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## Appeal Decision

Site visit made on 23 November 2020

**by David Wyborn BSc(Hons) MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 December 2020**

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**Appeal Ref: APP/C1760/W/20/3255627**

**Land At Sleepy Hollow Farm, Ampfield Hill, Ampfield SO51 9BD**

- 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 Rivendale Homes Ltd against the decision of Test Valley Borough Council.
  - The application Ref 20/00310/FULLS, dated 5 February 2020, was refused by notice dated 11 June 2020.
  - The development proposed is the erection of office building (B1).
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Rivendale Homes Ltd against Test Valley Borough Council. This application is the subject of a separate Decision.

### Preliminary Matter

3. The proposal seeks permission for an office building. I am aware of the recent revisions to the Use Classes Order and the new Class E (Commercial, Business and Service)<sup>1</sup>. However, Regulation 4 sets out transitional arrangements and requires that if an application has been submitted under the earlier list of use classes (in this case B1) then the application must be determined by reference to those uses and use classes.

### Main Issues

4. The main issues are:
  - whether the development plan supports the principle of the proposed business use on this site, and
  - the effect of the proposal on the character and appearance of the area.

### Reasons

*Whether the development plan supports the principle of the proposed business use on this site*

5. There is a dispute regarding whether the site for the proposed office building falls within a planning unit that incorporates employment use or is outside such

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<sup>1</sup> The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

a planning unit and therefore would fall to be considered as countryside for the purposes of the development plan. The information appears to show that there was a series of poultry sheds across a wider part of this rear section of the land. It seems that the western most two sheds, at least, had some form of business use taking place. The appellant seeks to adduce from comments in Planning Reports for various approvals, and other information, that the historic business use extended across the width of this back section of the site. On the other hand, statutory declarations from the adjoining owners of The Old Farmhouse explain, in summary, that their knowledge of the site was that business use did not extend over the wider area and was limited to the two units to the west. They have explained that arrangements were made when they bought their property for all but the two sheds to be removed.

6. I do not find the two permissions for business use submitted in 2016 and 2017 are helpful in resolving this matter as, while the red lined application site was extensive, these permissions have not been implemented. The office building which has been constructed as an alternative scheme was based on a permission with a tighter red lined site area and this did not include the site of the proposed office building. This permission therefore does not assist in clarifying whether the present appeal site falls within a lawful area for employment use.
7. I have carefully considered the appellant's legal opinion. However, the conclusions of this opinion flow, in the main, from a basis that the historic employment planning unit extended across the rear of the land. There is no original planning permission for the use of the two poultry units for business use and no certificate of lawful use which identifies the extent of business activities and the related planning unit. Consequently, at this stage and based on the information before me, there is not documented certainty on the lawful extent of the planning unit for employment purposes.
8. It is not the role of a section 78 appeal to determine the lawfulness of land and buildings. It is open for the appellant to seek clarity on this matter by submitting a certificate application and nothing in this decision fetters the submission and analysis of the determination of such a submission in the future.
9. The site is presently open land. Aerial photographs show that this has been the case in the recent past. In the absence of clear and determinative evidence that conclusively confirms that the site falls within a planning unit for a employment use, I consider that I need to take a precautionary approach. Accordingly, I intend to determine the appeal on the basis that the site falls outside such a lawful employment area and within the countryside for planning purposes.
10. I note the arguments regarding what may be possible under permitted development rights including for the erection, extension or alteration of an industrial building. However, there is no approved certificate of lawful use that demonstrates that such works could lawfully take place. Also I am not satisfied of the option to implement permitted development rights on the site when there is not conclusive evidence that the site falls within the curtilage of the existing new building or within an extant planning unit for employment activities. I therefore attribute this matter, and the option that it falls to be considered as a fallback position, limited weight.

11. I therefore conclude on the basis that it has not been clearly demonstrated that the site falls within an existing employment site that it should be considered to fall within the countryside for planning purposes. As there is no convincing evidence that there is an essential need for the development to be located in the countryside it follows that the proposal would not comply with Policies COM2 and LE17 of the Test Valley Borough Revised Local Plan 2011-2029 (the Local Plan) which sets out, amongst other things, that the erection of new employment buildings should, in the countryside, be contained within a lawful employment site.

