
Appeal Decision

Site visit made on 14 July 2022

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2022

Appeal Ref: APP/D3505/W/21/3286431

1 Coxhall Cottages, Coxhall Road, Tattingstone, Ipswich, IP9 2NP

- 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 D Allen against the decision of Babergh District Council.
 - The application Ref. DC/21/04629 dated 19 August 2021, was refused by notice dated 13 October 2021.
 - The development proposed is the change of use, conversion and extension of stables and workshop to form 1 No. dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use, conversion and extension of stables and workshop to form 1 No. dwelling at 1 Coxhall Cottages, Coxhall Road, Tattingstone, Ipswich, IP9 2NP, in accordance with the terms of the application, Ref DC/21/04629, dated 19 August 2021, subject to the conditions set out in the schedule at the end of this decision.

Main Issue

2. The main issue in this case is the suitability of the location of the site for residential development in terms of sustainable travel.

Reasons

3. The site is part of the curtilage of No.1 Coxhall Cottages, which is part of a semi-detached pair. It is the side and rear part of the curtilage of No. 1, with an outbuilding described as 'formerly used as a stable and workshop, which supported the use of part of the site as a smallholding'. The site is to the east of a hamlet known as the White Horse hamlet. It is outside any settlement boundary, although I am told that the emerging Joint Local Plan (JLP) proposes a settlement boundary for the White Horse hamlet, but the site is also outside this. In any event, as an emerging plan, the JLP carries little weight. The site is therefore within the countryside for policy purposes, and in fact it and its attached neighbour have arable farmland on 3 sides.
4. The starting point is the development plan with the National Planning Policy Framework (the Framework) as a material consideration of substantial weight. Since it is only the question of the sustainability of the site's location that is in issue, it is development plan policies CS2, CS3, CS11 and CS15, of the Babergh Core Strategy, February 2014, referred to in the refusal notice, that are germane.

5. The Core Strategy is clearly an aging document, but not necessarily out of date on that basis alone. However, these policies all fail to follow the flexible approach to decision making as set out in the Framework. Policy CS2 for instance, includes a section on 'Countryside', which states that development outside the defined settlements will only be allowed in exceptional circumstances. Similarly, CS11 has a sequential approach with criteria that do not sit well with the Framework, such as whether the development meets a proven local need. Again, CS15 has a long list of criteria, a good number of which are consistent with the framework. However, it does not reflect the flexibility and balancing that is advocated in the Framework. For that reason I give it less than full weight.
6. I have not mentioned Policy CS3 in the paragraph above, but this is a general policy setting out a Strategy for Growth and Development. It is thus high level, governing employment and housing growth. It seems to me that it adds nothing material to the matters that I must deal with.
7. Since I have found the development plan policies referred to are either not in accord with the Framework or do not attract full weight or are not material, I will consider the appeal against the policies of the Framework taken as a whole. This must begin with paragraph 10 which states that at the heart of the Framework is a presumption in favour of sustainable development. Sustainable development has 3 overarching objectives: the economic, the social and the environmental (paragraph 8). More explicit policy can be found in the section on rural housing – paragraph 78 to 80, and the appellant draws particular attention to paragraph 80. Paragraph 78 is mainly concerned with affordable housing and opportunities for rural exception sites, and is not relevant.
8. It seems to me that paragraph 79 gets to the nub of rural housing policy: *"To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby"*. Thus the emphasis for sustainable development in terms of rural housing is on villages. As I have already found, paragraph 3 above, the appeal site is not within a settlement boundary.
9. This leads to the 'isolated homes' paragraph 80, which is clear in its opening sentence: *"Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:"*. Only one of which can be considered as being relevant to this case: *"c) the development would re-use redundant or disused buildings and enhance its immediate setting;"*. Therefore it is necessary to address the question of whether it would be 'isolated'.
10. The judgement in the case of Braintree District Council ([2018] EWCA Civ 610), endorsed in the case of City & Country Bramshill Limited ([2021] EWCA Civ 320), determined that the meaning of isolated is *"whether [the development] would be physically isolated, in the sense of being isolated from a settlement"*. It is clear that the appeal site is outside any settlement boundary. The question then arises as to whether it is in any other form of settlement, such as a hamlet. Irrespective of the possibility that the White Horse hamlet might in due course have a settlement boundary through the currently emerging JLP, it

certainly is a hamlet. The curtilages of Nos.1 and 2 Coxhall Cottages touch, or appear to almost touch, the development that is part of the Tattingstone - White Horse hamlet. I therefore conclude that the appeal site is not isolated in the paragraph 80 sense.

