



Appeal Decisions

Site visit made on 31 January 2022

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2022

Appeal A Ref: APP/D3125/W/21/3279926

Farm Building at E426163 N224706, Kingham OX7 6YD

- 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 W Morris against the decision of West Oxfordshire District Council.
 - The application Ref 20/03286/FUL, dated 24 November 2020, was refused by notice dated 1 February 2021.
 - The development proposed is change of use of building into a dwellinghouse (3 bed) and associated works.
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Appeal B Ref: APP/D3125/W/21/3280633

Farm Building at E426163 N224706, Road from Station Road to Rynehill Farm, Kingham OX7 6YD

- 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 W Morris against the decision of West Oxfordshire District Council.
 - The application Ref 21/01826/FUL, dated 18 May 2021, was refused by notice dated 13 July 2021.
 - The development proposed is conversion of existing barn to create a new dwelling to be used as a holiday home.
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Decisions

1. Appeals A and B are both dismissed.

Main Issues

2. The main issues are:
 - a) whether the site is suitable for the dwelling being proposed under Appeal A, having particular regard to development plan policy on the location of new housing and development within the Cotswolds Area of Outstanding Natural Beauty (AONB);
 - b) whether the site is suitable for the holiday home being proposed under Appeal B, having particular regard to development plan policy on tourism uses and development within the AONB; and
 - c) whether there are material considerations which outweigh any conflicts with the development plan in respect of the above issues.

Reasons

Appeal A

3. The appeal site lies to the north of the settlement of Kingham and comprises a farm building and part of the field parcel within which it is located. The building is steel framed, with timber clad walls and a corrugated sheet roof. At the time of my site inspection, it was being used to store kindling, some of which had been bagged up. The building does not have a defined curtilage and sits at the edge of the field adjacent to its southern boundary.
4. The site falls outside of any settlement and is thus considered to lie within open countryside for policy purposes. Policy H2 of the West Oxfordshire Local Plan 2031 (WOLP) sets out those circumstances where new dwellings would be permitted in such locations. Most are plainly not relevant to this case and the appellant does not suggest otherwise. However, I note that Policy H2 would permit the re-use of appropriate existing buildings which would lead to an enhancement of their immediate setting and [my emphasis] where it has been demonstrated that the building is not capable of re-use for business, recreational or community uses, tourist accommodation or visitor facilities.
5. Although described as a farm building, the information before me suggests that the site is in business use. This activity is low key and compatible with the site's rural location, being contained within the building. The appellant has made an application for a holiday home – to which Appeal B relates – but otherwise I have seen no evidence of efforts to find an alternative use which fits within the policy. But in any event, the site's suitability for residential use under Policy H2 would be dependent upon the scheme leading to an enhancement of the immediate setting.
6. The proposal is to insert new window and door openings, clad the external walls in vertical timber boarding and re-roof using profiled metal sheeting. Planning permission has already been granted for recladding and re-roofing (Council Ref 20/01412/FUL), but the nature of the fenestration being proposed in the appeal scheme would give the building a more domestic appearance relative to the approved scheme, especially on the west and north elevations.
7. The scheme would also include the creation of a new curtilage, to be defined by post and rail fencing. Timber boarded gates would be installed at the entrance to a parking area constructed using concrete pavers. The new curtilage would read as an arbitrary incursion into the adjacent field and residential activity on the land would intrude into scenic views across the AONB landscape from the road. There would be no reliable means of controlling residents' use of the area, or physical items such as play equipment, washing lines and garden furniture. A condition could be used to require landscaping on the boundaries but this would not mitigate the adverse visual impact of domestic paraphernalia.
8. The creation of a residential curtilage would combine with the works to the building to significantly harm the site's attractive rural charm. The development would not be widely visible from public vantage points; the main views are from the entrance onto the road and these would be glimpsed from passing vehicles. However, the site lies within AONB landscape which has the highest status of protection in relation to its natural beauty. The proposal would fail to conserve or enhance this natural beauty. This would amount to material harm which brings the proposal into conflict with WOLP Policy EH1 and the general principles set out within WOLP Policy OS2.

