
Appeal Decision

Site visit made on 13 April 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2021

Appeal Ref: APP/Y3940/W/20/3259635

Dudgemoor Farm, Hayes Knoll, Purton Stoke, Swindon SN5 4JJ

- 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 Brooks against the decision of Wiltshire Council.
 - The application Ref 20/04360/FUL, dated 29 May 2020, was refused by notice dated 23 July 2020.
 - The development proposed is a replacement dwelling and associated works.
-

Decision

1. The appeal is allowed and planning permission is granted for a replacement dwelling and associated works at Dudgemoor Farm, Hayes Knoll, Purton Stoke, Swindon SN5 4JJ in accordance with the terms of the application, Ref 20/04360/FUL, dated 29 May 2020, subject to the following 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: Location Plan, Drawing number 02; Proposed Drainage and surface treatment details (block plan), Drawing number 03; Proposed elevations, Drawing number 04; Proposed ground floor, Drawing number 05 and Proposed 1st floor, Drawing number 06.
 - 3) The development shall be carried out in compliance with the mitigation and enhancement measures identified in the Update Emergence Survey prepared by Darwin Ecology dated 22 June 2020. The compensatory bat roosts referred to shall be provided in accordance with the document prior to the commencement of the development and shall be retained at all times thereafter.
 - 4) The development shall be carried out in accordance with the Flood Risk Assessment and Drainage Strategy prepared by Clive Onions dated 28 May 2020 (V2) and complied with at all times thereafter.

Application for costs

2. An application for costs was made by Mr Brooks against Wiltshire Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are (i) whether the proposal would be acceptable having regard to local and national planning policies for rural housing, and (ii) whether the proposal makes appropriate mitigation for bats.

Reasons

Local and national policies for rural housing

4. The appeal site accommodates a detached traditional farmhouse which the proposal seeks to demolish and replace with a larger detached dwelling within a similar curtilage. The parties agree that the site lies within the open countryside for the purposes of the development plan.
5. The delivery strategy in Core Policy 2 of the Wiltshire Core Strategy, January 2015 (CS) generally restricts development in the open countryside to specified exceptions in the development plan. Included amongst those are the exceptions permitted by saved policy H4 of the North Wiltshire Local Plan 2011, June 2006 (LP). This allows for the replacement of an existing dwelling subject to three criteria.
6. There is no dispute that the proposal would satisfy two of the criteria in policy H4, namely that the residential use has not been abandoned and that the replacement dwelling is of a similar size and scale to the existing dwelling within the same curtilage. Essentially the parties dispute whether policy H4 (ii) (b) would be met. The area of disagreement can be narrowed further as it is not part of the appellant's case that the existing house is unsightly or is out of character with its surroundings. Accordingly, the parties dispute whether the existing dwelling is incapable of retention in its current state.
7. There is no definition of what is meant by 'incapable of retention in its current state' in the supporting text for policy H4, nor a comprehensive explanation of its intended purpose. As such, the policy does not state whether this means the existing dwelling must be structurally unsound or financially unviable to improve. Neither does it clearly establish whether the approach should be a stringent or pragmatic one. Consequently, there is some ambiguity as to where the threshold of the test lies.
8. Paragraph 9.9 of the LP simply states that the whole of policy H4 reflects the strict controls placed on new residential development within the countryside at all levels of planning guidance. However, this has been subject to change in the intervening period since the adoption of policy H4 and there is no express mention made of replacement dwellings in the countryside in either the National Planning Policy Framework (the Framework) nor Planning Practice Guidance. On that basis, national policy does not explicitly prevent replacement dwellings in these circumstances.
9. Nevertheless, policy H4 (ii) (b) necessitates a judgement as to whether the existing property is incapable of retention in its current state. Paragraph 127 e) of the Framework stipulates that planning decisions should ensure that developments promote health and well-being, with a high standard of amenity for existing and future users. In addition, paragraph 148 gives general support to reducing greenhouse gas emissions and improving resilience in a changing climate. Cognisant of these sections of the

Framework, I have taken an ordinary interpretation of the term to mean whether the existing dwelling could reasonably be brought into a state whereby it would function appropriately using modern day standards for a dwelling to provide a high standard of amenity.

