The Planning Inspectorate

Appeal Decision

Site visit made on 18 August 2020

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st September 2020

Appeal Ref: APP/Y3940/W/20/3250940
Land at Lydiard Green, Lydiard Millicent SN5 3LP

- 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 George Gordon of Lydiard Green Limited against the decision of Wiltshire Council.
- The application Ref 19/10402/FUL, dated 29 October 2019, was refused by notice dated 30 January 2020.
- The development applied for is erection of three dwellings.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr George Gordon of Lydiard Green Limited against Wiltshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. The development has been carried out in part and therefore planning permission is being sought retrospectively. The appeal has been determined using the plans submitted to the Council, which provide the basis for which planning permission is being sought. The description of development has been taken from the appeal forms as it more accurately describes what has been applied for, omitting references to other matters not relevant to this appeal and phrases that are not descriptions of development.

4. There is prior approval consent on the site pursuant to Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) but there is no lawful development certificate confirming that the works have been implemented in accordance with the approved plans and that the buildings on site, in their current state, are lawful. The case of Mansell v Tonbridge and Malling Borough Council and others [2016] EWHC 2832 is noted and appears to be predicated on the future prospect of Class Q prior approval consent as a material consideration. However, as stated by the appellant in this case, the existing Class Q prior approval consent has been implemented, and further applications for Class Q prior approvals at the site are not possible. Accordingly, any fallback position would be predicated on a lawful development certificate demonstrating that the existing Class Q prior approval consent (including all relevant parts therein) is implemented lawfully. In the absence of such evidence the stated fallback position and any other arguments relating to the buildings in this context carry limited weight under the appeal.

5. For the avoidance of doubt, it is not for me, under a section 78 appeal, to determine whether the works pursuant to the Class Q (or Class R as the case may be) prior approval consent are in fact lawful. To that end, it is open to the appellant to make an application under sections 191 or 192 of the Town and Country Planning Act 1990 (as amended) and my determination of this appeal does not affect such an application.

6. Statements are made in relation to a subsequent application submitted by the appellant and considered by the Council under reference 20/03231/FUL and further details of design evolution therein. I am mindful of the guidance in Procedural Guide – Planning Appeals – England 2020 which states that when an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the Council, and on which interested people's views were sought. Consequently, the appeal is determined on the evidence currently available and on which the Council's decision was made. The appellant has the right to appeal any decision from the Council in relation to the aforementioned subsequent application, but I am not aware that any such appeal has been made and therefore it is not linked with this appeal or considered in tandem.

7. In accordance with Coronavirus (Covid-19): planning update published by Ministry of Housing, Communities and Local Government (MHCLG) on 13th May 2020, neighbourhood plans awaiting referendums can be given significant weight in decision-making. I have acted accordingly in relation to the emerging Lydiard Millicent Neighbourhood Plan.

Main Issues

8. The main issues are:

   (a) whether the site is outside of the settlement boundary, has suitable access to services and therefore whether it is an appropriate location for open market housing; and

   (b) the effect of development on the character and appearance of the area.

Reasons

Location

9. The site is located on former agricultural land adjacent to the small settlement of Lydiard Green. A larger settlement of Lydiard Millicent is located around 1km to the east. Neither of these settlements, nor the site, are included within any limits of development as identified on the policies map and as referred to within Core Policy 2 of the Wiltshire Core Strategy 2015 (WCS). Consequently, they are in the open countryside for the purposes of the WCS. The policy goes on to confirm that other than in circumstances permitted as an exception by other policies, development will not be permitted in the open countryside. For example, saved Policy H4 of the North Wiltshire Local Plan 2006 (NWLP) sets the criteria whereby new dwellings in the open countryside would be permitted as an exception. However, these are limited to agricultural need or rural based enterprise, and replacement dwellings, among other things. There is no evidence substantiating that the development meets any of these criteria (or other policy exceptions within the WCS). Accordingly, for the purposes of the appeal, the dwellings are treated as being open market housing, which is not permitted in the open countryside.

10. Of particular contention is the role of Core Policy 48 of the WCS, mainly because it deals with the conversion and re-use of rural buildings, but it is considered that parties have conflated the merits of Class Q conversion when applying the policy. In straightforward terms, irrespective of Class Q, it has not been demonstrated that employment, tourism, cultural and community uses are not practical propositions for development in the first instance. Furthermore, the Council's officer report demonstrates that there are elements of the development that constitute major rebuilding, which I could validate after visiting the site and referring to the plans. This is something not permitted under the policy. Consequently, the application of Core Policy 48 of the WCS would not help justify the development. The National Planning Policy Framework (the Framework) at Paragraph 118d, makes provision for the development of underutilised land or buildings. Policy Core Policy 48 of the WCS deals with such matters and is consistent with the Framework.