Appeal B

9. The plans for Appeal B are identical to those put forward under Appeal A. The only difference lies in the fact that the proposal is for a holiday home rather than a dwelling.
10. WOLP Policy E4 sets out the Council's strategy for sustainable tourism. It states that new tourist and visitor facilities should be located within or close to Service Centres and Villages and reuse appropriate existing buildings wherever possible. The policy is more restrictive for sites in small villages, hamlets and the open countryside. Proposals in these locations are required to have a functional linkage with a particular countryside attraction, or they need to relate to farm diversification or re-use an appropriate building in accordance with WOLP Policy E3. The latter policy supports the conversion of non-traditional buildings, including modern farm buildings, to tourism uses where the building lies within or adjoining Service Centres or Villages or where it forms part of an agricultural holding and the proposal is part of a farm diversification scheme.
11. The appeal building is a steel framed structure which I would categorise as non-traditional construction. Although Kingham is defined as a 'Village' within the district settlement hierarchy, the site does not lie within the settlement, neither is it adjoining. In my judgement, the location should be treated as open countryside for the purposes of interpreting Policy E4. I have seen no information to suggest that the proposal is part of a wider farm diversification scheme. Consequently, I find that there would be conflict with Policy E3.
12. The site is located approximately 350 m from the edge of Kingham¹. The appellant contends that the proximity to services and facilities in this village means that the proposal would constitute sustainable tourism. Even if I were to accept this, Policy E4 requires proposals to conserve and enhance the landscape quality of the Cotswolds AONB. The occupants of a holiday home would enjoy their outdoor amenity space in much the same way as residents of a dwelling and for that reason I consider the visual impacts to be comparable. Overall, I find that the proposals to convert the building to a holiday home would fail to preserve the natural beauty of the Cotswolds AONB contrary to Policy E4. There would be conflicts with WOLP Policies BC1, OS2, OS4 and EH1 insofar as these seek to protect landscape character and ensure that development respects its context.

Other Material Considerations

13. Kingham contains a range of services and facilities, including a primary school, public house and shop. Although WOLP Policy H2 would permit new dwellings within or adjoining the built-up area, the proposal under Appeal A would not comply with the policy due to the site being physically separate from the built-up area. Notwithstanding this, it is argued that the dwelling would be sustainably located due to its close proximity to Kingham. However, the road leading into the village lacks footways and lighting and is subject to the national speed limit. This would act as a significant deterrent to making the trip on foot. The journey by car would be relatively quick but this in itself does not justify a development which conflicts with the spatial strategy set out in WOLP Policy OS2.

¹ Measured from the site entrance to the boundary of the Conservation Area

14. Prior approval has been granted² for the change of use of the building to a dwelling under Class PA of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. Notwithstanding this, the Council contends that there is no legitimate fallback, given that the date of the prior approval conflicts with the limitation imposed by Paragraph PA.1(c). The appellant challenges this on the basis of legal advice received. It is not for me, in the context of a s78 appeal, to make a ruling on the matter of lawfulness. This should be established by applying for a Certificate of Lawfulness under s192 of the Act. If the appellant is correct, then it is open to them to convert the building under permitted development rights. However, it does not obligate me to grant planning permission for a scheme that I consider to be materially harmful, particularly as I have not seen the plans for the Class PA scheme and do not know whether a residential curtilage was being proposed.
15. The lawfulness of the existing use has not been established via an application for a Certificate of Lawfulness under s191 of the Act. Nevertheless, the Council does not appear to dispute the appellant's contention that the use of the site falls within Use Class E. If this is correct, the building could be used for a wide range of alternative business, commercial and services uses. There is no information on the impact of such uses, but based on the current activities, the likelihood is that commercial activity would need to be confined to the building and not within the adjacent field. The fallback is a material consideration to which I have had regard, but it does not alter my conclusions on either case.

Planning Balance and Conclusion

Appeal A

16. This proposal would make use of an existing building to provide a new 3-bed dwelling. In doing so, it would make a very modest contribution to the supply of new homes. However, the proposal would fail to enhance the immediate setting and it would conflict with the spatial strategy of the development plan. There would also be harm to the landscape and scenic beauty of the Cotswolds AONB. I have attached great weight to this harm, in line with paragraph 176 of the National Planning Policy Framework (the Framework).
17. I have considered the arguments presented in relation to the fallback, both in terms of permitted development and the impact of alternative uses within the same Use Class. I have also had regard to the availability of services and facilities in nearby Kingham. However, none of these material considerations are sufficient to outweigh the conflict with the development plan.

Appeal B

18. This proposal would deliver a new holiday home and thereby contribute to the local rural economy. However, the scheme would not comply with development plan policy in relation to tourism uses in the open countryside. These policies are consistent with paragraph 84 of the Framework and therefore I attach significant weight to the policy conflict. The scheme would also have adverse impacts on the Cotswolds AONB and the conflict with the development plan in this regard is a consideration of significant importance and weight. Although I have taken account of the other considerations put forward by the appellant, as per Appeal A, these do not justify a decision otherwise than in accordance with the development plan.

² Council Ref 20/02103/PN56

19. For the reasons given above and having regard to all other matters raised, including the representations of support, I conclude that both appeals should be dismissed.

Robert Parker

INSPECTOR