiate the claim that the loss of the employment site would have no effect on the supply and availability of employment generating sites in the area, and as such identified conflict with Policy SWDP 12. Despite the assertions made within the appeal documentation, it remains the case that a full marketing exercise has not been undertaken to ascertain if there was any form of commercial demand for the B1 use floor space lost.

15. The previous appeal was solely for housing and the proposal before me involves live/work accommodation with associated employment use. As such the appeal differs to that considered by the previous Inspector. Nonetheless, the proposal would still, albeit to a reduced extent, result in a net loss of employment use at the site. The location of the site in the rural north and west of the district[7] and compliance of the proposal with Policy SWDP 8[8] would not justify the loss of employment use associated with the development.

16. It is contended that the demolition of B1 use buildings for the erection of the two live buildings arises not from the proposal but in fulfilment of the enforcement process because the Council did not seek their replacement. I disagree. The evidence before me indicates that the operational development associated with the proposal, involving the demolition of employment floor space at the site to enable the proposed live/work development, has not been regularised. Thus, despite the employment floor space associated with the development, the proposal would result in a net loss of employment use, with no compelling reasons before me to justify the absence of a marketing exercise in the context of Policy SWDP 12 B.

17. It is also put to me that since the implementation of the previous permission[9] the site has only been used for storage by the appellant and has not been in commercial use. Also, in the context of the enforcement notice, it is contended

[7] Cited within the reasoned justification to Policy SWDP 8 as especially important to the achievement of sustainable development objectives underpinning the plan.
[8] Dealt with in the next main issue below.
[9] Council ref 12/00936.

that the outcome of not allowing this appeal would be a cleared site with a permitted use for unrestricted open storage, and not the retention of an employment use. Based on the information submitted, I cannot reach a definitive conclusion on what the fall-back position would be in the context of the appeal being dismissed and the enforcement notice. However, even if I were to agree that the fall-back position is as described by the appellant, the use of open storage could still potentially support an element of employment related use at the site. Moreover, I must determine the appeal on its own individual merits and based on the evidence before me. Drawing the above together, the proposal would result in a net loss of employment use at the site.

18. Therefore the loss of employment use associated with the proposal would not meet the requirements of development plan policy. Consequently the proposal would not accord with SWDP Policy 12, which is of most relevance to this matter. The relevant requirements of this policy are set out above.

Live/work accommodation and access

19. For planning purposes the site is beyond any defined development boundary and as such is within the open countryside as defined under SWDP Policy 2. Policy SWDP 2 criterion C sets out that development in the open countryside will be strictly controlled and will be limited to certain exceptions, which includes development specifically permitted by other SWDP policies, such as Policy SWDP 8 cited at footnote 3 of the policy. Of relevance to the proposal is the exception cited within Policy SWDP 8 criterion G relating to proposals for live/work accommodation. This policy contains a list of criteria that such proposals must comply with. Based on the case put forward, the Council's concern relates to the compliance of the proposal with criteria i) and ii). These are dealt with in turn below.

20. Policy SWDP 8 G i) requires that the residential use proposed is ancillary with a floor space split of at least 60% employment and no more than 40% residential. Criterion ii) of the policy states that such proposals will be permitted providing the residential accommodation contains no more than three bedrooms. Based on the appellant's calculations (uncontested) the floor space of each unit would comprise 39% and 40% residential respectively. In addition, the proposed units of accommodation would comprise three bedrooms. This aside, the Council raise concerns regarding the size of the dwellings proposed and the affordability of the units to prospective businesses. The Council also refer to the reasoned justification which states that policy criteria need to be set to ensure that proposals are genuinely intended for employment purposes and that the provision of live/work units can help support small and start-up businesses.

21. In this light, the Council state that large dwellings can generally be expected to command a higher market price and as such would be more likely to be unaffordable to prospective businesses. In addition, as the appellant indicates that a key driver of the proposal is to improve site viability, the Council consider that it is important to have regard to the overall size of the proposed live accommodation. The parties disagree on the affordability of the units and limited evidence is before me in this respect. However, a dwelling size survey undertaken for CABE in April 2010 is cited by the Council to contend that the dwellings are significant in floor space. Furthermore, reference is made to the footprints of the dwellings subject to the previous application and the size of

the study area in the light of the Council's draft Design Guide SPD. However, as no details are before me regarding the status of the SPD, it attracts limited weight only. Furthermore, Policy SWDP 8 G does not impose a limit on the floor areas of buildings or set out an assessment of affordability. Moreover the Council do not contend that the proposed residential element is not ancillary to the employment use of the site and the accommodation would comprise three bedrooms each. On this basis, the proposal would accord with criteria ii) and iii) of SWDP Policy 8, subject to the imposition of condition No 10 suggested within the Council's Statement of Case. I also note the decision referred to relating to land adjacent Oak Farm, Bevere in this respect.

