



Appeal Decision

Site visit made on 24 September 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2019

Appeal Ref: APP/W1850/W/19/3232285

Highfield, Overton Lane, Brampton Abbots, Herefordshire HR9 7JG

- 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 C J Winney against the decision of Herefordshire Council.
 - The application Ref 191293, dated 9 April 2019, was refused by notice dated 17 May 2019.
 - The development proposed is erection of 2 detached dwellings with associated development.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are i) whether the appeal site would be a suitable location for housing with regard to local and national policies, and ii) whether there is adequate justification for the loss of a rural employment use.

Reasons

Whether a suitable location

3. The site is an existing employment site with permission for use for B1/B8 light industrial and storage and distribution. It contains a large corrugated metal building and concrete hardstanding. Access to the site is off Overton Lane which joins the A449 (a main route between Ross on Wye and Worcester and beyond) and is accessible to the M50. The site has planning consents for a building extension and some limited outside storage.
4. The site is flat, but is set lower than the surrounding fields adjoining the northern site boundary with retaining walls on three sides of the site, with a leylandii hedge on the eastern boundary. As such, the site is screened from longer range views. A large detached dwelling 'Highfield' sits adjacent to the site. A public right of way (PROW) runs from Overton Lane along the entire western boundary between the site and Highfield, before emerging at a stile into the field and wider countryside beyond. The site is located within the Wye Valley Area of Outstanding Natural Beauty (AONB).
5. The proposal is for the replacement of the building with 2 detached 4-bedroom, two-storey dwellings. Both dwellings would share the existing site access, but once inside the site the driveways would branch off to each dwelling, which

- each have a single garage. There would be vehicle turning areas, front lawns and private rear gardens. The dwellings would be similar with plain tiled roofs, chimneys and rendered frontages and some decorative detailing such as brick window arches. The PROW would be relocated a little to the west but would still be aligned along the site's western boundary with a new access into the field.
6. The Herefordshire Local Plan Core Strategy 2011-2031¹ (the CS) has a spatial strategy and a settlement hierarchy to promote sustainable patterns of development. Under Policy RA2 sustainable housing growth will be supported in or adjacent to the settlements identified in figs 4.14 and 4.15 of the policy. Brampton Abbots is identified as one of the settlements that will be the main focus of proportionate development in fig 4.14.
 7. From my visit, I observed the main body of the village was centred on the village hall and church. There was some ribbon development along Ross Road and there was a bus stop at the junction of Ross Road with the road sign-posted to the church. There are scattered clusters of dwellings around the area. I noted the appeal site is some distance from the centre of the village and this junction, involving travel along Gatsford Lane and Overton Lane. These lanes have no pavement and are unlit. Because of the limited facilities, future occupiers would be reliant on the car to access day-to day facilities and there would be minimal opportunities for sustainable travel choices, such as walking or cycling. Due to the separation distance and the dispersed pattern of development in the area, I find the site is not located within or adjacent to the main built up part of a settlement identified in Policy RA2, but is located in open countryside, albeit a discreet parcel of enclosed land as already described.
 8. The proposal therefore falls to be considered under Policy RA3 that limits development in the countryside to that which meets one of the seven listed exceptions. The proposal would not be required for agricultural or forestry purposes; for rural enterprise; would not involve the replacement of an existing dwelling or the re-use of a redundant or disused building; is not purported to be for rural exception housing nor is it being promoted as a design of exceptional quality or innovative design, and it is not for gypsy or other travellers. Therefore, the proposal does not fulfil the requirements for housing in the countryside under Policy RA3 and would undermine the Council's spatial strategy for the location of housing in the rural area.
 9. The Brampton Abbots and Foy Neighbourhood Development Plan (the NDP) is currently being prepared and the appellant draws my attention in particular to the proposed settlement boundary for Brampton Abbots. The appellant paraphrases draft Policy BAF1 and provides a map extract in his Statement at paragraph 3.3.6 entitled "Figure 6 - Brampton Abbots and Foy Neighbourhood Plan Policies Map". This shows some six dispersed clusters of dwellings each with a boundary around them. The appeal site and the adjacent property 'Highfield' would lie within one such cluster together with some of the houses at the junction of Overton Lane and Gatsford Lane. The appellant ventures to suggest that the site's inclusion is likely due to its previously developed status.
 10. I acknowledge that this proposed boundary is an indication of how the local community would like to define the settlement for the purposes of planning and guiding development and that Brampton Abbots Parish Council has not objected to the appeal proposal. However, the NDP is at an early stage of

¹ adopted October 2015

preparation and has not undergone examination or referendum, and hence does not form part of the development plan. Therefore, in accordance with paragraph 48 of the National Planning Policy Framework ('the Framework') whilst I have had regard to it, I have attached limited weight to it and the proposed settlement boundary.

