



Appeal Decision

Hearing Held on 25 June 2019

Site visit made on 25 June 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th August 2019

Appeal Ref: APP/H1840/W/19/3221635

The Pig Barn, The Groaten, Ashton-under-Hill, WR11 7QR

- 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 Nicklin against the decision of Wychavon District Council.
 - The application Ref 18/01306/FUL, dated 30 June 2018, was refused by notice dated 24 September 2018.
 - The development proposed is construction of a dwelling for a rural worker.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development in the banner heading above is taken from the appellant's appeal form, as that given on the original application form states construction of dwelling for a rural dwelling, which appears to be an error.

Main Issues

3. The main issues are:
 - whether there is an essential need for a rural worker to live on the site; and
 - whether the site would be a suitable location for the proposed development having regard to the risk of flooding and national planning policy which seeks to steer new development away from areas at highest risk of flooding.

Reasons

Essential need

4. Policy SWDP 2 of the South Worcestershire Development Plan Adopted February 2016 (SWDP) sets out the development strategy and settlement hierarchy for South Worcestershire and states that development in the open countryside will be limited to, amongst other things, dwellings for rural workers.
5. Policy SWDP 19 of the SWDP relates to dwellings for rural workers and sets out that proposals for permanent agricultural, horticultural, forestry and rural enterprise related dwellings will be permitted subject to a number of criteria,

including and relevant to this case, that the functional and economic tests contained in Annex G are met. Annex G requires evidence to prove that any additional dwelling for the operation of the rural enterprise is necessary because for reason of animal welfare, security of animal stock or other stock, security of buildings or machinery, or the maintenance or delivery of essential processes, a full time worker is required to live on the unit for most of the year, and that no other dwellings are available within or adjacent to the site or a nearby settlement that can meet the required need. It also requires evidence to establish that the existing enterprise is economically viable and has clear prospects of remaining as such.

6. Paragraph 79 of the National Planning Policy Framework (the Framework) states that planning decisions should avoid development of isolated homes in the countryside unless there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
7. The appeal site consists of a relatively low-lying field bound by hedgerows, accessed off The Groaten, a short distance from the busy A46. There are 540 solar panels close to the broadly eastern boundary of the site and a relatively large storage building in the south east corner. There is also an unauthorised static caravan on the site close to an attenuation pond also in the south east corner.
8. There are 3 businesses operating from the site, Green Trak Ltd – a tree surgery business, Cotswold Drainage and Switch24 Ltd – a solar farm. Cotswold Drainage has been operating from the site since around 2012 although it is no longer in the appellant's ownership. Green Trak Ltd was established around 7 years ago and both businesses share the building for storage purposes and Cotswold Drainage also have an office which is manned during the day Monday – Friday. Switch24 Ltd was established on the land around 3 years ago. On the basis of the submitted evidence and discussion at the hearing, it seems that the businesses are well established, financially viable and capable of remaining so, and the Council does not dispute this.
9. Consequently, the dispute between the parties is whether there is a functional need for the dwelling. At the hearing the appellant confirmed that the proposal and any need relates to all 3 businesses and such need relates to security.
10. Cotswold Drainage carry out various drainage works off site and Mr Bailey of Cotswold Drainage explained at the hearing that the majority of their work is installing treatment plants, but they also have an operating license for tankers. The appellant explained that the tree surgery business, operated by his son currently largely involves carrying out maintenance work on the railway network. Switch24 Ltd does not employ anyone on the site.
11. The appellant considers that the nature of Cotswold Drainage and Green Trak Ltd means that the majority of their work is undertaken in rural areas however, there is no evidence which demonstrates that their use of the site for storage and offices in the case of Cotswold Drainage, has an essential requirement for a rural location. At the hearing Mr Bailey explained that alternative sites for rent are not affordable however, whilst I have some sympathy, there is no substantive evidence to support this. Overall, I find that these businesses are not rural enterprises for the purpose of development plan policy and any need related to these businesses and their presence on the site is of little weight in my assessment.

