



Appeal Decision

Site visit made on 20 September 2022

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2022

Appeal Ref: APP/B2355/W/22/3292697

Zion Cottage, Windy Willows Farm, Saunder Height Lane, Newchurch, Rossendale, Lancashire, BB4 9NB

- 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 Arnoldas Nauseda against the decision of Rossendale Borough Council.
 - The application Ref 2021/0595, dated 14 October 2021, was refused by notice dated 16 December 2021.
 - The development proposed is described on the application form as a replacement dwelling.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs were made by Mr Nauseda against Rossendale Borough Council, and by the Council against Mr Nauseda. These applications are the subject of a separate Decision.

Procedural Matters

3. The decision notice refers to policies in the Core Strategy and the Draft Rossendale Local Plan, but following the adoption of the new Rossendale Local Plan in December 2021, these policies have now been superseded. The application was determined in light of policies in the draft version of the Local Plan, which was at a very advanced stage of preparation at the time. I am satisfied that neither party's case is undermined by the change in policy context.

Main Issue

4. The main issue is whether the site is a suitable location for housing, having regard to the character and appearance of the area, and the suitability of the access.

Reasons

5. The appeal site is located in an upland area of moorland, characterised by fields of rough grazing, delineated by dry stone walls. The landscape is wide and open, with expansive views across to the surrounding fells. The elevation of the area, together with the sparsity of built development and made roads, contributes significantly to the feeling of remoteness, despite its proximity to the town of Rawtenstall.

6. The proposed dwelling would be sited within a modest sized rectangular field, which is bounded on one side by a public right of way, known as Saunder Height Lane, and on the other with a block of woodland. The small group of buildings at Windy Willows Farm occupies one corner of the field, and includes Zion Cottage, which would be demolished as part of the proposal.

Policy context and principle of development

7. In order to promote sustainable patterns of development and to protect the countryside, the spatial strategy set out in Local Plan Policy SS focusses growth in and around the larger Key Service Centres, with an appropriate level of growth in smaller settlements to meet local needs. The appeal site is in a rural location, outside of the Urban Boundary. There is nothing to suggest that the proposed house needs to be located in the countryside, so the proposal does not comply with Local Plan Strategic Policy SD2.
8. A new dwelling would not be acceptable in this location, but the submitted documents describe the proposal as a replacement for Zion Cottage. The Council's suggestion that the proposed dwelling would be too far away to be treated as a replacement dwelling is not backed up by any evidence or policy guidance. As such, Local Plan Policy HS10, which deals specifically with replacement dwellings, is relevant.
9. However, planning permission has already been granted on appeal for a replacement dwelling for Zion Cottage (ref APP/B2355/W/20/3259984), and that permission is still extant. The current appeal is for a dwelling of a very similar scale and design to that previously allowed, but it would be sited in a different position. The proposed scheme is intended as an alternative to the previously approved scheme, so if I were to allow the appeal, it would be necessary to put in place a mechanism to prevent both schemes being implemented, and two houses built. Similarly, measures would need to be put in place to ensure the demolition of Zion Cottage.
10. Whilst not included within the red line plan, Zion Cottage is identified as being within the appellant's ownership, and I am satisfied that its demolition could be secured through a condition. However, a planning condition could not be used to prevent implementation of the extant planning permission. The permission could be revoked by the Council following the process set out under s97 of the 1990 Town and Country Planning Act, but this has not been done. The only way to resolve this situation, therefore, would be through a signed planning obligation, in which the appellant agreed not to implement the extant permission.
11. I have not been provided with such an agreement, so if I allowed this appeal, there would be nothing to stop both permissions being implemented. This would result in a new, additional house being provided in a countryside location, contrary to Local Plan Policy SD2. On its own, the lack of a legal agreement is sufficient to dismiss the appeal, but for the sake of completeness, I have also assessed the scheme in terms of Local Plan Policy HS10.

Character and appearance

12. To protect the character of the area, Policy HS10 indicates that permission for a replacement dwelling in the countryside would only be granted where the

