



Appeal Decision

Site visit made on 2 February 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2021

Appeal Ref: APP/Y3940/W/20/3261033

Swillbrook Farm Cottages, Swillbrook, Malmsbury SN16 9GA

- 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 & Mrs P Walker against the decision of Wiltshire Council. The application Ref 20/03439/FUL, dated 21 April 2020, was refused by notice dated 18 September 2020.
 - The development proposed is the demolition of 4 no. semi-detached dwellinghouses; and erection of 1 no. detached dwelling (new build) with associated outbuilding; and the conversion of a barn to form 1 no. detached dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In my heading above I have taken the site address from that given on the appeal form as it is more succinct than that given on the planning application form.

Main Issue

3. The main issue is whether the proposed development would be in a suitable location having regard to local policies concerned with housing in rural areas, and if harm arises, whether this is outweighed by other material considerations.

Reasons

4. The proposal comprises two main components concerning different areas of land at Swillbrook Farm. Firstly, the conversion of an existing barn building into a dwelling. Secondly, the demolition of two pairs of semi-detached houses and their replacement with a larger detached dwelling.
5. Core Policy 1 (CP1) and Core Policy 2 (CP2) of the Wiltshire Core Strategy, January 2015 (CS) outline a settlement strategy and delivery strategy for the county. They broadly seek to direct a level of development commensurate with the size and nature of settlements as classified within a hierarchy. CP2 confirms that other than in specified circumstances, development will not be permitted outside the limits of development on the policies map. Exceptions include development permitted by Core Policy 48 (CP48) in supporting rural life. CP48 sets out the circumstances under which the conversion and re-use of rural buildings will be supported.

6. In addition, saved policy H4 of the North Wiltshire Local Plan, January 2001 (LP) permits new dwellings in the countryside provided that, amongst other things, it is a replacement for an existing dwelling that meets certain criteria.
7. Although they predate the National Planning Policy Framework (the Framework), paragraph 213 states that weight should be given to policies adopted prior to its publication according to their degree of consistency with it. The policies referred to broadly align with the approach to rural housing in the Framework whereby paragraph 78 states that housing should be located where it will enhance or maintain the vitality of rural communities and paragraph 79 stipulates that isolated homes in the countryside should be avoided save for express exceptions.
8. Both parties refer to the appeal site as isolated and it is some distance from local services and facilities such that future residents would be reliant upon the car as the principal means of travel. Nevertheless, Swillbrook Farm comprises a notable cluster of residential, agricultural and equestrian buildings. Given this immediate context, and having regard to relevant caselaw, the proposed dwellings would not be remote or physically separate from the concentration of existing buildings. Based on my observations and the information provided, it is not shown that they would constitute isolated homes within the meaning of paragraph 79 of the Framework. Therefore, the exceptions permitted by paragraph 79 are of limited relevance to the proposal before me.
9. The appellants assert that saved policy H4 of the LP is inconsistent with the Framework and further refer to the absence of a similar policy in the emerging Wiltshire Local Plan¹. I accept that replacement dwellings in rural areas are not specifically mentioned in the Framework, but it does not expressly prevent a development plan policy on this matter. Therefore, I find no conflict in this regard. Furthermore, the emerging local plan is likely to be subject to further scrutiny and change prior to adoption. Accordingly, presently it is of little weight.
10. There is no dispute that the appeal site is in the open countryside for the purposes of the CS and LP and consequently, in a location where support for new housing is limited. Essentially the parties disagree as to whether the proposed barn conversion would meet the requirements of CP48 of the CS, and whether the new build dwelling would meet the criteria for a replacement dwelling under saved policy H4 of the LP.
11. Taking these in turn, the submitted information² suggests that the existing use of the barn is equestrian or agricultural, which is consistent with its appearance. As mentioned above, given the immediate context, in my view the conversion would not result in an isolated home in the countryside. Therefore, the exception permitted by paragraph 79c of the Framework to re-use a redundant or disused building would not apply in this case. CP48 of the CS allows for the conversion and reuse of rural buildings for employment, tourism, cultural and community uses subject to criteria. It is only where there is clear evidence that the sequentially preferable non-residential uses in CP48 are not practical propositions that residential development may be appropriate.

¹ Appendix B, Appellants' Statement of Case, Wiltshire Local Plan Review Consultation Paper, November 2017

² Planning application form & Design and Access Statement dated 21.4.20 prepared by Fowler Architecture & Planning

