



Appeal Decision

Site visit made on 8 November 2022

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2022

Appeal Ref: APP/A0665/W/22/3303867

Tushingham Arena, Bell O The Hill Road, Tushingham Cum Grindley, Malpas SY13 4QR

- 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 B Kay against the decision of Cheshire West and Chester Council.
 - The application Ref 21/04875/FUL, dated 7 December 2021, was refused by notice dated 31 March 2022.
 - The development proposed is conversion of existing equestrian building to accommodate manager's 3-bedroom accommodation, provision 3 No 2-bed holiday lets, cafe with covered outside eating area, kitchen, store and toilets and 6 No stables.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr and Mrs B Kay against Cheshire West and Chester Council which is the subject of a separate decision.

Main Issues

3. The main issues are:
 - whether the proposed development is consistent with development plan policy relating to the location of housing and the reuse of rural buildings;
 - the effect of the proposed development on the character and appearance of the countryside;
 - whether there is an essential need for a rural worker to live permanently at the location of the proposal;
 - the effect of the proposed development on the vitality and viability of town centres; and
 - the effect of the proposed development on highway safety.

Reasons

Location

4. The appeal relates to an existing equestrian building and associated land, including outdoor riding areas, access and car park, set within the countryside some distance to the north of Whitchurch. The existing building is a large

utilitarian structure with a small lean-to on the northern side. It is set back from the road behind a yard area.

5. Policies STRAT1 and STRAT2 of the Cheshire West and Chester Council Local Plan, Part One, Strategic Policies (2015) (LP1) seek to direct new housing primarily to areas with good accessibility to existing services, specifically in identified settlements in line with a settlement hierarchy. The appeal site is not within an identified settlement or key service centre and for development plan purposes falls within a countryside location.
6. Policy STRAT2 allows for development to be brought forward in smaller rural settlements which have adequate services and facilities and access to public transport. However, the appeal site is a significant distance from any settlements which have services and facilities. Future occupiers of the dwelling and proposed visitor accommodation would be reliant upon the private car in order to access services and facilities. Therefore, development at the appeal site would not accord with the LP1 strategy relating to sustainable locations for development.
7. Policy DM7 of the Cheshire West and Chester Council Local Plan, Part Two, Land Allocations and Detailed Policies (LP2) sets out that proposals for the diversification of agricultural and other land based rural businesses will be supported where they meet the requirements of LP1 Policy STRAT9 and subject to additional criteria, including that development proposals must be ancillary and related to the primary rural business and the development must be necessary to support the continued viability of the land based business, amongst other things.
8. Policy STRAT9 of the LP1 restricts new development to that dependent on a countryside location. However, some exceptions are made including the reuse of rural buildings where they are of permanent construction and can be reused without major reconstruction.
9. For proposals to reuse existing rural buildings as dwellinghouses, Policy DM22 of the LP2 imposes a number of criteria which must be met. These include requirements that the building is currently redundant or disused; that the building is of permanent and substantial construction which is capable of conversion without significant loss of existing fabric, or major or complete reconstruction; that it does not have a harmful visual impact which would be perpetuated by its retention; and, that it would lead to an enhancement of its immediate setting.
10. The existing building is a large single storey structure with a steel portal frame, corrugated concrete cladding to the upper external walls and roof of the building, blockwork to the lower half of the walls, and large openings on either gable end. The floor of the building consists of a concrete slab. It is not an unusual form of development in the countryside and, in my view, does not have a harmful visual impact. The appellant states that the building is currently unused and redundant. However, at the time of my site visit the building appeared to be partially used for the stabling of horses and for storage purposes; it did not appear to be either redundant or disused.

