



Appeal Decision

Site visit made on 15 December 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 March 2021

Appeal Ref: APP/M1710/W/20/3258256

Land at The Spinney, Shalden Green Road, Shalden, Alton GU34 4DT

- 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 and Mrs O'Connell against the decision of East Hampshire District Council.
 - The application Ref 38980/006, dated 10 June 2020, was refused by notice dated 14 August 2020.
 - The development proposed is demolition of an existing agricultural building and a poultry shed, along with a further two poultry sheds, and erection of one 3-bedroom dwelling, together with hard and soft landscaping and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of an existing agricultural building and a poultry shed, along with a further two poultry sheds, and erection of one 3-bedroom dwelling, together with hard and soft landscaping and associated works at Land at The Spinney, Shalden Green Road, Shalden, Alton GU34 4DT, in accordance with the terms of the application, Ref 38980/006, dated 10 June 2020, subject to the conditions set out in the attached schedule.

Procedural Matter

2. The site address in the heading above is taken from the application form and appeal form, notwithstanding that the address on the decision notice and the planning application drawings refer to the road as "*Shalden Lane*".

Application for costs

3. An application for costs was made by Mr and Mrs O'Connell against East Hampshire District Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether the existing barn is a suitable location for a dwelling, having regard to local and national planning policy and all other material considerations.

Reasons

5. The site is located on the east side of Shalden Green Road. It is occupied by a timber barn, which is set back from the road behind dense vegetation and trees. There are also 3 former poultry sheds, which are positioned further back

- into the site. Vehicular access is from Shalden Green Road. The former agricultural use of the site has ceased, and the buildings are currently disused.
6. Abutting the site to the south is a detached dwelling, known as The Spinney, and its large garden. To the east and north are open fields. The road is rural in nature, being narrow, unlit and having no pavements. Its edges are defined by grass verges, mature vegetation and trees. Built development along the road comprises sporadic detached dwellings and farmstead buildings.
 7. The site benefits from 2 extant permissions¹ under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order (2015) (as amended) (the GPDO), which would allow the barn and one of the poultry sheds to be converted into dwellings.
 8. The proposal comprises the replacement of the barn with a detached, single storey, pitched roof dwelling on a similar footprint as the existing building. The poultry sheds would be demolished.
 9. The first step in considering the appeal scheme is the development plan, which comprises the *East Hampshire District Local Plan: Joint Core Strategy* (2014) (JCS) and the Saved Policies of the *East Hampshire District Local Plan: Second Review* (2006) (LPR). The site lies outside of any designated settlement boundary and is therefore considered to be a countryside location for planning policy purposes, where new development is restrained.
 10. JCS Policies CP1, CP2 and CP10 set out the District's spatial strategy. As a general rule this directs new housing to within the designated settlement policy boundaries and allocated sites, and restricts new residential development within the countryside. JCS Policy CP19 and Saved Policy H14 of the LPR set out exceptions to the above.
 11. Policy CP19 states that the only development allowed in the countryside will be that with a genuine and proven need for a countryside location, such as that necessary for farming, forestry, or other rural enterprises. Policy H14 states that outside settlement boundaries, residential development will only be permitted where it is essential to house a full-time worker in agriculture, forestry or other enterprise who must live on the site rather than in a nearby settlement.
 12. The site is not an allocated site, and the appellant has not sought to justify the proposal on the basis of requiring a countryside location. As such, the appeal scheme is clearly in conflict with the above policies.
 13. Section 38 (6) of the Act sets out that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In this instance, the extant permissions to convert the barn and one of the poultry sheds into dwellings constitute a significant material consideration.
 14. Whilst acknowledging that these permissions are a material consideration, the Council's view is that they do not justify approval of a new dwelling in the countryside. The Council considers that they are specific to the barns, and permissible as conversions under permitted development, so that if the barns were to be demolished, as proposed, these permissions would be extinguished.

