



Appeal Decision

Site visit made on 3 September 2019

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2020

Appeal Ref: APP/W1850/W/19/3223874

Twyford Brook Barn, Twyford Common Road from Chapel House to Kings Pitts, Twyford HR2 8AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Reed against the decision of Herefordshire Council.
 - The application Ref 181347, dated 10 April 2018, was refused by notice dated 18 December 2018.
 - The development proposed is erection of dwelling and garage. Construction of new vehicular access and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in 'outline' for access and layout, with scale, landscaping and appearance reserved for future consideration. I have determined the appeal on this basis.
3. Some of those making representations contend that the appeal site ('the Site') as edged red on the submitted 1:1250 Location Plan is not located along Twyford Common Road ('the Lane'). However, the appellants have provided a reason¹ for the inclusion of Twyford Common Road in the address and the Council's submissions also refer to this when describing the site. Therefore, I have used the address supplied by the appellants.
4. At the time the appeal planning application was made to the Council, the host property 'Twyford Brook Barn' ('the Barn') and land associated with it, as shown edged blue on the Location Plan was in the applicants' ownership. I understand that subsequently, this property and land have been sold. Nevertheless, the Site as edged red on the Location Plan remains unaltered and in the appellants ownership, I have proceeded on this basis.

Main Issues

5. The Council's third reason for refusing the appellants' application, relates to the lack of information to address surface water drainage. The Council is no longer pursuing this reason for refusal. On the available evidence, I concur with the Council's position.

¹ As set out in the appellants' final comments

6. As already stated, until recently the Site formed part of the Barn. This is located to the north of Brook Farmhouse ('the Farmhouse') a Grade II listed property. The main parties disagree as to whether the Barn is curtilage listed.
7. Accordingly, the main issues are:
 - a) Whether the Site is a suitable location for housing;
 - b) The effect of the proposal on the character and appearance of the area, including any heritage assets; and,
 - c) If any harm arises whether or not this is outweighed by any other considerations.

Reasons

Suitability of the site for housing

8. In terms of new housing provision across the county Policy RA1 of the Herefordshire Local Plan-Core Strategy (CS) identifies that Herefordshire Rural areas will need to find a minimum of 5,300 new dwellings between 2011 and 2031 to contribute towards the county's housing needs. These dwellings are to be broadly distributed across the seven Housing Market Areas (HMAs). Twyford Common lies within the Hereford HMA and is listed as being one of the 'other settlements where proportionate housing is appropriate'.
9. Policy RA2 of the CS states that the minimum growth target in each rural HMA will be used to inform the level of housing development to be delivered in the various settlements. Further, that Neighbourhood Development Plans (NDPs) will allocate land for new housing or otherwise demonstrate delivery to provide levels of housing to meet the various targets. Amongst other criteria, this Policy specifies the need for the development site to be located within or adjacent to the main built up area of the settlement. In particular, Paragraph 4.8.23 of the CS states that where appropriate, settlement boundaries (or a reasonable alternative) for those settlements listed in Policy RA2 will be defined in NDPs or the Rural Areas Sites Allocation DPD. Paragraph 4.8.23 of the CS goes on to explain that outside of these settlements new housing will be restricted to avoid unsustainable patterns of development and to proposals which meet the criteria listed in Policy RA3 (Herefordshire's countryside) of the CS.
10. The Site lies within the area covered by the Callow and Haywood Neighbourhood Development Plan² (CHNDP). Policy CH9 of the CHNDP supports new housing proposals for sites in the Twyford Common area only where it is clearly demonstrated that proposals are adjacent to or closely linked to existing built form and suitable access is provided.
11. However, the text preceding Policy CH9 at paragraph 4.5.1 states that: *'The Parish Council objected to the designation of Twyford Common on the grounds that there is no pre-existing village or settlement at Twyford Common and access is extremely poor. It is therefore considered that it would not be appropriate to guide new development to this isolated location and planning policies in the Neighbourhood Development Plan should instead encourage development to be located within Grafton. For the purposes of the Plan,*

² Map 1 Callow and Haywood Parish and Neighbourhood Plan Area

Twyford Common is identified as that area of land inside the circular un-adopted road around the old common land at Twyford. This area includes several scattered properties.'