- new dwelling would not detract from openness to a greater extent than the original dwelling (criterion d), and would not be materially larger (criterion e).
13. The original dwelling, Zion Cottage, is forms part of the small cluster of buildings at Windy Willows, which are accessed by a private track along a third side of the appeal field. The buildings are set well back from Saunder Height Lane, and are partly screened by trees, so they appear to be nestled into the landscape. From the surrounding footpaths, Zion Cottage is not discernible as an individual building, and forms part of the existing small cluster of well screened buildings.
 14. The proposed detached house would also be set well back from Saunder Height Lane, but would appear clearly separate from the existing group of buildings at Windy Willows, despite its relative proximity. The proposed development would occupy a prominent position in the centre of the field, and would be clearly visible from the surrounding footpaths. The proposed house, together with the long driveway, domestic garden and space for 3 parked cars, would introduce an urbanising form of development which would appear out of character in this open, upland area.
 15. As a result of its siting, the proposal would have a significantly greater impact on the existing open, rural character of this upland area than Zion Cottage. It would therefore fail to comply with criterion d) of Policy HS10.
 16. In terms of its scale, design and appearance, the appeal proposal is very similar to the replacement dwelling approved under appeal ref APP/B2355/W/20/3259984. However, the differences in siting mean that the impact of the two proposals on the character of the area would not be the same.
 17. Unlike the dwelling now proposed, the previously approved house would be sited very close to, and would visually form part of, the existing cluster of buildings at Windy Willows. Furthermore, the approved house would be served by the same access as Windy Willows, and would benefit from the same screening. As a result, the effect of the approved scheme on the character and appearance of the surrounding upland landscape would be far less than that of the dwelling now proposed, and the previous Inspector's findings in relation to character and appearance do not apply in this case.
 18. Zion Cottage is described as a single storey, one-bed dwelling attached to the rear elevation of the stone farmhouse at Windy Willows Farm. As the proposed house would be materially larger than the single storey Zion Cottage, it would also fail to comply with Policy HS10 criterion e).
 19. I acknowledge that the previously approved replacement dwelling would be of a similar scale to that now proposed, so would also be materially larger than Zion Cottage. However, that scheme was not subject to the requirements of Local Plan Policy HS10, which has only recently been adopted. Instead, the previous appeal was assessed in light of Policy 23 of the now superseded Core Strategy, which sets out general requirements for high quality design, but does not specifically deal with replacement dwellings. Because of the change in policy context, the previously approved scheme does not provide a reason to allow a dwelling of the scale proposed,

20. The proposal would allow for two dwellings to be built, and is unacceptable for this reason. However even if that issue were resolved through a signed legal agreement, the proposed dwelling would cause significant harm to the character and appearance of the area, and would fail to comply with the requirements of Local Plan Policy HS10.

Suitability of the proposed access

21. Most of the long access from Edge Lane to the appeal site is narrow, and in parts is very steep. A number of sections are in poor condition, and I note comments about damage caused by the use of large vehicles. Resurfacing might improve the situation, and would be supported by the Council's Public Rights of Way Officer. However, even if the track were to be upgraded, the steepness of the track means it would remain difficult to gain vehicular access to the site without a 4-wheel drive, a situation which is likely to be more challenging in winter.
22. The access is difficult, but it does already serve Zion Cottage and Windy Willows, and the previous Inspector concluded that it was suitable. However, that finding was on the basis that the proposed dwelling would provide a replacement for Zion Cottage, so it would not necessarily introduce new car-borne trips. Assuming that there would be no overall increase in the number of dwellings in this location, I would have no reason to come to a different view in terms of trip generation. However, in the absence of a mechanism to prevent the extant permission being implemented, the current appeal proposal could result in an additional dwelling being constructed.
23. Regardless of any legal right which the appellant might have to use the access, the site is in a remote location which is a considerable distance from local services and facilities, and up a steep hill. As such, future occupiers would be likely to rely on private vehicles for most of their day to day trips. To allow an additional dwelling in this location would be at odds with the objective of promoting sustainable transport contained in chapter 9 of the Framework.

Conclusion on main issue

24. For the above reasons, I conclude that the appeal site would not provide a suitable site for housing. With no mechanism in place to prevent implementation of the extant permission, the proposal could result in a new additional dwelling in a location which would fail to comply with the spatial strategy for development contained within Local Plan Policy SS and SD2. The proposal would also conflict with paragraph 80 of the Framework, which seeks to avoid the development of isolated homes in the countryside.
25. Furthermore, even if a mechanism were in place to prevent implementation of the previously approved scheme, the proposal would fail to meet the requirements for replacement dwellings contained in Policy HS10, so would be unacceptable.
26. Owing to its form and siting, the proposal would also cause significant harm to the character and appearance of this upland area of countryside. As such, the proposal would conflict with Local Plan Policy ENV3, which aims to protect and enhance the distinctive landscape character of Rossendale, including large scale sweeping moorlands. There would be further conflict with Policy ENV1, which

requires all proposals to take account of the character and appearance of the local area.

27. The Council has also referred to Local Plan Policy SD1 in its decision notice. This policy reiterates the presumption in favour of sustainable development, contained within paragraph 11 of the Framework. In this case, the proposal does not accord with relevant and up-to-date policies in the Local Plan, so should not be approved.

Other Matters

28. The proposed dwelling would be further away from Windy Willows than the previously approved scheme, but no harm to living conditions was identified within the previously approved scheme, which was considered acceptable in this regard. The suggestion that the scheme would result in improved outlook for either or both properties does not justify the appeal scheme.
29. I note the Council's concerns that the demolition of Zion Cottage would result in an area of land with no clear planning use. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary to consider this matter any further.

Conclusion

30. The proposal conflicts with the development plan, and no other considerations outweigh this finding. The appeal is therefore dismissed.

R Morgan

INSPECTOR