



Appeal Decision

Site visit made on 2 December 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 January 2020

Appeal Ref: APP/K2420/W/19/3237098

Lea Grange Farm, 11 Twycross Lane, Orton on the Hill CV9 3NP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr and Mrs Michael Hayward against Hinckley & Bosworth Borough Council.
 - The application Ref 19/00772/OUT, is dated 9 July 2019.
 - The development proposed is the demolition of an existing farm building and the erection of a detached dwelling.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The proposal is in outline form, with matters of access and layout also for consideration. I shall determine this appeal on that basis.
3. This appeal has been made against the Council's non-determination of the planning application. The Council has since stated that it would have refused the proposal on the basis that it would result in the creation of a dwelling in the countryside, beyond a settlement boundary. Furthermore, the Council has stated that the design of the proposed dwelling would neither complement nor enhance the intrinsic value and undeveloped rural character of the area.

Main Issues

4. Consequently, the main issues are:
 - whether the appeal site offers a suitable location for new housing development, having regard to the Council's settlement strategy policies and the National Planning Policy Framework (The Framework), and
 - the effect of the proposed dwelling on the character and appearance of the area.

Reasons

Locational suitability

5. The Development Plan for the district includes the Hinckley and Bosworth Borough Council Site Allocations and Development Management Policies 2006-2026 (DPD) (2016). Policy DM4 of the DPD states that the countryside will be

safeguarded from unsustainable development. It lists the type of development in the countryside that would be considered favourably. Policy DM4(e) relates to the support for accommodation for an agricultural worker. However, it is not in evidence that the proposal would be to accommodate a farm worker. This policy is generally consistent with the objectives of paragraph 77-79 of the Framework.

6. The Framework seeks to significantly boost the supply of housing. This supports housing where it would enhance and maintain the vitality of rural communities and support local services. The site is some distance from the nearest settlements of Twycross and Orton on the Hill. Although within a group of farm buildings, including a farm house, the site is within the open countryside.
7. The access onto the public highway is via a long private driveway. Orton Lane is a country lane without the benefit of streetlights or footways. As a result, the site is not in a location with good accessibility to services or employment. This finding is made in acknowledgement that access to public transport is generally reduced in rural areas in comparison to urban areas. Future occupiers would be dependent on the private car for day-to-day needs resulting in a consequently high car dependency. Future occupants of the dwelling may support facilities and services located within the surrounding area. However, the benefit of one dwelling to the viability and vitality of rural services, would be negligible.
8. Accordingly, the proposal would not accord with policies DM1 and DM10 of the DPD which seek development to be sustainably located and for the countryside to be safeguarded from unsustainable development.

Character and appearance

9. The appeal site is within a cluster of farm buildings and currently occupied by a large barn. The barn is part of a group of agricultural buildings of various styles and sizes. There is also a farmhouse at the entrance to the group. The group of buildings is at the end of a comparatively long driveway between fields. The buildings are of limited visibility from Twycross/Orton Lane; hidden by distance, topography and tree planting. However, I have observed that the site itself is relatively exposed to distant views of the open countryside to the rear, when looking to the south and west. The land falls away in these directions and nearby screening is limited. The appeal site and adjacent buildings have an agrarian character. The site therefore makes a positive contribution to the local rural character.
10. The proposal would replace the barn with a large detached dwelling. Although, the submission includes details of layout and access, remaining details are indicative only. The submitted indicative elevation plan is therefore provided for illustrative purposes only and is not formally part of the application. Nevertheless, this shows a relatively traditional two-storey dwelling with a layout that would be a long narrow building. It would present a main elevation towards the open aspect to the southwest. The layout illustrates a departure from the character of the existing barn. Appendix B of the Council's Statement of Case illustrates that the approved conversion retained the form and profile of the existing barn, with consolidated openings that maintained the character of the building. Therefore, although the proposal would result in a reduction in footprint, I do not concur with the appellants that this would enhance the

openness and character of the site. Subsequently, the proposal would have a harmful effect on the character of the area.

11. Moreover, the proposed garden would extend the residential boundary beyond the approved conversion. This would enable the addition of further domestic garden features/equipment that would be out of character with the surrounding area. The garden would be significantly larger than shown to serve the converted barn, as the footprint of the barn would also be reduced. The proposed garden would therefore also contribute towards the identified incongruous addition of residential character to the farm building grouping.
12. Accordingly, the proposal would not comply with policy DM10 of the DPD, which seeks development that would enhance the character of the surrounding area. The proposal would also fail to satisfy the Council's Landscape Character Assessment¹ which seeks development to complement the existing context with regard to scale, form and materials.