11. The Council's case with regards to CS Policy SS6 and the AONB is not clear. Apart from the site's location away from the main body of Brampton Abbots and that two dwellings rather than one would have a greater impact on traffic movements, the Council does not identify any specific harm that would arise to the landscape and scenic beauty of the AONB.
12. The site is already developed as a light industrial and storage and distribution use, with an existing industrial building. The proposal would see the site re-used and the building replaced with two dwellings with no extension of the site into the countryside beyond. In my view there would be no further harm to the AONB from the presence of this different built form, whose design now meets with Council approval. With regards traffic, the business could continue and vehicle movements would likely be greater than for two dwellings, so the proposal would not see a worsening in that regard. Therefore, I find on balance the proposal would not have an adverse impact to the landscape and scenic beauty of the AONB. Furthermore, the enjoyment of users of the PROW would not be worsened, a view confirmed by the Ramblers' Association who comment that the proposal (and diversion of the PROW) would not affect the use or enjoyment of the PROW. I therefore find there is no conflict with Policy SS6.
13. Notwithstanding my findings on the AONB, I conclude the development would be contrary to CS Policy SS1, which endorses the presumption in favour of sustainable development set out in paragraph 11 of the Framework, and CD Policies RA2 and RA3 whose aims are outlined above. CS Policy SD1 is a general policy about sustainable design and energy efficiency. The Council confirms in its Delegated report that in design terms the proposal does not conflict with SD1, hence Policy SD1 is not directly relevant.

Employment

14. CS Policy E2 deals with the redevelopment of existing employment land and buildings. There is a hierarchy in that 'best and good' quality employment land, defined in the Employment Land Study 2012, will be safeguarded from redevelopment to other non-employment uses. Loss of employment uses on land rated as 'moderate' will be permitted in accordance with 3 criteria.
15. However, in all cases the policy requires the viability of the development to be comprehensively assessed, with evidence of appropriate and active marketing of at least 12 months, as the proposal is for change of use of a Class B8 use, and it can be shown that the marketing was unsuccessful.
16. The appellant contends that a viability and marketing assessment is not required as the requirement only applies to the 'best and good' and 'moderate' rated employment land, and not to other and smaller sites, such as the appeal site.
17. Paragraph 5.2.16 of the supporting text to Policy E2 clarifies the matter. The first sentence deals with 'best and good' quality employment land, which will be safeguarded for employment generating uses and general industry. The second

sentence states that “In circumstances where *other employment land* [my emphasis] and sites are no longer viable, sufficient justification and evidence will need to be submitted...”. From my reading of the policy and supporting text, sites do not have to be rated in order to fall under the requirement for viability and marketing, as the requirement applies to all existing employment sites. This is confirmed by the Forward Planning Manager in the Council’s Delegated report who seeks to correct the appellant’s challenge about the interpretation of Policy E2. He unequivocally says it applies “In all cases”.

18. The Council has not specified how the loss of the site would affect employment land supply or provided any assessment of the site’s quality against the methodology used in the Employment Land Study 2012. However, I find these requirements are a separate consideration beyond the viability and marketing assessments required in all cases.
19. In light of the above, I am not persuaded by the appellant’s interpretation of Policy E2. I find the proposal would result in a loss of employment land and building without the required assessment of viability, evidence of appropriate and active marketing for at least 12 months and evidence that the marketing was unsuccessful. No such viability assessment or marketing evidence has been submitted. Hence, there would be an unjustified loss of employment land that would undermine the Council’s economic strategy for the Borough, including for the rural area.
20. Accordingly, the proposal would be contrary to CS Policies SS1 and E2, whose aims are outlined above. CS Policy SS5 deals primarily new ‘employment provision’ and CS Policy RA6 deals with new employment generating proposals in the rural area. As the site is already a B1/B8 employment use, these policies are not directly relevant.

