The Planning Inspectorate

Appeal Decisions

Site visit made on 25 February 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Appeal Ref: APP/Q3305/W/19/3240769
Land West of Le Brace, Emborough Pond Lane, Emborough, Wells BA3 4SE

- 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 Ian Saunders against the decision of Mendip District Council.
- The application Ref 2019/0976/FUL, dated 17 April 2019, was refused by notice dated 12 June 2019.
- The development proposed is the demolition of existing agricultural building (benefitting from prior approval for conversion to a dwelling) and the erection of a new dwelling.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council made its decision, planning permission reference 2019/2147/FUL has subsequently been granted dated 22 October 2019 for the conversion and extension of the existing barn to a dwelling. I have had regard to this in my determination.

3. Furthermore, the evidence[1] indicates that since the decision was taken, it has been established that the Council is unable to demonstrate a five year supply of housing land. The Mendip District - Five Year Housing Land Supply, December 2019 document indicates a shortfall that equates to a 3.8 years supply of deliverable sites. I have determined the appeal on this basis.

Main Issues

4. The main issues are whether the appeal site is an appropriate location for the development having regard to local planning policies and the effect of the proposal on the character and appearance of the area.

Reasons

Location

5. There is no dispute between the parties that the appeal site would not accord with the strategy for the delivery of new housing set out in the Mendip District Local Plan 2006-2029, Part 1: Strategy and Policies, December 2014 (LP). Core Policies 1 and 2 seek to direct new residential development towards the principal settlements and defined Development Limits and the appeal site does

[1] Statement of Common Ground for appeal reference APP/Q3305/W/19/3236922 & Council's letter dated 7.1.20

not fall within these. Together with Core Policy 4 they, amongst other things, seek to strictly control residential development in the open countryside save for specific exceptions. It is not part of the appellant's case that the proposal falls within any of the exceptions outlined in Core Policy 4.

6. The proposal would demolish the existing single storey agricultural buildings with an L shaped footprint at the appeal site and introduce a detached two storey dwelling with a barrel roof, terrace, garden and parking area. This would conflict with the core policies mentioned.

7. However, prior approval exists for the conversion of the existing agricultural buildings to a residential dwelling[2]. Even so, in order to comply with the limitations of the permitted development this would need to be completed by April 2020 which, in light of the short time scale limits its weight as a realistic alternative to the scheme before me. Nevertheless, more recently planning permission was granted for the conversion and extension of the same building into a three-bed dwelling[3].

8. I accept that the existence of this latter permission amounts to a realistic 'fall-back position' should the proposal before me be dismissed. As such, this amounts to a material consideration of significant weight. My view on this is consistent with the case law[4] and the general approach taken by the Inspectors in examples of appeal decisions[5] to which I am referred.

9. As the appeal proposal and the fall-back position would both result in a detached three-bedroom dwelling, there would be little difference between the appeal proposal in comparison to the existing permission in terms of the principle of a dwelling in this location. Therefore, whilst the proposal would conflict with policies CP1, CP2 and CP4 of the LP, there would be no resulting tangible harm insofar as is relevant to the principle of a dwelling. In these circumstances, the significant weight attributed to the fall-back position justifies development in a location other than in accordance with the adopted development plan.

Character and appearance

10. The Landscape Assessment of Mendip District 1997 (LA) indicates that the appeal site is broadly on the boundary[6] of two landscape character areas, namely the Mendip Plateau and Oakhill-Emborough. Due to the combination of surrounding pastoral fields, hedgerows, woodlands and sporadic limited built form, the land surrounding the appeal site has a prevailing agricultural rural character. Currently there are modest single storey agricultural buildings on the site, the appearance of which, although somewhat neglected, is commensurate with that character.

11. As already stated, significant weight is afforded to the existence of the planning permission for a dwelling at the site. However, although this supports the principle of a dwelling at this location, there are notable differences with the appeal proposal in terms of the impact on the character and appearance of the

[2] Reference 2017/0584/PAA
[3] Reference 2019/2147/FUL
[4] Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314
[5] Referenced APP/D3830/W/16/3156030, APP/N1215/W/18/3200120, APP/Z1510/W/17/3189624 & APP/Y3940/W/18/3200095
[6] Figure 2, Map showing the Landscape Character Areas within the Landscape Assessment of Mendip District 1997, page 14 Appellant's Statement of Case

area. The following considerations have led me to this view. Firstly, the scheme before me is two-storey in height and therefore, considerably higher than the approved single storey dwelling and the existing agricultural buildings on the appeal site.

12. Secondly, the footprint of the appeal proposal, which takes a more consolidated central position within the appeal site, bears little relation to the narrower more linear footprint of the existing buildings on the site or the approved conversion and extension of them to a dwelling.

13. In combination, the bulk and massing of the appeal proposal would be considerably greater than the modest fall-back scheme. Furthermore, the impact from lighting within the proposed building would be particularly noticeable within the otherwise generally unlit rural landscape, especially given the extensive glazing at upper floor level on the southern elevation.

14. Thirdly, the garden area of the proposed dwelling[7] would be larger such that the encroachment of domestic planting and paraphernalia directly adjacent to farmland would be more extensive than the approved scheme[8].