11. I therefore turn to policy CR19 Buildings in the Countryside – Residential, which is referred to in the appellant's statement and the officer's report. This is a saved policy from the earlier Babergh Local Plan Alterations No.2 of 2006. Whilst it is a document of some age, it remains part of the development plan. The officer's report deals with it in this way: *"Saved Local Plan Policy CR19 focuses on the conversion of barns or other redundant or under-used buildings in the countryside to dwellings. The context to Policy CR19 is found in the supporting text: Many of the traditional farm buildings in the Babergh District make a significant and positive contribution to the character of the landscape and their retention should, therefore, be supported. However, such buildings are often no longer suitable for agricultural use and their future survival is at risk, unless appropriate alternative uses can be found for them. The unused stable block is not a traditional farm building. It has not been used for traditional agricultural use. It is not in an agricultural setting. Equine does not fall within the definition of agriculture. Saved Policy CR19 does not apply"*.
12. The council has not provided me with the text of the policy, but the following is set out in the supporting statement to the planning application:
"Proposals for the conversion of barns or other redundant or under-used buildings in the countryside into dwellings or holiday accommodation will only be permitted if:
 - *_it can be demonstrated that the alternative uses for business, community and leisure uses have been thoroughly explored and can be discounted;*
 - *_the building's location makes it unsuitable for conversion to other uses;*
 - *_the building is of architectural or historic merit and is capable of conversion without significant rebuilding or extension;*
 - *_the method of conversion retains the character of the building and, in the case of barns, retains the single open volume with minimal change;*
 - *_the scheme is acceptable in terms of highway safety;*
 - *_the building is not at risk of flooding;*
 - *_there is scope for connection to a suitable drainage system; and*
 - *_there is no material adverse impact on protected species, particularly bats and barn owls"*
13. This policy is not, as the officer's report suggests, only about the conversion of agricultural buildings; it includes other redundant or under-used buildings in the countryside, without reference to agriculture. Further, it is clear that all the criteria do not have to be met, although some clearly must, such as highway safety and connection to a suitable drainage system. My interpretation is that the first 3 bullet points cannot be read as though there were an 'and' between them; for instance each of the first 2 bullet points surely cannot be read as "and the building is of architectural or historic merit and is capable of conversion without significant rebuilding or extension". To include an 'and' would mean that the policy only applies to buildings that are of architectural or historic merit: that in turn, I would expect, would be reflected in the opening of the policy: 'Proposals for the conversion of barns or other redundant or under-used buildings of architectural or historic merit ...'.

14. On this basis, the first bullet point cannot be decisive because the second bullet point comes into play – the buildings location makes it unsuitable for conversion to other uses (other than residential). The appeal site is not a location where business, community and leisure uses would be suitable. Bullet point 3 is not applicable, whilst there is nothing to suggest that the remaining criteria are not met, or could be met by conditions, such as those suggested by the council. Whilst the description of the proposed development includes the words 'and extension', there is very little shown on the plans that is not using the building in its present shape and extent. The appeal proposal fits within the scope of policy CR19 – it is the conversion of an existing building.
15. Finally I must address the refusal reason point that the site is a location lacking sustainable transport options. As framework paragraph 105 points out, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making. As I saw on my site visit journey, the site is 4 miles or so from the large town of Ipswich, which has available all shopping, health, education, leisure and other services that would satisfy most needs, and a main line railway station connecting London, Norwich, Cambridge, etc. Thus, acknowledging the extent to which the private motor vehicle would play the greatest part in journeys, these would for the most part be short, other than for journeys that would probably be made by car, no matter how well connected a location might be by footpaths, cycle routes and bus services.

Conclusions

16. For the reasons that I have set out above, I conclude that the proposed development meets the requirements of development plan policy CR19 and that the relatively poor access to sustainable modes of transport is not a sufficient reason for withholding planning permission in the circumstances of this case. Therefore I will allow the appeal.