12. The appellants explain that the barn in this case is not of a size or form that would suit modern agricultural requirements as it could not accommodate large scale equipment. Be that as it may, it is not otherwise shown that it would be unsuitable for other employment, tourism, cultural or community uses. As such I have little before me that would support the appellants' general assertion that it is unlikely to be suitable for all such uses. In the absence of such clear evidence, the proposal would fail to comply with the sequential approach in CP48 of the CS.
13. Turning to the proposed new build dwelling, saved policy H4 of the LP allows for the replacement for an existing dwelling provided (a) the residential use has not been abandoned, and (b) the existing dwelling is incapable of retention in its current state, is unsightly or is out of character with its surroundings and (c) the replacement dwelling is of a similar size and scale to the existing dwelling within the same curtilage. This policy is written in the singular such that it supports a one for one replacement of a dwelling of a similar scale within the same curtilage. That is not what is proposed in this case. The new build house proposed would replace four existing dwellings. The resultant detached house, together with the outbuilding would be considerably larger in size and scale than any of the existing semi-detached houses taken individually.
14. Furthermore, notwithstanding that the appellants assert that the size of the proposed new build dwelling does not exceed that envisaged under criterion H4c, it would not be contained within a single existing curtilage but would utilise most of all four curtilages as well as a considerable amount of open land to the south. Hence, the proposed new build dwelling would not fall within the scope of replacement dwelling development permitted by the wording of saved policy H4.
15. It follows that, even if I were to accept the appellants argument, that the four existing semi-detached dwellings are not capable of retention in their current state or are unsightly under criterion H4b, the development would still fall outside the remit of saved policy H4 as all the criteria must be met. Accordingly, as it would not lead me to a different view, there is no need to consider the structural appraisal and energy performance certificates provided in further detail.
16. It is not otherwise shown that the new build dwelling would fall within any of the exceptions for development in the countryside otherwise permitted by the CS. Moreover, even taking into account the proposed barn conversion, there would be a net loss of dwellings as a result of the development which would run counter to the Government's objective of significantly boosting the supply of homes. Fewer dwellings would also undermine the encouragement to make effective use of land given in paragraphs 117 and 118 of the Framework.
17. There is no dispute between the parties that the Council is unable to demonstrate a five year supply of housing land. In circumstances where there is an existing shortage of land for meeting identified housing needs, paragraph 123 of the Framework stipulates that it is especially important that planning decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site. The proposed development would represent a lower density development than currently exists and therefore, would conflict with this approach.

18. Taking these points together, there are sound reasons to resist a net loss of housing. It is put to me that the proposal would be beneficial as it would reduce housing at an isolated countryside location. However, for the reasons outlined I cannot agree. Whilst I acknowledge that local and national policies seek to control the growth of new housing in the countryside, this does not equate to an objective to reduce rural housing. This is evident in the wording of CP48 of the CS which seeks to support rural life. Additionally, paragraph 78 of the Framework refers to enhancing or maintaining the vitality of rural communities rather than a diminution. On this basis, the proposal would not accord with either the development plan or Framework when considered as a whole, as is asserted.
19. Reference is made to an appeal³ which concerned a replacement for a single dwelling. The Inspector in that case did not consider saved policy H4 of the LP and the main issue under consideration was the impact on the character and appearance of the area. As such, the circumstances and main issues differed considerably with the scheme before me. Therefore, it attracts limited weight.
20. Accordingly, I find that the development would not be in a suitable location having regard to local policies concerned with housing in rural areas. For the reasons outlined, the proposed conversion of the existing barn would conflict with CP48 of the CS and the proposed new build dwelling would not fall within the limited scope of new dwellings in the countryside permitted by saved policy H4 of the LP. Overall, the proposal would conflict with the settlement and delivery strategy for the county and Malmesbury Community Area set out in CP1, CP2 and Core Policy 13 of the CS.

Other considerations

21. The development would provide two energy efficient dwellings and there would be economic benefits associated with the construction and activity of the future occupants. Even so, there would be an overall reduction in housing which, for the reasons already outlined would not amount to a benefit. Overall, given the modest scale of the development the economic and energy benefits identified attract limited weight.
22. Reference is made to the absence of harm to the character and appearance of the area, highways and flood risk. However, this would be required to make the development policy compliant. Similarly, the absence of objections from the Parish Council and other residents does not amount to a benefit. I consider that these are neutral factors in the overall balance.
23. It is asserted that if the appeal were unsuccessful the continued presence of the existing dwellings, due to their state of repair, would have a negative visual impact. However, I did not observe the appearance of the existing dwellings to be objectionable. Moreover, the Council has powers to act in the event that the condition of land or buildings adversely affects the amenity of an area. Accordingly, this attracts little weight.

Planning balance and conclusion

24. The Council cannot demonstrate a five year supply of deliverable housing sites. In these circumstances footnote 7 of paragraph 11 of the Framework deems that the policies which are most important for determining the application are

³ APP/Y3940/W/19/3239783 Appendix E, Appellants' Statement of Case

- out-of-date. There is nothing otherwise before me to show that the Framework policies in footnote 6 provide a clear reason for refusing the proposal. Consequently, 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.
25. The proposal would conflict with policies in the development plan that broadly align with the approach to rural housing in the Framework. Therefore, the conflict with Core Policies 1, 2, 13 and 48 of the CS and saved policy H4 of the LP in this regard attracts significant weight. Furthermore, the net loss of dwellings at the site means that the proposal would conflict with policies in the Framework which seek to boost the supply of housing and make effective and efficient use of land. This is especially the case where there is unmet need.
26. I have had regard to paragraph 14 of the Framework which states that in situations where paragraph 11 d) applies, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits subject to specific criteria. Whilst I have been provided with extracts from Malmesbury Neighbourhood Plan, February 2015 (NP), it is not part of either parties' case that the proposal would conflict with the NP. In any event, the NP did not become part of the development plan two years or less before the date on which the decision is made. Therefore, the criteria in paragraph 14 are not met. Accordingly, this has not affected the overall planning balance.
27. Nevertheless, I find that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
28. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise⁴. There are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

⁴ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.