



Appeal Decision

Site visit made on 13 May 2020

by D M Young JP BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 8 June 2020

Appeal Ref: APP/M1005/W/20/3246623

Land off Kirkham Lane, Fritchley DE56 2FS

- 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 R Thompson against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2019/0509, dated 21 May 2019, was refused by notice dated 17 January 2020.
 - The development proposed is an agricultural building, greenhouse and hardcore track.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Officer's Report and Reason for Refusal refer to the site being within the Fritchley Conservation Area (FCA). However, on the basis of the conservation area plan provided by the Council, the appeal site is in fact outside the FCA.

Main Issue

3. In light of the above, the main issues are the effect of the development on, firstly, the character and appearance of the area and, secondly, the setting of nearby heritage assets.

Reasons

The proposal

4. The proposal seeks permission for the erection of an agricultural building, greenhouse/polytunnel and a new access and turning area from Kirkham Lane. The size of the proposed timber agricultural store would be 4.75 (width) x 11.9m (length) x 2.6 metres (height). The proposed polytunnel would be approximately 4.8m (width) x 11.9m (length) x 2.5m (height). According to the Appellant, the agricultural building would be used for the storage of agricultural equipment including a tractor and related implements.
5. Both buildings would be built into the ground to reduce their height and visual prominence. Existing vegetation along the southern site boundary would be retained and strengthened. The plans also indicate that an orchard would be planted in the central/western section of the site as well as a hedgerow adjacent to the proposed greenhouse.

Policy context

6. In policy terms, the appeal site is outside the settlement boundary for Fritchley. It is therefore in the countryside for planning purposes. Policy EN1 of the "*Amber Valley Borough Adopted Local Plan 2006*" (the LP) states that such development will only be permitted where; a) it is essential in conjunction with the requirements of agriculture or forestry, and b) it is necessary within the countryside and cannot reasonably be located within an existing settlement. The supporting text to EN1 recognises the need to maintain the openness of the countryside and sustain the rural economy. In a similar vein, Policy EN11 states that agricultural development will only be permitted where it is essential for agriculture and would not have a significant adverse impact on the character of the locality.
7. Whilst the need for the greenhouse is self-explanatory, I share the Council's concerns as to whether the agricultural building is 'essential' for the intended agricultural use. The Appellant's submissions on this issue are scant. The appeal site is only 1,574m², a significant portion of which would be given over to the orchard, the landscape buffer along the southern and eastern site boundary, the greenhouse and access/turning area.
8. Whilst I have not been provided with any calculations, the Appellant's layout plan indicates that the remaining land would be fairly limited in its extent. Accordingly, I have doubts whether items such as a tractor would be strictly necessary. Whilst I accept there is likely to be a need for some form of building on the site for storage there is a notable lack of evidence before me on these matters. Consequently, I am unable to conclude that these requirements could only be met by a building of this size in the location intended. As it has not been demonstrated that the proposed agricultural building is essential for the carrying out of agriculture, there would be conflict with Policies EN1 and EN11 of the LP.
9. Clearly the language of Policies EN1 and EN11 are inconsistent with paragraph 170 of the "*National Planning Policy Framework*" (the Framework) which beyond 'valued landscapes' does not seek blanket protection for the countryside. Instead it advises a balanced cost/benefit approach, where amongst other things, decisions should recognise the '*intrinsic character and beauty of the countryside*'. There is no suggestion from the Council that the appeal site forms part of a valued landscape and that being the case, I am giving limited weight to the conflict with LP Policies EN1 and E11.

Character and appearance

10. The appeal site is a small enclosed field to the south of Fairfield Farm on the northern outskirts of Fritchley. The land slopes away from Kirkham Lane to the eastern site boundary beyond which is the line of the Butterley Gang Road (BGR). The surrounding area is unmistakably rural comprising an attractive rolling landscape of enclosed fields and meadows. Aside from the established group of buildings at Fairfield Farm, the area is largely open and free of built development.
11. The site has significant visual exposure from Kirkham Lane, a Public Right of Way, which as I saw at the time of my visit, is popular with walkers. Whilst the site itself lacks redeeming features, in my view, it makes a small positive

contribution to the character and appearance of the area and by extension, the setting of the FCA.