12. The appellant has provided evidence which demonstrates that since 2016 there have been 4 incidences of theft from the site including 2 trailers being stolen, a van broken into and tools stolen, and 2 incidences of solar panels being stolen with replacement costs of £12,000 and £22,000. There was a further attempted theft in 2018 which was foiled by a combination of the site owner and the police. The appellant confirmed that the building has not been broken into.
13. After the theft in 2016 a CCTV system was installed and an upgraded CCTV system which I had regard to at the site visit, was installed after the theft in 2017 with 2 further thefts and an attempted theft since then. As a result of the thefts and associated insurance claims the insurance premium for the site has risen from around £600 to £9600 each year and consequently the site is currently uninsured. Whilst I acknowledge the significant increase in cost, there is no evidence to demonstrate that insurance is dependent on an on-site presence.
14. The static caravan which was first brought onto the site around 2018, is occasionally occupied by the appellant and the appellant stated that on 2 occasions when the caravan has been occupied attempted thefts have been foiled, albeit at the hearing the appellant explained that one of these incidences may have been people 'lamping'.
15. At the hearing the appellant explained that they have considered alternative security measures including engaging the services of a private security firm but stated that this would not be economically viable, albeit no substantive evidence has been provided to demonstrate what such costs would be or how they compare with the costs associated with the construction of a dwelling.
16. Switch24 Ltd with a modest annual turnover of around £20,000 would not alone be able to support the provision of a dwelling to be occupied by a person employed for security or other purposes in that business, and the dwelling would be occupied by an employee of either Cotswold Drainage or Green Trak Ltd, with its purpose being as a deterrent. Whilst I acknowledge the support of West Mercia Police Design Out Crime Officer, given my findings in paragraph 11, the intended occupant would not be a full-time worker employed in a rural enterprise on the unit. Furthermore, the occupant is likely to be working away from the site during the day and would likely be asleep at night, as such I consider that any security benefits associated with the proposed dwelling would be limited.
17. Moreover, given the business's modest turnover, excluding the costs associated with building the proposed dwelling, it would not be economically viable if it employed a person for security purposes and as such there would be no demonstrable significant economic or public benefits which would outweigh the general presumption against the development of new homes in the open countryside as set out in the development plan. I also note the Council's point that other solar farms within South Worcestershire operate without a residential presence on site.
18. Consequently, taking all of the above into account, I consider that an essential need for a dwelling to accommodate a rural worker has not been demonstrated and the development is not justified. The proposal would therefore be contrary to Policies SWDP 19 and SWDP 2 of the SWDP and the Framework.

19. Policy SWDP 4 of the SWDP concerns managing travel demand and states that proposals must demonstrate that the layout of development will minimise demand for travel and offer genuinely sustainable travel choices.
20. I have had regard to the information regarding access to services and it appears that there are limited facilities in the nearby village of Ashton -under-Hill around 800m away, including a pub, bus stop and school. However, given the limited facilities in Ashton-under-Hill and that The Groaten is a relatively narrow unlit country lane with little in the way of footpaths for pedestrians, in my judgement, it is likely that the future occupiers' of the proposed dwelling would largely be reliant on the use of the private car for access to almost all services to meet day to day needs. The appellant referred to a bus stop at the junction of Station Road and the A46 however, no information has been provided about the services offered.
21. Overall, given the rural location of the site I consider future occupants would be likely to be largely dependent on the private car for access to services and facilities. Such a lack of accessibility by means of transport other than the private car weighs significantly against the proposal and would be contrary to the relevant sustainable transport aims of Policy SWDP 4 of the SWDP. It would also conflict with national planning policy in the Framework which seeks to ensure that residential development is directed to the most sustainable locations where there is access to a range of services and forms of transport other than the private car. Furthermore, for the reasons set out above the proposal would not be in accordance with Policies SWDP 19 and SWDP 2 of the SWDP or the Framework.