10. The evidence provided establishes that the existing building suffers from a combination of problems including poor thermal efficiency, damp and ingress of water from regular surface water flooding events¹. These factors would be likely to directly undermine the day to day quality of life of the occupants and result in higher energy use and bills than would be desirable. In particular, flood events may cause damage, render parts of the property temporarily uninhabitable and the experience and anticipation of such frequent events would be distressing to the occupants.
11. The building survey and energy report provided² outline the extent of works that would be necessary to improve the energy performance of the property to the most efficient standard and reduce the risk from surface water flooding. Raising the floor level would be the most effective way to improve flood resilience. The existing floor to ceiling heights within the current property would make raising the existing level by the amount recommended in the Flood Risk Assessment impractical. Moreover, the survey identifies the absence of effective damp proofing in the walls and below the existing concrete floor slab, which would be technically difficult to address and would have an uncertain outcome.
12. The evidence does not state that the existing dwelling is structurally unsound³, nor has a financial comparison of the respective costs been provided, but these are not expressly demanded by policy H4. I acknowledge it would not be impossible to undertake remedial works to address damp and flood risk and retain the building. However, the evidence before me indicates that this would require disproportionate, convoluted and potentially less effective measures than would be the case if the dwelling were to be demolished and rebuilt. Hence, in these circumstances and where it is not shown that any other unacceptable harm would result, for example to the historic environment or character and appearance of the area, it would be unreasonable to insist on the retention of the building.
13. The Council asserts that the replacement dwelling proposed would not result in a significant enhancement to the character and appearance of the locality. Nevertheless, this is not amongst the criteria specified by policy H4 of the LP for a replacement dwelling. Furthermore, the Council does not suggest that harm would result to the character and appearance of the area or that there would be a conflict with development plan policies more specifically related to design.
14. Consequently, I am satisfied that the evidence before me shows that the existing dwelling is incapable of retention in its current state to provide a high standard of amenity for the existing and future users. Therefore, it would fulfil the criteria in policy H4 of the LP.

¹ 4-6 occasions per year referred to, Page 5 Flood Risk Assessment prepared by Clive Onions 28.5.20

² Building Survey prepared by Whitby Wood, dated 6.1.20 & Energy Report prepared by Modern Heating dated 17.8.18

³ Structural Appraisal, David Smith Associates, dated 12.1.19, Appendix 4, Appellant's Statement of Case

15. It follows that there would be no harm arising from conflict with local or national planning policies in relation to rural housing that would provide a reason to prevent the development. Accordingly, it is not necessary to deliberate further what weight should be attributed to policy H4 of the LP, nor the presumption in favour of sustainable development set out in paragraph 11 of the Framework as they would not lead me to a different outcome.
16. Therefore, I find that the proposal would be acceptable having regard to local and national planning policies for rural housing and would accord with the criteria for a replacement dwelling set out in saved policy H4 of the LP.

Bats

17. The Council's decision notice also refers to insufficient information regarding a bat emergence survey to ensure appropriate mitigation for bats, a protected species. The appellant has provided an Update Emergence Survey (UES) prepared by Darwin Ecology dated 22 June 2020 as part of the appeal submission. This supplements bat surveys on the dwelling carried out in 2018 and an update Preliminary Roost Assessment dated 30th March 2020.
18. The results of these assessments concluded that the building supports three low level Common Pipistrelle bat roosts. As the proposed works would have an impact on bats and their roosts, an application for a Bat Mitigation Class Licence will be necessary to complete the works. The UES further outlines mitigation measures required to address the impact on bats.
19. This provides sufficient evidence to show the likely impact on the protected species and that proportionate mitigation measures can be undertaken so to prevent harm. It also sets out enhancement measures for bats, wildlife gaps and landscaping. On that basis, the proposal would not conflict with paragraph 170 of the Framework which requires planning decisions to contribute to and enhance the natural and local environment. The Council have not provided any substantive evidence that would undermine the findings of the UES.
20. Accordingly, I find that the proposal would provide suitable mitigation to prevent harm to bats and would therefore comply with Core Policy 50 of the CS which seeks to protect and enhance biodiversity.

Conditions

21. The three-year period in which the planning permission may be implemented is a statutory requirement. I also consider that it is necessary to specify the plans that are approved, and that the development shall be undertaken in accordance with these, as this provides certainty.
22. In order to protect bats, it is necessary that works proceed in accordance with the mitigation, compensation and enhancement measures identified in the UES. Furthermore, in the interests of biodiversity the other mitigation and enhancement measures outlined but unrelated to bats should be secured.
23. As indicated above, I gave weight to the findings of the Flood Risk Assessment which set out recommendations to protect the dwelling against surface water flooding vulnerability. On that basis, the replacement dwelling should implement the recommendations within the Flood Risk Assessment and I have imposed a condition to this end.

24. The Council have suggested an additional condition to restrict the permitted development rights that would normally allow for enlargements and alterations to the dwelling house as well as domestic outbuildings. Planning Practice Guidance states that such conditions may not pass the test of reasonableness or necessity. Other than a general reference to the amenity of the area there is little explanation for the need to remove rights to carry out small scale alterations. Accordingly, I am not satisfied that it would be necessary to make the development acceptable in planning terms and have not imposed it.

Conclusion

25. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed

Helen O'Connor

Inspector