



Appeal Decision

Site visit made on 16 June 2020

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 July 2020

Appeal Ref: APP/X1355/W/20/3249278

Harehill Farm, Harehill Farm Road, Haswell Plough DH6 2BA

- 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 Michael Ford against the decision of Durham County Council.
 - The application Ref DM/19/02482/FPA, dated 31 July 2019, was refused by notice dated 19 September 2019.
 - The development proposed is part retrospective application for the erection of a dwelling house.
-

Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal site has previously had the benefit of planning permission¹ for the conversion of a former agricultural building into a single dwelling which included works of demolition and rebuilding. During construction works in connection with the previously approved scheme of conversion part of the building collapsed onto itself resulting in it being described by the appellant as 'irreparably damaged'².
3. The appeal proposal is the second of two partly retrospective subsequent planning applications for the erection of a dwelling house at the appeal site. The first³, for an agricultural worker's dwelling, was refused by the Council and dismissed at appeal⁴. The proposal subject to this appeal seeks permission for a new dwelling of a similar design, appearance and scale to that set out in the previous permissions for conversion of an existing building, formerly used for agricultural purposes.
4. Neither the Framework nor City of Durham Local Plan (CDLP) policy H5 seek to define what amounts to re-use. However, this appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) and it is not the role of such appeals to examine the lawful status of land or buildings. Indeed, it is open to the appellant to apply to have such matters determined under sections 191 or 192 of the Act. Any such matter would be unaffected by my determination of this matter.

¹ LPA Ref Nos 4/08/00774/FPA and 4/11/00598/FPA

² Quote from 'Site Context: Site Description', page 2 'Appellant Planning Statement Including Design and Access Statement'

³ DM/15/02373/FPA

⁴ APP/X1355/W/15/3139552

5. Thus, having regard to the above, the main issues are:

- Whether the appeal site is an appropriate location for new housing development, having regard to the development plan and national planning policies; and
- The effect of the proposal on the safety of pedestrians using the access lane.

Reasons

Location

6. The appeal building is described by the appellant as a semi-derelict barn. The re-use of this as a dwelling would, the appellant states, amount to an improvement to its immediate setting. However, the appellant also described the building in the Planning Statement² as being in a poor state and having been 'irreparably damaged' during earlier works for the conversion of the former agricultural building to a dwelling.
7. The application was described, submitted and subsequently determined as, a new dwelling house, not for the re-use or conversion of an existing building. I am required therefore to determine the appeal on that basis. From my observations of the structure, most notably with its partly built roof structure, it is indeed appropriate to describe it as 'part retrospective', with the roof structure only half-built. Whilst I am aware that planning permission was previously granted for its conversion to a dwelling⁵, I am also mindful that an Inspector concluded that that permission was unable to be implemented⁶.
8. As the current appeal has been made under section 78 of the Town and Country Planning Act 1990 (the Act) it is not the role of such appeals to examine the lawful status of land or buildings. It is, however, open to the appellant to apply to have such matters determined under sections 191 or 192 of the Act. Any such matter would be unaffected by my determination of this matter.
9. CDLP policy H5 sets out the Council's approach to new housing development in the open countryside which, it states, shall include the rebuilding of derelict or abandoned houses. CDLP policy H5 is qualified by a number of criteria, all of which have to be met. There are elements of this policy's criteria which are broadly consistent with, or similar to, those of the National Planning Policy Framework (the Framework) in terms of approach to new housing in the countryside. However, the Council's contention that the most important policies of the CDLP for determining the application are not up to date is not challenged by the appellant and I have not been provided with any further submissions to that end.
10. The appeal site is located some way distant from the settlement of Haswell Plough. Although the appeal property is not isolated, in the sense that it lies within a group of six other residential properties, there is no dispute that the site does lie within the open countryside beyond Haswell Plough. The appellant has not advanced an argument that the proposal would meet the criteria set out at (1) to (5) of CDLP policy H5. I will consider matters relating to character

⁵ LPA Ref Nos 4/08/00774/FPA and 4/11/00598/FPA

⁶ Paragraph 24 of Appeal Decision – APP/X1355/W/15/3139552

and appearance below but, as proposals are expected to meet all of the terms of this policy, the proposal would fail to accord with CDLP policy H5.

11. Paragraph 78 of the Framework sets out the approach to promoting sustainable development in rural areas, stating that housing should be located where it will enhance or maintain the vitality of rural communities. It gives as an example, where there are groups of smaller settlements development in one village may support services in a village nearby. Framework paragraph 79 goes on to state that isolated new homes in the countryside should be avoided unless one or more specific circumstances apply to the proposal.
12. The group of buildings is situated some distance from the village of Haswell Plough along a loosely surfaced track. Whilst the track is generally straight with good visibility, and levels of traffic associated with the existing dwellings correspondingly low as might be expected from a small grouping of dwellings, as a regular route to access services, facilities or transport links to those services and facilities, the lane is unlikely to be particularly attractive to residents on a regular basis.
13. However, beyond the limited range of services and facilities in Haswell Plough, the surrounding area is typified by the rural and dispersed nature of surrounding villages. The lane may provide a pleasant enough basis for a recreational walk, but as a means to regularly access services and facilities to meet day-to-day needs it would be less attractive. It is likely therefore that residents would be faced with accessing such services and facilities mainly by private car, which is not consistent with the Government's aims of reducing carbon footprint and promoting sustainable patterns of development in rural areas. The appeal site does not lie within a smaller settlement or village of the nature envisaged by Framework paragraph 78 and so the proposal would fail to promote sustainable development in rural areas in the manner sought by Framework paragraph 78.
14. There are, as described above, dwellings (and converted barns to dwellings) close to the appeal site, which lie together as an identifiable group of buildings. Although the proposal does not lie within a smaller settlement or village of the nature envisaged by Framework paragraph 78 and is instead agreed as being within the open countryside, for the purposes of Framework paragraph 79 I do not consider the appeal site to be isolated⁷. Nor has it been demonstrated that the proposal, for a single dwelling, would have anything other than a very limited contribution commensurate with a single dwelling towards enhancing or maintaining the viability of rural communities.
15. Even if I were to conclude that the dwelling was 'paragraph 79 isolated', the application was submitted and subsequently determined as a partly retrospective application for the erection of a new dwelling, not for the re-use of an existing building. The proposal would fail against the provisions of Framework paragraph 79(e) which requires new dwellings to be of exceptional design quality. The Framework's requirements set, in my judgement, a high bar for such matters and the re-use of salvaged materials from the irreparably damaged building falls significantly short of the intentions and provisions of Framework paragraph 79(e).