11. Both parties have referred to the Hibbitt judgment¹, including with regard to the point at which a conversion becomes a rebuild. That case related to an application for prior approval under permitted development rights and is not directly comparable to the building in the current appeal. However, the judgment states that it is a matter of legitimate planning judgment as to where the line is drawn between conversion and rebuild.
12. The appellants' Visual Inspection Survey submitted with the appeal concludes that the building is in very good condition and is suitable for conversion. However, the survey was limited to a visual inspection only and no structural investigations were carried out. The foundations of the building were not inspected and no detailed consideration of the condition or load bearing capacity of the elements that remain has been undertaken.
13. There are no substantive details before me as to the extent of works required to facilitate the conversion. New insulated walls would be required though no details have been provided. The floor plans show that the extent of new internal walls would be significant. The survey states that any internal structures should be constructed on their own foundations or raft slabs so as not to load the existing portal frame column foundation. There appears to be uncertainty around the suitability of the existing foundations for the proposed conversion. The submitted plans indicate a combination of new larch cladding and plastic coated metal cladding to some of the walls and new roof covering. With the insertion of new window and door openings, and new rooflights above, together with the extent of new external cladding and roof covering, it is unclear to me how the conversion could be achieved without significant structural works or reconstruction.
14. Consequently, there is insufficient information before me to demonstrate that the building would be capable of conversion without significant loss of the existing fabric, or without major reconstruction. Moreover, for the reasons explained below, the proposal would be harmful to the character and appearance of the countryside and would not lead to an enhancement of its immediate setting.
15. There is no substantive evidence before me, for example in the form of a viability appraisal, to demonstrate that the development is necessary to support the continued viability of the land based business in accordance with LP2 Policy DM7.
16. For the above reasons, I conclude that the proposal would not accord with development plan policy relating to the sustainable location of housing and the reuse of buildings in the countryside. It would therefore conflict with LP1 Policies STRAT1, STRAT2, STRAT8, STRAT9 and ECON2 and LP2 Policies DM7, DM9, DM19 and DM22. Amongst other things, these policies seek to locate new housing in line with the Council's settlement hierarchy to protect the character and beauty of the countryside and to locations with good accessibility to services, facilities and public transport.

Character and appearance

17. In its general scale, design and materials, the existing building is not dissimilar to agricultural buildings typically found in the wider countryside. For this

¹ Hibbitt and Another v SSCLG & Rushcliffe BC [2016] EWHC 2853 (Admin)

reason, the existing building does not unduly detract from its rural setting. The surrounding countryside is interspersed with occasional dwellings, including a farmhouse and a barn conversion to the south which are both Grade II listed, and agricultural buildings. This provides a pleasant rural character which contributes positively to the area.

18. The proposed conversion would require the insertion of several windows and patio doors to the new living accommodation, café and office. These glazed openings would be positioned in regimented fashion to the northern and western elevations of the building and would unduly domesticate the simple, understated appearance of the building. The resulting building would appear as an unduly domesticated and incongruous feature within the rural landscape. That harm would be exacerbated by the proposed patio and large garden, with new boundary fencing and domestic paraphernalia associated with residential occupation, which would have an urbanising effect on the rural landscape. There are nearby gardens at Tushingham House Farm and Tushingham House but these are seen in the context of existing domestic properties whereas the garden proposed as part of the appeal scheme would appear incongruous within its immediate setting.
19. The plans indicate new landscaping around the garden boundaries which would provide some screening of the garden. The new garden would be largely screened from public vantage points. However, it would feature within the immediate setting of the site and the lack of public views does not justify the harmful effect it would have on the rural character of the site. The appellants state that the area of land to the west of the building is unsightly, however at the time of my visit it did not have a particularly unsightly appearance that detracted unduly from the appearance of the area. A planning condition to control domestic paraphernalia within the garden would not in my view prove to be enforceable or reasonable given the likely needs of future occupiers.
20. There is already a mobile café and associated chairs on the site. I find that the proposed outdoor café area to the northern side of the building would be unlikely to result in lasting harm to the rural landscape given that it would not project beyond the lean-to structure and the temporary nature of the café tables and chairs.
21. The removal of the existing residential cabin, café and plastic chairs, and the lean-to structure would have some benefits to the overall appearance of the site, but would not outweigh the harm arising to the character of the rural area due to the proposed works to the main building and associated development.
22. Therefore, the proposal would be harmful to the character and appearance of the countryside. It would conflict with LP1 Policy STRAT9 and LP2 Policies DM3 and DM8 which require, amongst other things, that the character and beauty of the countryside is protected, that development respects local distinctiveness and is in keeping with the character and appearance of its surroundings.