22. SWDP Policy 2 seeks to control development in the open countryside and as set out above the proposal is located in the countryside. The reasoned justification of the policy states that sites beyond development boundaries generally are less sustainable as access to local services and employment opportunities tends to be poorer and therefore it is appropriate that development in the open countryside is restricted to proposals which are supportive of more specific SWDP policies. Policy SWDP 4 seeks to ensure that development offers genuinely sustainable travel choices.

23. During my site visit I saw that the site is reached via lanes that are unlit and without footpaths. In my view, future occupants are highly likely to be dependent on private vehicular modes of transport to access services and facilities available in the wider area. My conclusion in this respect is supported by the findings of the Inspector determining the previous appeal at the site. However, in the context of this main issue, a materially different proposal was before the previous Inspector.

24. The appellant sets out that the location of the proposal would not be contrary to SWDP2 C with reference to Policy SWDP 8. To support this view, the appellant cites an appeal decision[10] at Bradley Green wherein the Inspector considered that the possibility of car journeys outside development boundaries is implicitly accepted in the reasoned justification of policies SWDP 2 and 8. In the cited case the Inspector considered that the policy exceptions within the SWDP and the potential benefits to the rural economy outweighed the reliance of private motor car. Private vehicular movements associated with the proposal would result in some conflict with Policy SWDP 4. However, I have no substantive reasons to disagree with the approach set out in the appeal at Bradley Green. Whilst each case must be determined on its own merits, in my view this harm and subsequent conflict with Policy SWDP 4 would be outweighed by the support offered to the proposal by policies SWDP 2 and 8 and its associated rural economic benefits.

25. Therefore the proposal would accord with development plan policy in respect of live/work accommodation, including the access future occupants of the development would have to services, shops and facilities. Consequently the proposal would comply with SWDP policies 2 and 8 insofar as they relate to this matter. The relevant requirements of these policies are set out above.

Other Matters

26. A number of benefits are associated with the proposal which include its support to construction employment and to facilities and services at nearby villages. In

[10] APP/H1840/W/17/3176897.

addition, although tempered by the loss of employment use at the site, some rural economic benefits would arise through the business occupation of the work/live units. In this respect, I have identified that the proposal would receive support via Policy SWDP 8 G and by virtue of this, SWDP Policy 2. In addition, paragraph 83 of the Framework offers support to the sustainable growth of all types of business in rural areas, albeit through the conversion of existing buildings and well-designed buildings. Although not within a settlement, as the evidence indicates that the site was not last occupied for agricultural purposes, the proposal would involve the use previously developed land. This factor attracts favourable weight in the light of Policy SWDP 13 and the Framework.

27. However, the primacy of the development plan is established at Section 38 (6) of the Town and Country Planning Act and at paragraph 12 of the Framework. Paragraph 12 of the Framework states that proposed development that conflicts with an up-to-date Local Plan should not usually be granted and that local planning authorities may take decisions that depart from an up-to-date development, but only if material considerations indicate that the plan should not be followed.

28. In this case, the above noted benefits and support offered to the proposal by SWDP policies 2, 8 and 13 would be outweighed by the identified harm and associated conflict of the proposal with SWDP policies 12, 21 and 25. On this basis the proposal would conflict with the development plan when taken as a whole, a matter which attracts considerable weight. In this light, I note that paragraph 15 of the Framework states that the planning system should be genuinely plan led.

29. Owing to a contended fall-back position at the site and the terms of the enforcement notice, it is put to me that dismissal of the appeal would not return the employment buildings demolished at the site. As set out above, based on the evidence provided, I cannot reach a definitive conclusion in this respect. In any event, even when weighed against the benefits and considerations set out above, the harm identified to the character and appearance of the area and resultant policy conflict alone is a sufficient basis upon which to dismiss the appeal. Moreover, based on the harm identified to the character and appearance of the area, the proposal would not represent sustainable development as defined and sought by the Framework and as reflected by Policy SWDP 1.

Conclusion

30. For the reasons given above, I conclude that the appeal should be dismissed.

B Bowker
INSPECTOR