12. In my view, the above text of Paragraph 4.5.1 falls under the category of a 'reasonable alternative' for defining the settlement in the terms of Policy RA2 of the CS. While I have had regard to the Cherkley judgment³ and acknowledge that Paragraph 4.5.1 is not itself a development plan policy, amongst other things it seeks to geographically define the Twyford Common 'area' for the purposes of Policy CH9 of the CHNDP.
13. In this case, the Site is outside the circular un-adopted road around the old common land at Twyford and is also separated from it by a sizeable field and the Lane. I therefore do not consider it to be adjacent to the settlement for the purposes of Policy RA2 of the CS. In any event, Policy RA2 of the CS a non-strategic policy as it refers to specific areas and pre-dates Policy CH9 of the CHNDP. Therefore, having regard to Paragraph 30 of the National Planning Policy Framework ('the Framework') the latter takes precedence.
14. In considering the comments of the Council's Neighbourhood Planning Manager and given its location close to other dwellings, I acknowledge that the Site is not isolated in terms of the definition within the Framework. Nonetheless, the meaning behind the Framework is not that any site which is not isolated is suitable for development. Furthermore, in this case, I am not aware of any basic level of services and facilities that are available in the settlement of Twyford Common or access to bus services to any nearby settlements. There would therefore be a reliance on the private motor vehicle to access a wider range of services and facilities to meet day to day needs. The Site's development as proposed would therefore promote unsustainable patterns of development contrary to the Council's strategy for the location for new development set out in the development plan.
15. I have been referred to the Council's Rural Housing Background Paper 2013, which identifies 52 dwellings in the 'main village envelope' for Twyford Common. As this, pre-dates the CHNDP and is not the development plan, I afford this limited weight.
16. Drawing together the matters outlined above, the Site is located outside the settlement of Twyford Common and for planning policy purposes is within the countryside. Consequently, Policy RA3 of the CS is engaged, which limits new housing outside settlements for certain types. The proposal does not fall within any of the specified types.
17. In light of the above reasons, the Site is unsuitable for housing and would be in conflict with both Policy CH9 of the CHNDP and Policy RA3 of the CS.

Character and appearance

18. The Site is on higher ground relative to the Lane and is mainly grassed with some shrub planting. Although it contains some domestic paraphernalia such as a washing line, planted beds, sheds and other storage vessels, these elements are largely close to and screened by the established hedge along its eastern boundary adjacent with the Lane. Consequently, in views from the Lane, the Site has the appearance of an open green field with a distinct

³ Cherkley Campaign Ltd v Mole Valley District Council [2015] EWCA Civ 567

topography that slopes upwards from the Lane. To the north of the Site is a detached dwelling 'Uplands' and to the south is the Barn and its retained land. Further south about 60m from the Site is the Farmhouse. On the eastern side and relatively close to the Lane are two other detached dwellings 'Ivy Cottage' and 'Cartef'.

19. Based on its listing the significance of the Farmhouse which is a late 17th to 18th century detached property and granary, is largely derived from its form, architecture and detailing. The Barn is not expressly identified in the listing for the Farmhouse.
20. Section 1(5) (b) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that any object or structure within the curtilage of a listed building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948 shall be treated as part of the listed building.
21. Whether the building is 'curtilage listed' is a matter of fact and degree based on the evidence before me. Case law has established a number of tests which should be considered by a decision taker in defining the extent of curtilage. These include the physical layout of the listed building and the building in question, their ownership past and present, and their use or function past and present specifically whether the building was ancillary (i.e. subordinate to and dependent on) to the purposes of the listed building at the date of listing.
22. There appears to be no dispute between the main parties that the Barn, pre-dates 1948. Further, on the available evidence the Farmhouse and the Barn were in the same ownership prior to the listing of the Farmhouse on 20 October 1952 and remained as such through until 1981. There is nothing before me to suggest that these buildings are in the same ownership at present.
23. In terms of physical layout, both the Farmhouse and the Barn are located on the western side of the Lane and the separation between them ranges between about 12-15m. This does not suggest any intimate relationship between them, nor are they so far apart to preclude them from sharing a curtilage, the extent of separation is therefore a neutral factor. The linear arrangement of these buildings close to the road is most likely due to the generally upwardly sloping landform to the rear (west) of the site. However, this along with the historic field arrangements and a track between the two properties (even if this was not enclosed at the time of the listing) are inconclusive as to the curtilage relationship of these buildings.
24. The present use of the buildings appears to be residential. With regards to past uses, an agent acting on behalf of a third party advises that at the time of listing and for a long period thereafter the Barn was in ancillary use, in that children of the resident family at the Farmhouse and their friends had used it for play. Further, that the Barn was used for stabling of horses (kept for pleasure) and associated storage purposes, in addition to agricultural use. However, due to the anecdotal nature of such evidence, I attach limited weight to this. The Council's Conservation Officer has also concluded that the Barn is curtilage listed because the listing of the Farmhouse refers to a granary. However, this does not specifically identify whether the primary use of the listed property was residential, agricultural or if it was in mixed use and more importantly, whether the Barn was in an ancillary use to this.