⁷ Per *Braintree DC v SSLG Greyread Ltd & Granville Developments Ltd* [2017] EWHC2743 (Admin); [2018] EWHC Civ 610

16. The proposal would not, for the reasons I have set out, support or promote sustainable patterns of development in rural areas, or maintain or enhance the vitality of rural communities. There may be some limited enhancement to the setting of the building through the completion of building works but this would not outweigh the appeal site's inappropriate rural location for a new dwelling.
17. The CDLP is now of some age, there is broad agreement between the main parties that the most important policies for determining the application are out-of-date and the appellant has not challenged the Council's assessment of its 5-year housing land supply. These factors reduce, but do not remove entirely, the weight that can be afforded to CDLP policy H5. The policy and its supporting justification make it clear that its aims broadly align with those of the Framework in seeking to promote sustainable patterns of development in rural areas. However, for the reasons I have set out, the appeal site would not provide a suitable location for a new dwelling, having regard to the development plan, the Framework and its location and accessibility to services and facilities.

Pedestrian safety

18. The loosely surfaced private lane which serves the appeal site is, for the most part, straight and reasonably wide with generous flat verges and good visibility. Although there is a short stretch of lane which gently bends one way then the other closer to entrance into the lane from Haswell Plough, that stretch too is of reasonable width with sufficient visibility so as to avoid any blind corners or unsighted pedestrians or drivers.
19. The proposal would result in one additional dwelling being served by this lane which already serves a total of six dwellings. The Council's 'Highways Design Guide for Residential Development'⁸ (HDG) states that a private drive access is one which serves a maximum of five private residential properties and which does not form part of the public highway.
20. As noted above, the access lane currently serves six dwellings; with the proposed development it would serve seven. Both figures exceed the provisions of the HDG for private drive accesses, although the Council suggest that a relaxation of these standards can be applied where the conversion of agricultural buildings would result in the threshold of 5 dwellings being exceeded. That, as I understand it, provides some explanation for the current situation.
21. It is not clear, however, what the basis for this exemption is, and there is no mention of it in the HDG, but from the evidence before me it seems the Council's contention that the lane is substandard is based on it serving more than five dwellings. No evidence has been submitted by the Council to demonstrate that the lane is substandard for any other technical, physical or other operational reason, other than it currently serves more than five dwellings (and would continue to do so).
22. Rather, the second reason for refusal states that the proposal would 'intensify the use of a substandard lane' which would increase potential for conflicts with between pedestrians and vehicles. An additional dwelling would inevitably bring additional vehicle movements over and above those that current exist but

⁸ November 2014

neither those additional movements, nor pre-existing ones, have been quantified by either party.

23. However, any additional movements from a modest 3-bedroom dwelling are likely to be correspondingly modest. I accept that pedestrians may use the lane, particularly when accessing the local public rights of way network, but the lane's width is reasonably generous, sightlines generally good and verges are accessible. Any intensification of the lane would be likely to be limited and any additional conflict, having regard to the circumstances, condition and context of the lane, would in my judgement be correspondingly low and adequately mitigated for the reasons I have set above.
24. The site access already serves more than 5 dwellings. Whilst the proposal would further increase the number of dwellings served by a private lane, I am not persuaded that it would result in either a material intensification of the use of the lane, or that any such intensification would cause conflict between pedestrians and vehicles. There would not, on the basis of the evidence, be any conflict with CDLP policy T1.

Conclusion

25. The proposal would be accessed via a private lane which already serves a total of six dwellings, thereby exceeding the threshold of a maximum of five set out in the Council's 'Highways Design Guide for Residential Development'. Whilst that may be so, I have not been presented with any compelling evidence to demonstrate that the private lane is unable to accommodate access to a further dwelling or that its use would increase the chances of conflict pedestrians and vehicle.
26. However, the site is located in an unsuitable location for a new dwelling, distant from services and facilities for which residents would be likely to rely heavily upon private transport to access to meet their day-to-day needs. Although the weight that I give to CDLP policy H5 is limited for reasons I have set out above, it retains moderate weight and the proposal would be in conflict with its provisions. However, the proposal would also fail to accord with the provisions of paragraphs 78 and 79 of Framework and so the adverse impacts of the proposal in this regard would clearly and demonstrably outweigh the neutral effect of absence of harm in highway safety terms. For these reasons, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Graeme Robbie

INSPECTOR