
Appeal Decision

Site visit made on 2 July 2019

by I Bowen BA(Hons) BTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2019

Appeal Ref: APP/Y3940/W/19/3223582

4 Vicarage Gardens, Dilton Marsh, Wiltshire BA13 4FB

- 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 J Daykin against the decision of Wiltshire Council.
 - The application Ref 18/08361/FUL, dated 31 August 2018, was refused by notice dated 31 October 2018.
 - The development proposed is described as retrospective change of use of land from agricultural to domestic garden, including erection of garden shed and play climbing frame and zip wire and frames.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I saw on my site visit that the appeal site is already in use as a garden and that various structures including a zipwire, shed and climbing frame have been installed. These accord with the submitted plans and I am therefore proceeding on the basis that the development has already occurred.
3. During the appeal, the appellant requested I consider a revised plan¹ which would substantially reduce the proposed area of land for which permission for a change of use is sought. Significantly, however, the appellant has not proposed to withdraw the original proposal but instead has requested that the revised plan be given consideration in the event of the appeal proposal being unacceptable. The revised plan was not therefore submitted for consideration as a substitute for the original proposal but as an additional option.
4. Whilst, in certain circumstances, a proposal can be amended through revised plans during an appeal in line with the Wheatcroft principles², I have been asked to consider the merits of two different options concurrently. I am mindful that it is not the purpose of the appeal process to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority.
5. I have therefore proceeded to determine the appeal on the basis of the plans as originally submitted. The merits of the reduced scale scheme would, if necessary, be a matter for the main parties to consider as part of a fresh proposal away from this appeal.

¹ Drawing No. 1067-PO3

² Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

6. The description of the development on the Council's refusal notice differs from that on the application form. However, as this merely excludes unnecessary text relating to the history of the site, I too have omitted it in the description in the banner above and am satisfied that no prejudice arises to the interests of any party in my doing so.

Main Issues

7. The main issues are:

- The effect of the development on the character and appearance of the area; and
- Whether the development accords with local planning policies on the location of development.

Reasons

Character and appearance

8. The appeal site is a large, broadly rectangular parcel of land which, according to the Council's assessment, extends to over 4,570 sq.m. Whilst there is no physical boundary between the land and the host dwelling, the appeal site is offset from the rear garden of No 4.
9. I understand that the land was once heavily treed but the appellant's evidence shows that it has, in recent years, been largely open and used as domestic space in association with the existing dwelling. It has a well-tended appearance and, as noted above, contains the zip wire and garden structures as set out in the description of development.
10. The land rises quite steeply to the south and is bounded to the north by a school playing field with a belt of intervening boundary trees. There are mature trees along the property's eastern boundary, beyond which lies a farm. The southern boundary is also marked by a line of substantial trees separating the appeal site from a manege and farmland. To the west, beyond a post and rail fence and a number of trees dotted sporadically along the boundary, is land which appears to be in equestrian use. There are a number of houses off Woodland View immediately to the north of the equestrian area.
11. Given the above, whilst the appellant submits that the land has the appearance of being part of the village, I disagree. Leaving aside its current managed appearance, it clearly lies beyond the built-up area of the village and visually forms part of the wider countryside surrounding the settlement. In my judgement, the school and equine activities on the immediately adjoining land do not undermine the sense that the land forms part of the countryside.
12. Whilst the appeal land is well screened from most public vantage points by the physical features described above, I saw that the elevated, southern part of the site in particular is nonetheless visible from part of Woodland View, from the dwellings on that street and from the surrounding farmland/equestrian land.
13. Although the landscape harm resulting from the use of the land and the garden structures within it is currently limited, this could, over time, intensify significantly through a proliferation of domestic paraphernalia and activities such as furniture, play equipment and garden structures.