Flood risk

22. Policy SWDP 28 of the SWDP requires that the sequential test and exception test must be satisfied, and that development is safe from flooding for its lifetime and appropriately flood resistant and resilient, and ensures safe access and exits are available for residential development.
23. Paragraph 155 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
24. Paragraph 158 of the Framework states that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
25. It is not in dispute between the main parties that whilst the site lies in an area categorised as Flood Zone 1 (lowest risk) for river and sea flooding, it is nonetheless vulnerable to surface water flooding. However, the main parties dispute whether the site is at a 'high' or 'low' risk of flooding.
26. The Council stated that the site is in an area identified by the Environment Agency of being at a 'high' risk of flooding corresponding to a 3.3% annual probability of flooding (1:30 year event) and flood levels between 0.3m and 0.9m. The appellant considers that the Council's flooding maps in the SWDP, which are based on the Strategic Flood Risk Assessment, show the site to be in an area where the flood levels would not exceed 0.3m. However, in the

absence of sufficient detail on such plans I cannot be certain that the site does not fall within the 'high' flood risk area.

27. Furthermore, the appellant contends that the Environment Agency classification does not take into account the flood alleviation measures already put in place, such as the attenuation pond and the existing underground drainage. I appreciate that the land has been in the appellant's family ownership for over 100 years and as such they have good knowledge of the site's history of flooding. However, I have no substantive evidence before me which demonstrates that the attenuation measures have reduced the risk of flooding to an acceptable level. At the hearing the appellant confirmed that they would be prepared to employ a hydrologist to prepare a report if permission were to be granted however, given the sensitive end use it is necessary to first establish the level of flood risk.
28. I have had regard to the submitted Flood Risk Assessment and Drainage Statement and recognise that the appellant has proposed measures to attempt to mitigate the degree of exposure of future occupiers and the dwelling to flood water through design solutions such as increased floor levels. However, these measures do not take climate change into account. As such, on the basis of the submitted evidence, I am not satisfied that the development would be safe from flooding for its lifetime and would not increase the risk of flooding elsewhere.
29. Furthermore, the Framework and the Planning Practice Guidance (PPG) are clear that flood mitigation measures should only be considered having first followed a sequential approach and test followed, if necessary, by an exceptions test. Whilst the appeal site lies within the lowest risk zone for river and sea flooding, the PPG is clear that the sequential test operates also to keep development out of areas affected by other sources of flooding where possible. This process is necessary where the Strategic Flood Risk Assessment or where other more recent information indicates there may be flooding issues.
30. As part of this approach, the Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. In this regard, as I have found that there is no essential need for the proposed dwelling and as I have been provided with no substantive evidence to indicate that the Council's housing needs are not capable of being accommodated on land lying within low risk flood areas, the proposal therefore fails the sequential test and would not be an acceptable form of development with regard to flood risk. Furthermore, on the basis of the evidence before me, I cannot be certain that the proposed dwelling would be safe from flooding. The proposal is therefore contrary to Policy SWDP 28 of the SWDP and the Framework.

Other Matters

31. Whether or not the site constitutes previously developed land and that the proposed development would provide an additional dwelling which would contribute to housing supply in South Worcestershire are limited benefits which do not outweigh the harm I have identified above.
32. The appellant has provided a decision notice which relates to an outline planning permission for an agricultural-workers dwelling nearby. However, I do not know the circumstances of that development being permitted and therefore

I give this limited weight. In any event I have considered the appeal scheme on its own merits.

33. The appellant has also provided an extract from what appears to be an appeal statement by the Council, relating to an appeal against enforcement notices in respect of various developments on the site including the attenuation pond. It is stated in the statement that there is no justification for the pond as the site is not within a major flood zone and therefore not prone to water retention or drainage problems. However, I have no details about the information and evidence which was before the Council at that time in respect of flood risk, as such this is of limited weight.
34. I acknowledge that the appellant sought pre-application advice from the Council however, this is an informal opinion which has no bearing on the planning merits of the proposal.

Conclusion

35. For the reasons given above and having regard to all matters raised, the appeal is dismissed.

Felicity Thompson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Neil Jones

Agent

David Nicklin

Stuart Bailey

FOR THE LOCAL PLANNING AUTHORITY:

Katherine Smith BSc(hons) MA MRTPI

Wychavon District Council

INTERESTED PERSONS:

G Jones

The Planning Inspectorate

Rebecca Bakewell Planning Assistant

Wychavon District Council

DOCUMENTS SUBMITTED AT THE HEARING:

1. Flood Risk Assessment and Drainage Statement.
2. Flooding maps from the SWDP.