15. I acknowledge that, due to established vegetation, topography and its distance from the road, the proposal would not have an immediate presence in views from public vantage points. Nevertheless, at my site visit I was able to clearly see the appeal site in longer views from Emborough Pond Lane to the south east, which is reinforced by the submitted photographs[9]. Furthermore, glimpses would be possible, especially in winter months, through the hedgerow adjacent to the lane.

16. Taking these factors together, the proposed building would be of a scale and bulk that would be at odds with the modest agricultural character of the land at present. Moreover, by comparison to the fall-back position it would have a notably more harmful impact.

17. In support of the proposal the appellant points to the removal of the existing Dutch barn to the west of the site. Nevertheless, the Dutch barn is an open sided structure, the functional light-weight appearance of which is in keeping with a working agricultural landscape and is therefore, not objectionable. On this basis, notwithstanding that it takes design cues from its form, I do not consider that the more solid massing and appearance of the appeal proposal would successfully convey the agricultural essence of the Dutch barn. It follows that the removal of the Dutch barn attracts little weight.

18. I accept that orchard planting and hedgerow reinstatement would provide some landscape enhancement. However, as existing woodland already lies to the north, the additional tree planting would only enhance the backdrop to a limited degree. Furthermore, the locations[10] of the proposed hedgerow reinstatement would do little to prevent the harm arising from the scale and massing of the building identified. Therefore, these factors would not fully address the harm and hence, do not outweigh it.

[7] Proposed site plan reference PL 4103/3
[8] Proposed block plan reference PL 4171/5
[9] Photographs Appendix 5B Appellant's appeal statement of case
[10] Drawing No. PL4103/6 Landscape Enhancements

19. My attention is drawn to four appeal decisions[11] which related to proposals for a new dwelling in circumstances where a fall-back position had been shown. The Inspector in each case found the impact on the character and appearance to be acceptable. However, I do not have the full details of those proposals which inhibits a direct comparison with the scheme before me. Nevertheless, based on the content of the decision letters, some of the decisions refer to the replacement building being on a similar or smaller footprint, or with similar dimensions, to the existing building at the site. This would not be the case in relation to the proposal before me. Moreover, the examples correspond to different parts of the country which by implication will have individual characteristics that are not necessarily transferable to the context of other sites. As such, it is not shown that any of the examples referred to should carry more than little weight in relation to the assessment of the proposal's impact on character and appearance. They do however reinforce the necessity for considering each proposal on its own merits, which I have done in this case.

20. The appellant suggests conditions to restrict permitted development rights. Nevertheless, this would not fully address the harm identified in relation to the proposed building. Moreover, the fall-back position already has conditions imposed that restrict domestic outbuildings and extensions[12] normally allowed under permitted development rights.

21. Accordingly, I find that the proposal would have a harmful impact upon the rural character and appearance of the area and would conflict with paragraph 127(c) of the Framework which states that planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting. Furthermore, it would be contrary to saved policy DP1 of the LP, which states that all development proposals should contribute positively to the maintenance and enhancement of local identity and distinctiveness across the district. Additionally, it would conflict with saved policy DP7 of the LP, which amongst other matters, requires new development to be of a scale, mass, form and layout appropriate to the local context.

22. The Council have also referred to saved policy DP4 of the LP in their refusal reason on the decision notice. This stipulates that proposals for development that would, individually or cumulatively, significantly degrade the quality of the local landscape will not be supported and that account will be taken of efforts made to avoid, minimise and/or mitigate negative impacts. Although I have found that the proposal would be harmful to the rural character and appearance of the area, the overall scale of the proposal is relatively modest. Moreover, there are existing buildings at the appeal site and landscape enhancements have been proposed to limit the visual harm. In light of this, the degree of harm would not amount to significant degradation of the landscape and therefore would not meet the high threshold necessary to conflict with policy DP4.

[11] Referenced APP/D3830/W/16/3156030, APP/N1215/W/18/3200120, APP/Z1510/W/17/3189624 & APP/Y3940/W/18/3200095
[12] Conditions 2 & 3, Reference 2019/2147/FUL

Planning Balance and Conclusion

23. The evidence indicates that the Council is presently unable to demonstrate a 5-year supply of deliverable housing sites[13]. It is not shown that the policies referred to in footnote 6 of paragraph 11 of the Framework are applicable in this case. Therefore, footnote 7 of the same paragraph indicates that in these circumstances the presumption in favour of sustainable development means that planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

24. The proposal would provide a house for the appellant's family and add a dwelling to the overall housing supply. There would be economic and social benefits arising from the construction of the dwelling as well as economic benefit derived from the future occupants for the wider area as well as revenue for the Council. However, given the scale of the development such benefits would be limited. Furthermore, similar benefits would accrue from the fall-back position. Environmental benefits would be derived from increased planting and the removal of agricultural buildings that are not presently utilised. Overall, these benefits attract limited weight.

25. Nevertheless, harm would result to the character and appearance of the area contrary to paragraph 127(c) of the Framework. This amounts to an adverse impact of significant weight that would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole. As such, having applied the balance set out in paragraph 11d)ii), the presumption in favour of granting permission does not apply.

26. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise[14]. The benefits that the proposal would bring do not outweigh the significant weight given to the conflict with the development plan policies in relation to character and appearance identified above. Accordingly, they do not justify my determining the development other than in accordance with the adopted development plan.

27. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

[13] Mendip District - Five Year Housing Land Supply, December 2019 indicates a 3.8 years supply
[14] Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.