14. I acknowledge that certain permitted development rights³ could be restricted through a planning condition and outdoor lighting could be prohibited. However, some activities may not constitute 'development' and would therefore be outside the scope of planning control. Although the appellant has expressed no intention to use the land in this way, a planning permission would endure in the long term and there is no safeguard that such further domestication of the land would not materialise.
15. Given the significant area of the land and the degree to which it extends into the countryside well beyond any other gardens, this would significantly alter the character of the landscape and would be unacceptably harmful to the character and appearance of the area.
16. I recognise that the adjoining land already comprises a variety of paraphernalia associated with exercising horses. However, whilst that has altered the character of the countryside, it is not, in my view, comparable to the wide range of urban activity which could arise through domestic use. Similarly, whilst the school playing field introduces urbanising features, it does not protrude beyond the built-up area of the settlement into the countryside in the same way as the appeal site.
17. The Council contends that the grant of planning permission would result in future planning applications for the construction of garden buildings being difficult to resist. However, any such future proposal would be required to be assessed on its merits and this matter is not therefore determinative to my decision.
18. Furthermore, whilst not forming part of the refusal notice, the Council has referred to the adopted Wiltshire Core Strategy (January 2015) (the WCS) Policy C3 which identifies the appeal site as falling within a Special Landscape Area (SLA). However, I have been provided with no substantive evidence of the special features or characteristics of the SLA which may be harmed by the development. Furthermore, it appears that the designation is longstanding and has yet to be the subject of a necessary review. I therefore attach significantly reduced weight to any conflict with that Policy.
19. Drawing this main issue together, therefore, I find that the proposal would authorise a substantial area of garden land in the countryside outside the built-up area of Dilton Marsh and could become significantly harmful to the character and appearance of the area. Consequently, the proposal conflicts with WCS Policy 51. That Policy requires development to conserve the locally distinctive character of settlements and their landscape settings, including the transition between man-made and natural landscapes at the urban fringe.

Location

20. The WCS Core Policy 1 sets out an overall development strategy for Wiltshire which requires new development to deliver overall benefits to, and take account of, local distinctiveness and the character of Wiltshire.
21. Dilton Marsh is established as a 'Large Village' as part of the Strategy and the supporting text to Core Policy 1, together with that of WCS Core Policy 2, explains that development outside its defined boundary will be strictly controlled. The appeal site lies outside of the defined settlement boundary.

³ Under Schedule 2, Part 1, Class E of the General Permitted Development Order (2015)

22. I have had regard to the Court of Appeal (CoA) judgement⁴ cited by the appellant. It is contended that in the light of that judgement, an assessment on the ground is necessary rather than relying on a defined settlement boundary, in determining whether a site is in a settlement.
23. However, that is not, in my view, a reasonable interpretation. It is clear that in the CoA case, the dispute revolved around the meaning of "limited infilling in villages" for the specific purposes of implementing Green Belt policies set out in the National Planning Policy Framework. That is quite a different matter from determining whether, for Development Plan policy purposes, a site lies within a defined settlement.
24. Regardless of whether the appeal site lies within a defined settlement, however, the appellant submits that WCS Core Policy 1 is not in any event relevant to the permission being sought. In this respect it is suggested that many domestic extensions and curtilage developments are permitted outside of settlement boundaries, apparently with no conflict with the Policy. My attention is further drawn to WCS Core Policy 57 as being permissive of extensions to properties without any qualifying locational criteria. I note that that Policy, however, refers to extensions, alterations and changes of use of "buildings". That is not the proposal in this case which involves the change of use of land.
25. Nevertheless, whilst WCS Core Policy 1 and its supporting text refer to "development", and there is no dispute that the appeal proposal is development⁵, it is clear that the overall burden of the Policy is concerned with making provision for additional jobs and homes, having regard to objectives around self-containment and environmental quality. Whilst the current proposal seeks planning permission for a residential use, it does not propose any additional homes.
26. Consequently, I conclude on this main issue that the proposal does not conflict with the overall purposes of WCS Core Policy 1 and I attach little weight to any technical conflict with it.

Other Matter

27. I have had regard to correspondence which shows that, prior to the application being made, an officer of the Council advised the appellant that a proposal may be acceptable, subject to domestic permitted development rights being removed. However, that advice was informal in nature and is not binding on a subsequent decision of the Council or at appeal. It does not therefore outweigh the harm I have found.

Conclusion

28. Whilst I find no conflict with the objectives of the locational strategy of the WCS, I have found unacceptable harm with respect to the effect of the proposal on the character and appearance of the area. For the reasons given, the appeal should be dismissed.

Ian Bowen

INSPECTOR

⁴ Julian Wood v SSCLG, Gravesham Borough Council [2015] EWCA Civ 195

⁵ As defined in Section 55 of the Town and Country Planning Act 1990 (as amended)