Other matters

13. The existing barn is subject to prior approval to be converted to a dwelling under Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) in October 2017². This is currently unimplemented. A condition of Class Q.2(3) requires the work to be completed within 3 years of the prior approval date. It is therefore still reasonably capable of being implemented.
14. In the Mansell case³ the ruling identified that a fall-back position needed to be a real-prospect, but it did not need to be probable or likely: a possibility would suffice. Reference to fund raising land sale transactions, for the conversion and to a third-party developer, do not remove the possibility that the conversion could still occur. Furthermore, the advice from an estate agent⁴ and comments from a structural engineer⁵ indicate that the conversion still has a real prospect of being delivered. Accordingly, there is no tangible reason why the conversion could not be implemented within the required timeframe to comply with the conditions and limitations of Class Q. This is therefore a material consideration of significant weight.
15. However, planning permission requires development to be determined in accordance with the development plan unless material considerations indicate otherwise. I have identified that the proposal would not accord with the Plan in spatial terms or in terms of character. A clear intention of Class Q is to make use of existing agricultural building stock irrespective of locational matters. It does not follow that this is a method to gain the construction of a new dwelling that would side-step the spatial policies of the Development Plan or the Framework.
16. Furthermore, the extent of operational development permitted, in respect of Class Q is intentionally limited and only reasonably necessary to convert the building. In this case, I find the objectives of the development plan and of the GPDO to be mutually exclusive. Consequently, although of significant weight,

¹ Hinkley and Bosworth Landscape Character Assessment, September 2017

² Planning Application Reference: 17/00842/CQGDO

³ Mansell v Tonbridge and Malling Borough Council [2017] EWCA civ 1314

⁴ Andrew Johnson & Company letter, 30 May 2019

⁵ Martin Sansom letter, 13 June 2019

the fall-back position would not be a determinative factor. To afford it over-riding importance would prejudice the Council's spatial housing policy which is based on accessibility to services and employment. Furthermore, in any event one dwelling would have only a negligible effect on the delivery of housing in the district.

17. The appellant has referred to planning decisions taken by North Warwickshire Borough Council⁶ and North West Leicestershire District Council⁷. In the first, the Council considered that the principle for residential development had been established by the potential for the subject barn to be converted to residential use under Class Q. However, a further material consideration was that the site was in the Green Belt and the proposal would result in a substantial reduction in built form. In the second, the appellant states that the Council considered that a previous planning approval for conversion to residential use presented a material fall-back position. In summary, these two examples identify the fall-back as material considerations. However, the weight to apply to each consideration, within each case, is a matter for the decision maker and each case must be considered on its own merits.

Planning balance and conclusion

18. The Framework seeks to contribute towards the achievement of sustainable development through meeting the needs of the present without compromising the needs of future generations. A key thread of this objective is to ensure that housing development is well located and supported by the necessary infrastructure and facilities.
19. Paragraph 11d of the Framework states that where there are no planning policies, or the policies most important for determining the application are out of date (including where a Council cannot demonstrate a five-year supply of deliverable housing sites), a decision maker should grant planning permission. This is unless the policies of the Framework provide a clear reason to refuse development, or any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole. Parties agree that the Council does not have a 5-year Housing Land Supply (HLS).
20. This was established in a recent appeal decision in Barwell⁸ where the Council was found to have a 'significant shortfall' in its housing supply. The Council could only demonstrate a housing land supply figure of somewhere between 2.94 years and 4.15 years. This higher figure is within the Council's Housing Land Availability Report⁹. The Report's housing trajectory predicts that housing completion numbers will also not all achieve targets in future years. As a consequence, this is of significant weight in favour of the proposal. Accordingly, the proposal would benefit from paragraph 11d of the Framework and the presumption in favour of sustainable development.
21. The appellant has identified that the benefits of an additional dwelling would include the provision of economic support to facilities and services within the local area. However, the proposal would be located on a site with extremely poor accessibility that would therefore not be supported by the necessary

⁶ Planning Application Reference: PAP/2016/0336

⁷ Planning Application Reference: 18/00557/FUL

⁸ Planning Appeal Reference: APP/K2420/W/19/3222850

⁹ Hinkley and Bosworth Borough Council – Residential Land Availability Monitoring Statement March 2019

infrastructure and facilities. Consequently, the adverse effects of the proposed development would significantly and demonstrably outweigh its benefits when assessed against the Framework as a whole.

22. Consequently, even with the significant weight applied in favour of sustainable development, the benefits of the proposal do not outweigh the harm identified to the Council's spatial housing strategy or to the character and appearance of the area. Therefore, the identified conflict with the development plan is not outweighed by other material considerations.

23. For the above reasons, the appeal is dismissed.

Ben Plenty

INSPECTOR