25. Drawing on the above reasons, the buildings were in the same ownership at the time of the listing. However, although they share some layout characteristics this does not clearly point to a shared curtilage at the time of the listing. In particular, having regard to the function test, on the available evidence it has not been clearly shown that the building was ancillary (i.e. subordinate to and dependent on) to the purposes of the listed building at the date of listing. Considering these factors in the round, I conclude that the Barn is not curtilage listed.
26. Turning to the effects of the proposal on the setting of the Farmhouse, this lies gable end to, and about 60 metres from the proposed location of the new dwelling and its access. The Barn and its extensive gardens, car parking area and tall dense conifer hedge along its southern boundary intervene. This limits inter-visibility between the Farmhouse and the Site. When standing near the front of the Farmhouse the frontage of the Site is only visible in oblique and limited views to the north. Based on these reasons and having regard to the particular significance of the Farmhouse, the proposed layout and access for the new dwelling would not harm the setting and significance of this heritage asset. I therefore find no conflict with the relevant provisions of the Framework for conserving and enhancing the historic environment.
27. Although not forming part of a designated landscape in terms of the Framework, the Site lies partly within Landscape Character Areas Principal Settled Farmland and Forest Smallholdings and Dwelling, as per the Council's Landscape Character Assessment. These areas are primarily (but not exclusively) defined by the presence of established hedgerows and tree cover; the field patterns and wayside development. In this context, and for the reasons already given, the Site contributes to the established field patterns. Moreover, due to its largely undeveloped nature, established hedge and location between the Barn and the Uplands, it also supports the predominantly sporadic arrangement of development and reinforces the spacious and verdant quality of the area. In light of these factors, the Site forms part of the local landscape and positively contributes to the rural and scenic quality of the area.
28. Based on the proposed site layout an appreciable section of the existing hedge would be removed and some reduction of its retained part would also be likely to provide the required visibility splays. This would expose the Site in views from along the Lane. The access and driveway would be cut into the existing embankment. A further level area of land would be engineered into the slope along with associated retaining walls to accommodate the proposed layout for the new dwelling, garage and parking area.
29. Despite some concealment by the retained slopes and embankment and even in limited views from the Lane, the extent of works proposed would introduce considerable encroachment and urbanisation of a largely undeveloped site in the countryside. The new access would be close to the entrance to Uplands and based on the layout the new dwelling would also be adjacent to Uplands. Cumulatively, this arrangement would further compound the urbanising effects of the proposal which would detract from the rural and scenic quality of the area.
30. Although some proposed landscaping is shown and this is a reserved matter, from the information available, it is unclear how this might address the visual harm I have identified.

31. In the absence of a Certificate of Lawful Development, I attach limited weight to the appellants' assertion that the works associated with the creation of the proposed access, driveway and car parking constitute permitted development under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, as I cannot be certain that such works would not require planning permission.
32. For the above reasons, while I have found that the proposal would not affect the setting and significance of the heritage asset, there would be harm arising from the proposed access and layout on the character and appearance of the area. I therefore find conflict with Policy LD1 of the CS which amongst other matters requires that landscape and townscape positively influence development and that developments conserve and enhance the beauty of the landscape.

Other considerations

33. The Council acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites. Paragraph 11d of the Framework states that in these circumstances where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole (the tilted balance).
34. The proposal would deliver a single open-market dwelling, subject to the approval of the reserved matters. This would only make a very limited contribution towards housing locally and although it would increase the residents in the area, given the sites poor accessibility to local services and facilities, such support from a single dwelling and any other associated benefits would also be limited. On the available evidence, it has not been shown that the proposal would improve groundwater drainage. The lack of harm to the significance and setting of the heritage asset is a neutral factor in the overall balance.
35. On the other hand, and despite the initial support from Council officers, I have found that the site's development as proposed would promote unsustainable patterns of development contrary to the strategy for the location for new development as set out in the development plan. This would lead to an increased reliance on the private car resulting in adverse environmental effects. Further, the proposal would harm the character and appearance of the area. The Framework seeks to enhance the natural and local environment. It also promotes sustainable transport modes, and one of its key environmental aims is mitigating and adapting to climate change. Therefore, I attach great weight to the environmental harms I have already identified. Consequently, the adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Other Matters

36. The site falls within the Impact Risk Zone of the River Wye Special Area of Conservation (River Wye SAC) and the Lugg Site of Special Scientific Interest (Lugg SSSI). In this case, both Natural England and the Council are satisfied that the proposed mitigation in the form of a package treatment plant would safeguard against any discharge of water or liquid waste including to mains

sewer from the development, and the adverse effects associated with this on the integrity of the River Wye SAC and the interest features for which the Lugg SSSI has been notified.

37. However, caselaw⁴ requires the decision maker, when considering the effect that a proposal may have on such sites either individually or in combination with other development, to consider mitigation within an appropriate assessment (AA) rather than at the screening stage. This responsibility now falls to me as the competent authority. Nonetheless, as I am dismissing the appeal for other reasons, I have taken no further action on this issue.

Conclusion

38. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

M Aqbal

INSPECTOR

⁴ People over Wind and Peter Sweetman v Coillte Teoranta (Case C-323/17)