¹ 38980/004 granted 17 April 2018 and 38980/005 granted 1 June 2020

15. Having regard to the Court of Appeal judgement² relating to fallback positions, I do not concur with the Council's view. Although the prior approval process is separate to the planning application process, this judgement clarifies the principle that, in considering proposals for new development, decision-makers should have regard to the fallback position of lawful development which has a real prospect of taking place in the alternative. The demonstration of a real prospect of a fallback scheme being implemented does not necessarily require a permission or prior approval to have already been secured.
16. In this case, whilst the extant permissions have not been implemented, I find that there is a real possibility of either or both of the prior approval schemes being implemented in the event that this appeal fails. This is evidenced by the existence of the two extant prior approval decisions, and the appellants' stated intention to implement the schemes. I see no reason to take a different view. The implementation of both schemes would result in 2 residential properties on the site. While this should not automatically guarantee planning permission for the appeal scheme, the fallback position is an important material consideration that carries significant weight for the purpose of my decision.
17. The effect of the conflict of the proposal with the development plan and paragraph 79 of the *National Planning Policy Framework 2019* (the Framework) in respect of its location, would be similar to that from the effect of the implementation of either of the prior approval permissions and less than if both extant schemes were carried out. The proposed removal of the buildings which benefit from the extant permission would ensure that the appeal scheme resulted in a reduction in on-site residential units compared with that allowed under the 2 extant permissions.
18. The Council has raised no objection to the design of the replacement building and the impact of the scheme on the character of the area. On the basis of the information before me and my site visit, neither do I. The new building would be sited on the same part of the site as the existing barn, would be of a modest scale and would have a design and materials that would be appropriate to its rural location. The appeal scheme would not result in a significant increase in built development on the site compared to the existing situation and the extant schemes.
19. I do not have full details of the prior approval schemes. However, due to the restricted nature of works to the buildings allowed under the prior approval process, I give some weight to the appellants' assertion that the appeal proposal would enable the provision of a more functional living space for future occupants than that of the extant schemes. It would provide an opportunity for more sustainable construction within the development, including the incorporation of energy efficient features within the design.
20. The proposal would also enable the provision of additional native tree and vegetation planting and associated benefits to biodiversity and landscape screening of the proposal in wider views towards the site.
21. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, having regard to the above, I find that the conflict with the development plan in respect of the location of the

² Michael Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314

proposal is outweighed by the reduction in the number of dwellings, and the potential biodiversity, landscaping, living conditions and sustainability benefits arising from the implementation of the proposal instead of the extant permissions. On this basis, I therefore find that the barn is a suitable location for a dwelling.

Conditions

22. I have considered the Council's suggested conditions in accordance with Paragraph 55 of the Framework and the National Planning Practice Guidance. Where necessary, I have modified them. In addition to the standard implementation condition, it is necessary to define the plans for certainty (1, 2). In the interests of the character and appearance of the area, conditions are necessary to ensure appropriate building facing and roofing materials, a landscaping scheme for the site and the removal of some permitted development rights in association with the permitted dwelling (3, 4, 5 and 6).
23. In the interests of highway safety, a condition is necessary to ensure the provision and retention of the approved on-site parking (7).
24. To ensure that the development provides a satisfactory means of drainage, and does not increase flood risk on or off-site, a condition is necessary to ensure the implementation, and subsequent retention of, a scheme of foul and surface water drainage (8). In the interests of sustainable construction, a condition is necessary to ensure that the permitted dwelling incorporates measures that provide energy savings (9).
25. Having regard to the need to avoid non-essential residential development in the countryside, a condition is necessary to ensure the removal of the existing agricultural buildings which benefit from Class Q residential development rights (10).

Conclusion

26. For the above reasons, I therefore conclude that the appeal should be allowed.

S Leonard

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: xx-OBA-OO-ZZ-DR-A:0100 - location & block plan; 0103 - existing site plan; 0104 - proposed site plan; 0200 - existing ground floor plan; 0201 - existing roof plan; 0250 - proposed ground floor plan; 0251 - proposed roof plan; 0400 - existing east elevation; 0401 - existing north elevation; 0402 - existing south elevation; 0403 - existing west elevation; 0450 - proposed west elevation; 0451 - proposed north elevation; 0452 - proposed east elevation; and 0453 - proposed south elevation.
- 3) No development shall take place above slab level until details/samples of all external facing and roofing materials in respect of the development hereby permitted have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved detail/samples.
- 4) No development shall take place above slab level until there shall have been submitted to, and approved in writing by, the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no development as defined within Part 1 of Schedule 2, Classes A, B, C and E of that Order, shall be constructed on the site.
- 7) The parking spaces hereby permitted shall be provided before the development hereby permitted is first occupied, and shall be kept available at all times for the parking of motor vehicles by the occupants of the dwelling and their visitors and for no other purpose.
- 8) No development shall commence on site until details of a scheme for foul and surface water drainage has been submitted to, and approved in writing by, the local planning authority. Such details should include provision for all surface water drainage from parking areas and areas of hardstanding to prevent surface water from discharging onto the highway and should be based on site investigation and percolation tests. The development shall be carried out in accordance with the approved details before any part of the development is first occupied and shall be retained thereafter.

- 9) No development shall take place above slab level until a scheme has been submitted to, and agreed in writing by, the local planning authority to demonstrate that the built development hereby permitted incorporates measures that provide energy savings of no less than 10% above Building Regulations in force at the time the development is to be constructed. Before any part of the development is first occupied, a verification report and completion certificate shall be submitted in writing to the local planning authority confirming that the built development hereby permitted has been constructed in accordance with the approved scheme.

The developer shall nominate a competent person for the purpose of assessing and providing the above required report and certificate to confirm that the completed works incorporate such measures as to provide the required energy savings.

The energy saving works set out in the above report shall thereafter be maintained so that the required energy saving is sustained at the certified level for the lifetime of the development.

- 10) Prior to first occupation of the dwelling hereby permitted or the completion of the development, whichever is the sooner, the existing barns on the site which have Class Q residential development rights shall be demolished, the resultant materials cleared from the site, and the land reinstated, in accordance with details which have first been submitted to, and agreed in writing by, the local planning authority.

*****End of Conditions*****