



Appeal Decision

Site Visit made on 27 April 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2021

Appeal Ref: APP/J1860/W/20/3265338

Orchard Stables, Wad Lane, Dunshill, Corse Lawn, Malvern GL19 4PF

- 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 Charlie Deutsch against the decision of Malvern Hills District Council.
- The application Ref 20/00448/FUL, dated 31 March 2020, was refused by notice dated 29 June 2020.
- The development proposed is the residential conversion of disused former stable building.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The impact of the proposal on the character and appearance of the area;
 - Whether the site is in a suitable location for housing having regard to local and national planning policies, and;
 - The provision of Affordable Housing with reference to local and national policies.

Reasons

Character and appearance

3. The appeal site is within the 'Settled Farmlands with Pastoral Land Use' character area of the Worcestershire Landscape Character Assessment¹. It is described as a rolling, lowland, settled agricultural landscape with a dominant pastoral land use. Hedgerow and streamside trees provide tree cover in a landscape with a notable network of winding lanes, scattered farms and clusters of wayside settlements. This is consistent with my observations of the limited sporadic built form and strong countryside character of the area. Policy SWDP25 of the South Worcestershire Development Plan, February 2016 (SWDP) requires development proposals to take the Landscape Character Assessment into account such that they are appropriate to, and integrate with, the character of the landscape setting.
4. At present there is a stable building on a concrete slab served by an access drive onto Wad Lane at the appeal site. Although the appellant considers the

¹ Appendix 4, Planning, Design and Access Statement prepared by Brodie Planning Associates

stained timber walling to be brightly coloured, my observations were that its form and finish are typical of equestrian structures often seen in rural contexts. The modest scale and unassuming appearance of the structure together with the established boundary hedgerows along Wad Lane mean that it has an inobtrusive presence that integrates with the surrounding paddocks and fields. Overall, the existing building has a neutral impact on the prevailing rural character and appearance of the area.

5. The proposed residential use would lead to at least part of the existing curtilage of the stable being used as a domestic garden with the remainder providing driveway and parking space. This is likely to introduce domestic paraphernalia such as outdoor seating, play equipment, outbuildings or similar objects which in addition to more cultivated planting would emphasise the domestic nature of the development and would be alien to the rural context.
6. In addition, the proposals include extensive glazed sliding doors on the north-east elevation. When internally illuminated, this would make the presence of the structure more conspicuous in the landscape as notwithstanding the established boundary hedgerows, I was able to see glimpses of the existing structure through small gaps or lower sections of hedgerow from Swinley Lane to the north east. Furthermore, lighting in the proposed dwelling would be likely to coincide with times when trees and hedgerows would not be in full leaf.
7. Taken together, these factors would adversely dilute the prevailing rural character of the area. As such, the proposal would run counter to paragraph 170 of the National Planning Policy Framework (the Framework) which states that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside. Moreover, it would fail to comply with paragraph 127 c) of the Framework which requires planning decisions to be sympathetic to local character and history, including the surrounding built environment and landscape setting.
8. The modest size of the proposed garden area is highlighted. Nevertheless, the appellant acknowledges the potential for the introduction of domestic paraphernalia². Moreover, the limited space available would be likely to lead to a greater concentration of the presence of associated domestic objects.
9. My attention is drawn to the proposed Landscape Enhancement Plan³ which includes the removal of modern field sub-divisions to restore historic field boundaries, the replacement of post and rail fencing with a native hedgerow, the removal of a field shelter and orchard planting on the field adjacent to the appeal site. I acknowledge that these measures would provide some landscape enhancement and partial screening of the proposal. However, it is likely that future occupants would wish to retain views towards the countryside from the dwelling and garden area to the east of the building. This is reflected in the proposed additional planting which would be some distance from the significant glazed areas of the development. Therefore, these factors would not fully address the harm identified and hence, do not outweigh it.

² Paragraph 3.9, Planning, Design and Access Statement prepared by Brodie Planning Associates

³ Drawing number 20.008-201 Revision B

10. The appellant asserts that a planning condition could be imposed to restrict rights for domestic outbuildings to be built at the dwelling otherwise normally permitted. However, such a condition would not address normal domestic outdoor seating, play equipment, washing lines and the like, nor could it prevent ornamental gardening.
11. I have had regard to the comments of the Council's Landscape Officer who considers the proposed landscaping scheme to be acceptable. Nevertheless, I am required to form my own judgement based on the entirety of the evidence before me, including my own observations. Hence, his comments do not lead me to a different view.
12. Accordingly, I find that the proposal would be harmful to the character and appearance of the area contrary to policies SWDP21 and SWDP25 of the SWDP. In combination these policies, amongst other matters, require proposals that reinforce local distinctiveness and conserve landscape character.