11. The appellant has contended that the site is located within proximity of businesses, education and recreational facilities, among other things – both within Lydiard Green and Lydiard Millicent. They also note Lydiard Millicent Neighbourhood Plan's statement that the village is thriving. However, although some of these facilities may be in walking distance, the appellant has not provided substantive evidence demonstrating that there is a comprehensive level of accessibility for those facilities that are further away, and perhaps beyond walking distance. Just because there are long distance footpaths, does not mean that they are likely to be used as the primary mode of travel. This is because the distance could be excessive, or the route could be meandering and not link to convenient locations. Allied to this, there is no comprehensive evidence demonstrating that there is frequent bus service provision or that this is likely to be more convenient and used as a long distance form of transport instead of the private car. Consequently, where future occupants are required to travel beyond walking distance, and where footpaths are inconvenient, it has not been demonstrated how they would do so in a sustainable manner.

12. There does not appear to be any dedicated and uninterrupted pedestrian or cyclist routes from the site's location on the periphery of Lydiard Green along the main travel corridor of the highway toward the facilities in question. Consequently, the most direct route would require pedestrians and cyclists to share the highway with vehicular traffic until reaching footway provision close to the settlement, and this would increase the risk of highway user conflict to the detriment of safety, which would be at odds with Paragraph 109 of the Framework. Although the Lydiard Millicent Neighbourhood Plan may outline some routes of connectivity, it is unclear whether they are recreational routes or functional routes that link efficiently with destinations. Furthermore, the peripheral nature of the site makes it even more unclear as to the utility of these routes in offering a reasonable alternative to the car.

13. I have noted the appellant's reference to another appeal decision[1] which dealt with movements from a development in the open countryside, albeit in Devon. Insofar as it applies in this case, I accept that the volume of traffic entering and exiting the site may not be materially different between a residential use and an agricultural use, but the residential use would still require safe pedestrian and cycle links (notwithstanding any onsite cycle storage provision). It is therefore deficient in this respect.

[1] APP/U1105/W/19/3234774

14. Overall, the site is outside of the settlement boundary, does not have suitable access to services and is not an otherwise appropriate location for open market housing. The development therefore conflicts with Core Policies 1, 2, 19, 60 and 61 of the WCS, Saved Policy H4 of the NWLP, and Paragraphs 11, 77, 102, 103, 108 and 110 of the Framework. Among other things these seek to ensure the development strategy is adhered to and development comes forward in appropriate locations.

Character and Appearance

15. Lydiard Green is a settlement of a small scale that is not defined within the WCS settlement hierarchy. Lydiard Green comprises a low density and linear pattern of development that is set within an otherwise rural environment, which is indicative of its location within the open countryside. This context informs the setting of Lydiard Green Conservation Area, which includes the southern extent of the settlement. The site is located on the periphery of the settlement's existing pattern of development and therefore its context is defined more by the surrounding rural environment than the built environment of Lydiard Green itself, and this context appears consistent with its former agricultural use. The site is not located adjacent to existing residential development, separated by intervening agricultural land, which in conjunction with its peripheral nature and the settlement's already linear form, means the development would have the effect of extending the residential pattern of development further into the rural environment and generate harmful domesticating effects. Accordingly, it is not reasonable to consider the development as infill development for the purposes of Core Policy 2 of the WCS.

16. It is acknowledged that the existing buildings may have fallen into a state of disrepair and the development may go some way to rectifying their appearance in this respect and in doing so would not necessarily impinge on outlook or depart from the prevailing layout types apparent within Lydiard Green. However, this does not overcome the fundamental conflict with respect to delivering residential development on the periphery of an existing settlement in place of an agricultural use and associated erosion of the rural environment. Planning conditions should be considered where planning permission would otherwise be refused. Even if landscaping could be suitably controlled by planning condition, other harmful effects would remain. Consequently, such a condition would not alter the outcome of the appeal.

17. Overall, the development would harm the character and appearance of the area and conflict with Core Policy 57 i, iii and vi of the WCS and Paragraphs 124 and 127 of the Framework. Among other things, these seek to ensure high quality design and place shaping.

Other Matters

18. Paragraph 11 of the Framework states that where there are no relevant development plan policies, or the most important policies for determining the application are out of date (including where local planning authorities cannot demonstrate a 5 year supply of deliverable housing sites), 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.

19. There are conflicting statements about whether or not the Council can demonstrate a 5 year supply of deliverable housing sites and therefore whether Paragraph 11 of the Framework should be engaged. Even if the shortfall were substantial, the scale of the development would only make a limited contribution as a windfall. Similarly, any other benefits (social, economic and environmental) would also be limited in scope. Consequently, the adverse impacts identified within the main issues would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

20. Representations in support of the development are noted on the basis that they state the development should be allowed in order to avoid the persistence of an unsightly completion. Retrospective development should not be allowed on this basis alone and the merits of the case have been assessed in accordance with the evidence presented, the development plan and any other material considerations. The appellant's contentions about the Council's administration of the application are not matters under this appeal.

Conclusion

21. There are no material considerations that suggest a decision should not be taken otherwise than in accordance with the development plan. For the reasons given, the appeal is therefore dismissed.

Liam Page

INSPECTOR