Other considerations

21. The Council accepts that it cannot currently demonstrate a 5 year supply of deliverable housing land (5 YHLS) and since it determined the application there has been a reduction to 4.05 years. Therefore, in accordance with paragraph 11d) of the Framework, as this is an application for the provision of housing, the development policies which are most important for determining the application are considered out-of-date. As a result, conflict with the development plan is given reduced weight.
22. In light of the above position, I am required to consider, as stated in Framework paragraph 11d)ii, if any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted.
23. I attach significant weight to the shortfall of housing. New housing would accord with the Government’s objective of significantly boosting the supply of homes, especially in a context where there is no 5 YHLS. This would have a social benefit. There would be some economic uplift during construction through short-term employment and the purchase of building materials and longer-term local spend from future occupiers. However, the small-scale windfall of two dwellings would make only a modest contribution to the supply of housing and towards helping address the Council’s shortfall, even if there

has been some under-delivery. Therefore, the proposal would have limited economic and social benefits.

24. Whilst the existing rural business may generate more traffic movements than 2 dwellings, the Framework recognises that in rural areas, businesses may need to be located beyond existing settlements and may not be well served by public transport (paragraph 84) and the site is within easy reach of the A449 and M50. It also attaches significant weight to the need to support economic growth and productivity at paragraph 80. Therefore, I find the loss of a rural business weighs significantly against the economic aims of the Framework.
25. The housing shortfall needs to be balanced against the Framework's advice on the location of housing to avoid isolated development in the countryside and should be located where it will enhance or maintain the vitality of rural communities. The Framework requires opportunities to promote walking, cycling and public transport to be identified and pursued (paragraph 102) and that development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes (paragraph 103). The proposal does not offer this. Future occupiers would be reliant on the car to access day-to-day services and facilities. I find this weighs significantly against the environmental aims of the Framework.
26. The proposal would involve development in the AONB. At paragraph 172, great weight is given to conserving and enhancing its landscape and scenic beauty. The proposal would be re-using an existing industrial site and replacing an existing industrial building with 2 dwellings without further encroachment into the countryside and AONB beyond. I find the proposal and the use of previously developed land in this instance would have a neutral effect on the AONB's landscape and scenic beauty. There would also likely be some biodiversity gain arising from the provision of landscaping. As a result, some environmental aspects of sustainable development would be achieved.
27. The use of previously developed land weighs in favour of the proposal, as paragraph 117 of the Framework promotes its use for housing. However, significant weight is only attached to such land within settlements for housing (paragraph 118), which this is not. Paragraph 121 encourages a positive approach to applications for alternative uses of currently developed land not allocated for a specific purpose in plans, where it would help to meet an identified development need. This would include use of employment land for homes in areas of high demand, provided amongst other things, the development would be compatible with other policies in the Framework.
28. I find overall the proposal would cause significant economic harm with some environmental harm. As a result, the proposal would significantly and demonstrably outweigh the benefits and would not constitute sustainable development when assessed against the policies in the Framework taken as a whole. This is a material consideration in the overall planning balance.

Planning Balance

29. Planning law requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. My findings above against the Framework as a whole are a material consideration.

30. There would be limited economic and social benefits arising from the provision of 2 dwellings, in the light of the Council not having a 5YHLS. But their location in the countryside beyond a settlement would undermine the Council's spatial strategy for the location of housing in the rural area. The loss of a rural employment site, without the necessary assessment, justification and marketing, would have significant economic harm and undermine the Council's economic strategy. I find this outweighs the harm arising from the Council's lack of 5YHLS. There would be some environmental benefits from the use of a previously developed land in the AONB and some biodiversity gain. However, future occupiers would be heavily reliant on the car, which weighs against the proposal.
31. Despite there not being a 5YHLS and conflict with the development plan being reduced as a result, I find the proposal would significantly and demonstrably outweigh the benefits and would not constitute sustainable development when assessed against the policies in the Framework taken as a whole, when considered under paragraph 11d)ii of the Framework.

Other Matters

32. I acknowledge that the appellant has improved the house designs, after taking on board the Council's criticisms about the design of the previously refused dwellings. I have not been furnished with the designs from these previous schemes to be able to comment. However, as the Council has not raised objection to the designs of the dwellings, I do not need to consider this matter further.
33. The site lies within the River Wye catchment of the River Wye Special Area of Conservation. Consequently, a Habitats Regulation Assessment is required before any planning consent is granted. The Council has not undertaken one and have left me to undertake my own Appropriate Assessment, in my capacity as the competent authority in this case. However, as I am dismissing the appeal for other reasons, I do not need to consider or pursue this matter further.

Overall Conclusion

34. Drawing all the above points together, the proposed development would not represent a sustainable or acceptable form of development in the open countryside. For the reasons set out above, having regard to all matters raised, I conclude the proposed development conflicts with the development plan read as a whole, and there are no material considerations to justify the development. The appeal should be dismissed.

K. Stephens
INSPECTOR