12. In landscape terms there can be little doubt that the proposed engineering operations, buildings, vehicular access etc would change the appearance of the land. I have particular concerns about the proposed layout which would spread the access and buildings over a wide area rather than being focussed on the northern part of the appeal site close to those existing buildings at Fairfield Farm. As I have previously alluded to, I also harbour concerns that the size of the agricultural building is excessive, given the personal scale of the proposed enterprise and the size of the appeal site. The Appellant has failed to adequately justify the proposals in that regard.
13. Whilst the value of the appeal site as a parcel of undeveloped land would be diminished by the layout, that is not a reason in itself to dismiss the scheme out of hand given the site is not covered by any special landscape designation. The substantial landscaped buffers along the southern and eastern boundaries, the hedgerow planting, the proposed orchard along the Kirkham Lane frontage as well as the sunken nature of the buildings themselves would all help to mitigate the visual impact of the development.
14. Once matured, the landscaping and orchard would provide a high level of screening and visual containment such that the buildings would not be unduly prominent in views from public vantages including Kirkham Lane. However, it has to be recognised that the proposed landscaping would take time to mature and accordingly there would be an inevitable visual impact in the short-term and during the winter months.
15. Overall, despite the mitigation, I conclude that the layout of the development and the size of the agricultural building would result in moderate, short-term landscape harm from receptor points along Kirkham Lane in close proximity to the appeal site. This brings the proposal into conflict with LP Policies EV7 and NP3 of the "*Crich Parish Neighbourhood Plan 2018*" (the CNP) which amongst other things seek to ensure that the design of development does not represent visual intrusion and is appropriate to the local landscape character. Given the level of harm I have identified, I do not consider the development would have a '*significant adverse impact*' on the character of the locality. Consequently, there would be no conflict with LP Policy EN11(b).

Heritage

16. In heritage terms, I have carefully considered comments from the Council's Conservation Officer. There are two assets which are said to be affected; the FCA and the BGR, both of which are adjacent to the appeal site. Given the FCA encompasses the BGR I have dealt with both together.
17. The Council refer to views out of the FCA as being important to its significance as a rural settlement. I do not disagree, but as I have already found the development would have little visual prominence outside the appeal site's boundaries. The Council have not referred me to any specific views from the FCA which would be offended. Given distance, topography and intervening vegetation, the development would not be readily visible in northward views from the Sunnyside Cottage area of the FCA nor any of the 'significant views' identified in Map 13 to the CNP.

18. The FCA does extend northwards following the line of the BGR. However, the FCA and BGR at this point are located in the valley bottom with views to the west being significantly curtailed by the rise of the land and an established tree belt. It is also germane that there appears to be no formal public access to this part of the BGR.
19. Accordingly, I am not persuaded that the development would impinge significantly upon the setting or views to/from the FCA and/or the BGR. To that end, I am satisfied that the setting of the two heritage assets would be preserved and there would be no conflict with LP Policy EN27, CNP Policy NP3 or the Framework insofar as they relate to heritage assets.

Other Matters

20. The Appellant has referred me to a planning approval at Fairfield Farm¹. From the limited details available, it appears that the planning permission in that case related to a replacement double garage rather than agricultural development. It is therefore clear that the circumstances and hence planning considerations were different to those in this case. Based on the foregoing, I am satisfied that the Fairfield Farm decision is not a comparable scheme and does not therefore set a precedent for the appeal proposal.
21. I have noted the Appellant's frustrations regarding the Council's pre-application advice. However, that advice made it clear that there was insufficient information available to establish the principle of development. In any event, I have assessed this appeal on its individual merits and the Council's pre-application advice has no bearing on my decision.

Conclusions

22. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the application is determined in accordance with the development plan unless material considerations indicate otherwise. I have identified conflict with LP Policies EN1, E11(a), EV7 and CNP Policy NP3. These conflicts weigh against the scheme in the overall planning balance.
23. In favour of the scheme, there would be economic and social benefits to the applicant. There is no suggestion that the proposed development is necessary in connection with a commercial enterprise and as such, the scale of these benefits would be somewhat modest. Nonetheless, paragraph 118 b) of the Framework states that planning decisions should recognise that undeveloped land can perform functions, inter alia, food production. Accordingly, the use of the site for growing fruit and vegetable would be a benefit in favour of the scheme. There might be some small ecological gains, but these would be limited.
24. Overall, I have found the issues in this case to be finely balanced. Whilst the proposed use of the land is supported by local and national planning policy, I have found a moderate level of landscape harm arising from the general layout and the lack of justification for the size of the agricultural building. Although I have identified a number of benefits, these do not outweigh the landscape harm and the conflict with the LP and CNP in that regard.

¹ LPA Ref: AVA/2017/1367 (CM)

25. For the reasons set out above I conclude that the appeal should be dismissed.

D. M. Young

Inspector