Location

13. Policy SWDP2 of the SWDP sets out the development strategy and settlement hierarchy for the district which broadly seeks to direct a level of development to settlements commensurate with their position in the hierarchy. The supporting text outlines that this approach would locate housing in places which have the greatest housing needs and allow for the more efficient provision of services. The appeal site lies outside any identified settlement and consequently, lies within the open countryside for the purposes of the SWDP.
14. The policy goes on to stipulate that development in such locations will be strictly controlled and will be limited to a specified number of exceptions permitted by policies in the SWDP. As these do not include the re-use of rural buildings for residential purposes, the development strategy in the SWDP would not provide support for the proposal. On that basis, I am not persuaded by the appellant's assertion that the SWDP is silent in relation to such proposals⁴.
15. Nevertheless, policy SWDP2 is not entirely consistent with the range of exceptions set out in paragraph 79 of the Framework. This states that new isolated homes in the countryside should be avoided save for express exceptions, including paragraph 79 c) where a development would re-use a redundant or disused building and enhance its immediate setting. Although both parties agree that the development would result in an isolated home in the countryside, they disagree whether it would fall within the scope of paragraph 79c).
16. There is no definition of 're-use' in the Framework, but the wording does not include rebuilding or replacing the building. On that basis, it is reasonable to deduce that enough of the building as an original entity would have to be present in the proposed development in order for it to be used again for a different purpose. Whether this would be the situation in any given case requires the exercise of planning judgement based on the individual circumstances.
17. The structural engineer's opinion⁵ provided confirms that the existing rafters, roof trusses and walls are all capable of taking the loading applicable to a

⁴ Page 2, Final comments dated 22 April 2021

⁵ Shire dated 20.11.20, Appendix B, Appellant's Statement of Case

domestic residence. The proposed plan layout would necessitate new steelwork to replace the load bearing wall that would be removed. Nevertheless, the proposal would replace the existing timber wall cladding and roofing felt with larch cladding and zinc metal sheeting respectively. The overhang to the front of the stable building would be enclosed by glazed panels and timber clad walling⁶ and new windows, doors and rooflights would be introduced. Cumulatively, these works would amount to extensive building operations replacing the existing external building fabric, in addition to internal works required to make the building habitable. Therefore, notwithstanding the opinion of the structural engineer, this would be more akin to a rebuilding of the structure rather than a reuse of the existing building.

18. In addition, paragraph 79c) requires the development to enhance the immediate setting of the building. For the reasons outlined in relation to the first main issue, the proposal would be harmful to the character and appearance of the area and hence, would fail to do so. Whilst the Landscape Enhancement Plan would mitigate the degree of harm, it would not overcome the harm entirely and paragraph 79c) refers to the 'immediate' rather than the wider setting of the building.
19. Therefore, even if I were to accept that the building was redundant or disused as asserted by the appellant, for these reasons it would not be within the scope of development permitted by paragraph 79c). Neither does the evidence suggest it would fall within any of the other exceptions permitted in paragraph 79 of the Framework.
20. Reference is made to a planning decision⁷ made by a different local planning authority permitting the conversion of a stable building to a dwelling. As such, different development plan policies were applicable in that case. Based on the limited information provided it is not shown that the Council's determination turned upon the application of 79c) of the Framework. Consequently, it is of little weight.
21. My attention is also drawn to an appeal decision⁸ which permitted the conversion of agricultural barns to form a single dwellinghouse elsewhere in the district. The Inspector in that case considered paragraph 55 of the version of the Framework then in force, which was broadly equivalent to paragraph 79 of the present Framework. He concluded that the proposals in that case would re-use redundant rural buildings and enhance their immediate setting. Moreover, he gave weight to the existence of prior approval for the change of use of the barns to create a dwelling.
22. As I am only provided with the decision letter, I have not seen all the information that was before the Inspector, and this prevents a detailed comparison with the circumstances of the appeal proposal. Even so, the respective buildings are likely to have differences in their construction and I am not aware that a prior approval for a dwelling exists in relation to the building before me. These differences limit the weight given to the specific outcome of that decision. Nevertheless, my approach to the consideration of the relevant local and national policy is broadly consistent.

⁶ Paragraph 3.6, Planning, Design and Access Statement prepared by Brodie Planning Associates

⁷ Reference 16/04753/FUL Cotswold District Council, Appendix C, Appellant's Statement of Case

⁸ Appeal Ref: APP/J1860/W/17/3184604, Appendix 3, Planning, Design and Access Statement prepared by Brodie Planning Associates

23. Accordingly, I find that the proposal would conflict with policy SWDP2 of the SWDP in relation to the limited circumstances where residential development in the open countryside is permitted. In addition, it would be contrary to the thrust of the overarching sustainable development principles in policy SWDP1 and the sustainable travel choices encouraged by policy SWDP4 of the SWDP. Furthermore, it would conflict with paragraph 79 of the Framework which seeks to avoid isolated homes in the countryside. Therefore, having regard to local and national planning policies it would not provide a suitable location for the development.