Conditions

17. The Council has suggested a number of conditions in the event that the appeal is upheld. I have considered these in the light of Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG I have amended some of the text.
18. I consider that the conditions should be imposed for the following reasons: condition 2 is required for certainty and avoidance of doubt as to the development permitted; condition 3 is to allow control over further development that would otherwise be permitted development in view of the relationship of the development to other dwellings and the possible effect on the character of the countryside; conditions 4, 5 and 6 are to conserve protected and priority species and allow the Local Planning Authority to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species); conditions 7 and 8 are to ensure that an adequate access is installed for the safety of highway users; condition 9 is to ensure that refuse and recycling bins do not obstruct the highway for the safety of users of the highway; condition 10 is to prevent hazards on the highway for the safety of users of the highway; condition 11 is to ensure adequate parking provision to safeguard highway safety and convenience; conditions 12 and 13 are to provide adequate visibility for

vehicles leaving the development for the safety and convenience of highway user; and condition 14 is ensure safe working, and minimal disturbance to the neighbouring occupiers and adverse impact on the public highway during the construction phase

Terrence Kemmann-Lane

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 drawings: Location Plan No.1527-0100 P01 and Proposed Plans and Elevations No.1527-0103 P01.
- 3) Notwithstanding Section 55 (2)(a)(ii) of the Town and Country Planning Act 1990 as amended and the provisions of Article 3, Schedule 2 Part 1 Classes A to E and H and Part 2 Class A of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no enlargement, improvement, insertion of new openings or other alteration of the dwelling house shall be carried out; no garage, car port, fence, gate, wall or any other means of enclosure, building or structure shall be erected, except pursuant to the grant of planning permission on an application made in that regard.
- 4) Prior to occupation of the dwelling hereby permitted, all mitigation measures and/or works shall be carried out in accordance with the details contained in the Preliminary Roost Assessment (Arbtech, April 2020) and the Bat Emergence and Re-entry Surveys (JP Ecology, July 2021) as already submitted with the planning application and agreed in principle with the Local Planning Authority prior to determination. This may include the appointment of an appropriately competent person e.g. an ecological clerk of works, to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.
- 5) No works which will impact the breeding/resting place of bats, shall in any circumstances commence unless the Local Planning Authority has been provided with either:
 - a) A licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorising the specified activity/development to go ahead; or
 - b) A method statement relating to a registered site supplied by an individual registered to use a Bat Mitigation Class License for Bats; or

- c) A statement in writing from the Natural England to the effect that it does not consider that the specified activity/development will require a licence.
- 6) Prior to first occupation of the dwelling hereby permitted, a lighting design scheme for biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed prior to occupation of the dwelling in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances shall any other external lighting be installed without prior consent from the Local Planning Authority.
 - 7) No development hereby permitted shall be commenced, other than works of improvement of the existing vehicular access, until that access has been laid out and completed in all respects in accordance with DM01 and with a minimum entrance width of 4.5m. Thereafter, the access shall be retained in the specified form.
 - 8) Prior to the new dwelling hereby permitted being first occupied, the access onto the highway shall be properly surfaced with a bound material for a minimum distance of 5m from the edge of the metalled carriageway, in accordance with details previously submitted to and approved, in writing, by the Local Planning Authority.
 - 9) Details of the areas to be provided for storage of refuse/recycling bins shall be submitted to and approved, in writing, by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is first occupied and shall be retained thereafter for no other purpose.
 - 10) Prior to first occupation of the dwelling hereby permitted, details shall be submitted to and approved in writing by the Local Planning Authority showing the means to prevent the discharge of surface water from the development onto the highway and the approved scheme shall be carried out in its entirety before the dwelling is first occupied and shall be retained thereafter in its approved form.
 - 11) Prior to first occupation of the dwelling hereby permitted, details of the areas to be provided for the loading, unloading, manoeuvring and parking of vehicles including secure cycle storage shall be submitted to and approved, in writing, by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is first occupied and shall be retained thereafter and used for no other purpose.
 - 12) No development hereby permitted shall be commenced, other than works of improvement of the existing vehicular access, until clear visibility at a height of 0.6 metres above the carriageway level has been provided in that area between the nearside edge of the metalled carriageway and a line 2.4 metres from the nearside edge of the metalled carriageway at the centre line of the access point and a distance of 70m to the east and to the junction with White Horse Hill (west) along the edge of the metalled carriageway from the centre of the access (the visibility splays).

Thereafter clear visibility across this area shall be permanently maintained.

- 13) Notwithstanding the provisions of Part 2 Class A of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification) no obstruction over 0.6m high shall be erected, planted or permitted to grow within the areas of the visibility splays.
- 14) No development hereby permitted shall be commenced, other than works of improvement of the existing vehicular access, until a construction management strategy has been submitted to and approved in writing by the Local Planning Authority. This strategy is to include access arrangements for contractors vehicles (locations and times) and a methodology for avoiding mud from the site tracking onto the highway with a strategy for remedy of this should it occur. The approved strategy is to be adhered to until completion of the development.