*Character and appearance*

12. The recently constructed business building is set back from the road and it is not generally apparent from these adjoining road areas. It has been built on a level set down into the gentle slope across the site. When approaching along the drive, the building does appear as quite a sizeable structure and to be generally larger than many of the other buildings which are visible in these broadly rural surroundings.
13. The business building backs onto open countryside and a right of way passes across the fields to the north. This route is sunken in places and together with the hedged boundaries there are fairly limited views of the new office building across the field. There are, though, clear views of this building in places, for instance, particularly from an area beyond Wingham's Barn Cottage near the gate to the right of way, and further to the broadly north west where there is less hedging along the side of the right of way. From these locations the existing building is clearly apparent and with its bulk, form, and arrangement of windows and the gables, it draws the eye. The impact is to some extent mitigated by the lowered level in the site, the bank along the rear boundary and it will become less apparent as the landscaping matures. Nevertheless, even in time, the building is still likely to continue to contrast with the more sporadic and generally more modest scale of development in the surrounding countryside when viewed from the right of way.
14. Examining the proposal, the new building would be set up the slope with the ridge line higher than the adjoining office building. The structure would be reasonably wide in the overall context of the recently constructed building and the separation between the buildings would be relatively modest given the size of the existing and proposed structures.
15. This proposed addition to the site would not be readily apparent from the road but for those entering along the private drive the height, width and bulk of the building, including with its gable, would be prominent. Although cut into the slope, because of the height and width, the building would appear as quite a conspicuous addition when seen in conjunction with the adjoining office building.
16. From the right of way, the angled views from some locations would mean that the spacing between the proposed and existing buildings would not be readily apparent. The proposed business building would, therefore, in these fairly limited public views, appear visually as a continuation of the present structure. The raised level of the building, with the ridge higher than the adjoining structure, the fairly long ridge line and gable, would result in an unduly prominent addition to the site.

17. In conjunction with the present building, this additional structure would be conspicuous and lead to the overall development being more readily apparent in the views from the right of way. Although there are other buildings in the general rural surroundings, the combined scale and extent of the built form would appear as an undue and prominent bulk of building stretching across much of the width of the overall site. As a consequence, the proposal would not assimilate sympathetically within the rural context.
18. I appreciate that I saw the site and viewed the proposal from the right of way in the autumn when views may be more apparent. Landscaping, including along the rear boundary, and the retention of the existing partial screening, would help soften the impact of the proposal. There is also landscaping, including trees, which have been planted in the field to the rear of the site although this land appears to be beyond the appeal site and therefore the planting would not be within the control of the appellant. However, I am not satisfied that the benefits of the proposed comprehensive planting scheme would overcome the undue prominence and related harmful impact to the countryside surroundings resulting from the combined effect of the buildings when experienced by users of the right of way. Even taking into account the planting and other mitigation, in the context of the rural surroundings, the harm I have identified would be significant.
19. I have carefully considered the details of the Visual Impact Assessment and the appellant's other submissions in this respect. However, I place greater emphasis on the combined impact that the proposal would have with the adjoining building and consider the scheme would be more apparent than the Assessment concludes. The resulting impact would be harmful to the character and appearance of the area for the reasons explained and therefore I disagree with the conclusions of the Visual Impact Assessment.
20. It follows that the proposal would not recognise the intrinsic character and beauty of the countryside as required by the National Planning Policy Framework (the Framework). I am not satisfied that any planning conditions or legal agreement could overcome the harm I have identified.
21. In the light of the above analysis, I conclude that the proposal would harm the character and appearance of the area. Accordingly, the development would not comply with Policies COM2 and E2 of the Local Plan which seek, amongst other things, to ensure development does not have a detrimental impact on the appearance of the immediate area and the landscape character of the area within which it is located.
22. As a consequence, the scheme would not meet with the approach in the Parish of Ampfield Village Design Statement (2019) which seeks that in respect of business buildings that the scale of the development and its design and layout should be appropriate to the surrounding landscape.

### **Planning Balance and Conclusion**

23. I saw at my site visit that the existing business units, although only recently constructed, appeared to be occupied and providing a purpose built modern business environment. I have no reason to believe that the proposed office building would be any less popular<sup>2</sup>. The proposed commercial space could

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<sup>2</sup> The costs application explains that the building would be offices for the appellant themselves, a SME wishing to expand.

therefore make a valuable contribution to the economic well-being of the local area and comply with the approach in the Framework to support a prosperous rural economy.

24. The Framework explains that sites to meet local business needs in rural areas may have to be found adjacent or beyond existing settlements. In these circumstances, the policy approach is that it will be important to ensure that development is sensitive to the surroundings. As I have found that the scheme would not be sensitive to the surroundings, I attribute the benefits of the business development and the general support of the Framework in this respect moderate weight in favour of the scheme.
25. The proposal would not comply with Policies COM2 and LE17 of the Local Plan which set the strategic approach to new build employment development in the countryside. The site has not been clearly demonstrated to fall within a lawful employment site. Furthermore, the extension of the site into land defined as countryside would not be acceptable because of the harm to the character and appearance of the area. This visual harm would be contrary to Policy E2 of the Local Plan and not accord with the policy approach in the Framework to protect the countryside. This conflict with the development plan and the Framework, and the harm that I have identified, are matters of substantial weight. It follows that the benefits of the scheme would not outweigh the harm.
26. Consequently, for the reasons given above, the scheme would not comply with the development plan when considered as a whole and other material considerations do not indicate that a decision should be made other than in accordance with the development plan. Accordingly, and taking all other matters into account, I conclude that the appeal should be dismissed.

*David Wyborn*

INSPECTOR