Affordable Housing

24. Policy SWDP15 of the SWDP requires all new residential development above the thresholds set out in the policy to contribute to the provision of affordable housing in the district. SWDP15 B.v. stipulates on sites of less than 5 dwellings a financial contribution towards local affordable housing provision should be made, based on the cost of providing the equivalent in value to 20% of the units as affordable housing on site. The Council suggest the figure would be £12,797.
25. The appellants have not provided any mechanism to secure such an off-site contribution, and I have not seen evidence that it would make the development unviable. Accordingly, whilst I shall return to the figure suggested by the Council, on the face of it, by making no provision for affordable housing, the proposal would conflict with the requirements of policy SWDP15 of the SWDP.
26. Policy SWDP15 predates national policy in paragraph 63 of the Framework which states that provision of affordable housing should not be sought for residential development that are not major development, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). The thresholds in policy SWDP15 do not align with that approach. Paragraph 213 of the Framework states due weight should be given to such policies according to their degree of consistency with the Framework.
27. Moreover, the Council's Affordable Housing, Supplementary Planning Document, October 2016 (SPD) gives guidance on the interpretation and implementation of policy SWDP15. The site is within the parish of Eldersfield which Appendix 3 of the SPD confirms is within a designated rural area. As such, the Framework allows for lower thresholds for affordable housing provision. However, the SPD expressly states at paragraph 3.5 that '*As agreed by committee resolution the south Worcestershire councils will implement SWDP15 differently to the published policy in the adopted plan to take into account the national threshold as set out in the WMS (Nov 2014) and the NPPG.*'
28. It goes on to specify less onerous thresholds than those in the adopted policy for smaller residential developments. In particular, it states that on sites of 5 dwellings or less, no affordable housing contributions will be sought across the whole of the plan area⁹. Given the distinctions made in preceding paragraphs, this would be the case even in designated rural areas. On that basis, the proposal would accord with the guidance provided in the SPD, which is a material consideration of considerable weight. My approach in this regard is

⁹ Paragraph 3.8, SPD

broadly similar to that of the Inspector in a recent appeal decision¹⁰ which the Council have highlighted.

29. The Council refers to a subsequent Formal Position Statement dated June 2019 which explains the current approach of the three South Worcestershire Councils towards the provision of affordable housing given the changes in national policy. Nevertheless, the document refers to itself as a 'note'. It is not shown that the content underwent similar public consultation to the adopted SPD. On that basis it has limited status and therefore, carries little weight. Moreover, refusal reason 3 on the Council's decision notice refers to a conflict with the SPD rather than the position statement.
30. I am referred to a recent permission¹¹ granted by the Council for the conversion of a former coach house into a single residential dwelling where it appears there was no planning obligation secured for an off-site contribution towards affordable housing in line with policy SWDP15. The Council state that the applicant benefitted from vacant building credit (VBC) and the SPD indicates that where a site qualifies for VBC, affordable housing contributions will only be sought on additional floorspace created by the development. Nevertheless, the accompanying delegated report does not refer to the issue of affordable housing provision nor even cite policy SWDP15 as relevant. This provides some evidence that the Council is adhering to the stance set out in the SPD, which gives it added weight.
31. Furthermore, there is little explanation for how the Council arrived at the suggested financial contribution for the proposal. Paragraph 63 of the Framework indicates where vacant buildings are being reused or redeveloped any affordable housing contribution due should be reduced by a proportionate amount. Given that the appellant refers to the stable building not having been used for a period in excess of 2 years, it is unclear whether the site qualifies for VBC, and if so, whether the Council's figure takes account of this.
32. Taking these factors together, and based on the evidence before me, I am not assured that the contribution sought would be necessary to make the development acceptable or that it would be directly related to the development and fairly and reasonably related in scale and kind as stipulated in paragraph 56 of the Framework.
33. Consequently, although on the face of it the proposal would conflict with the wording of adopted policy SWDP15, given the national policy context and subsequent adopted SPD, I am unable to conclude that a planning obligation seeking to provide the contribution sought would comply with the statutory tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). In these circumstances, the absence of a planning obligation to provide a financial contribution towards off-site affordable housing does not weigh against the development.

Other Matters

34. The proposal would provide an additional dwelling that would make efficient use of previously developed land and contribute to the overall housing supply. The development is likely to qualify as a self-build scheme or custom building project, support for which is generally found in the Framework. The landscape

¹⁰ Appeal reference APP/J1860/W/20/3253525, paragraph 15 & 16, Appendix 8, Council's Statement of Case

¹¹ Reference 20/00933/CU, Appendix F, Appellant's Statement of Case

enhancement plan would also bring some improvements to the wider area that would also be likely to be beneficial to biodiversity. However, these benefits and the associated economic and social benefits accrued from the provision of one dwelling would be modest and therefore, this attracts limited weight. I acknowledge that the proposal would be of particular benefit to the appellant in allowing him to live and work in the area. However, planning decisions must be made in the public interest and therefore, such personal benefits attract little weight.

Conclusion

35. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹². No compelling reasons have been shown to justify my determining the development other than in accordance with the adopted development plan. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

INSPECTOR

¹² Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.