Essential Need

23. Paragraph 80 of the National Planning Policy Framework (the Framework) sets out that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. These include the essential need for a rural worker to live permanently at or near their place of work in the countryside. The pattern of development in the surrounding area is

characterised by occasional isolated farmhouses and associated buildings, such as the nearby Tushingham House Farm and Tushingham House, and there are no nearby settlements. The proposal would therefore result in the creation of a new isolated dwelling within the countryside.

24. In the countryside, LP2 Policy DM19 allows for an essential rural workers dwelling in line with LP2 Policy DM25. The latter policy contains a number of criteria, including where there is a clearly established existing functional need for an additional full-time worker to live permanently at the site, and the rural land based activity concerned has been established for at least three years, has been profitable for at least one of them, and is currently financially sound and has a prospect of remaining so.
25. The equestrian centre is clearly a well-established business. On the basis of the evidence before me, I have no reason to doubt the appellants' claim that the unit and rural land based activity have been established for at least three years. However, there is little financial information before me to demonstrate that the business has been profitable for at least one of those three years, that it is currently financially sound and has a prospect of remaining so. Consequently, on the basis of the evidence before me I cannot be satisfied that the business could feasibly support a need for a new dwelling in the long term.
26. As I understand it, the nearby Tushingham House Farm was until recently occupied by the owners of the equestrian business, but has been sold off separately to the business. The appellants would have been aware that the business would no longer have a permanent dwelling associated with it when the house was sold separately from the appeal site.
27. The appellants' case for a new permanent dwelling on the site relates to the operational functions of the business, including the need for an on-site presence to provide security for equestrian equipment, open and close up, take entries, undertake site maintenance, ensure that health and safety protocols are followed, and supervise other employees.
28. The provision of a permanent dwelling on the site would improve security of equipment. However, the evidence does not suggest that incidences of theft have been frequent and it is unclear whether other security measures have been considered and discounted, such as storing equipment within the existing building or by CCTV and alarm systems for example. The presence of the existing residential cabin on site is also likely to act as a deterrent to crime.
29. Whilst competitions can start early and finish late in the evening, there is a need for a worker to be present in setting up and closing events, and maintain the site, it is unclear to me why these activities would require a rural worker to be permanently resident at the site. Consequently, this consideration does not justify a new dwelling in this countryside location.
30. Horses would be stabled overnight, including in association with the proposed holiday accommodation, and there is said to be a requirement for foaling services. The appellants indicate that it is necessary for a worker to be present to ensure the welfare of the horses. However, it is not unusual for horses to be unsupervised in locations that do not have a permanent dwelling on site and I consider that the welfare requirements of the horses could be reasonably managed in shifts as it would be possible for one worker to travel to and from the site for the daytime and another worker to monitor the site at night.

Moreover, given the limited number of stables, problems with foaling would be unlikely to be frequent. It is also unclear to me why the welfare of the horses could not be ensured by means other than a permanent dwelling on site, such as from the existing residential cabin or remote supervision.

31. The appellants contend that many competitions run over several days and that competitors stay overnight; and that there is an expectation from competitors that there will be someone on hand to refer to in the event of problems. However, the Council says that such stays are unauthorised. There is no indication that a planning permission or lawful development certificate has been granted for overnights stays on the site. In the absence of evidence to establish that this use is lawful, I can attach no weight to this consideration. Visitors to the proposed holiday lets may appreciate an on-site presence, but it is not uncommon for such accommodation to be managed remotely. On the basis of the evidence before me, I am not persuaded that the absence of a permanent dwelling on the site would render the business unviable.
32. The appellants have also referred to a small-scale pig raising concern on the site, but the presence of pigs was not apparent during my site visit. There is no substantive evidence before me to suggest that pig rearing on the site is a financially viable concern and such a low level of agricultural activity would not justify a permanent on-site presence in my view.
33. For the above reasons, I conclude that an essential need for a rural worker to live permanently at the location of the proposed development for the proper functioning of the enterprise has not been demonstrated. The appellants' planning obligation restricting the occupation of the dwelling to a person employed in the equestrian business at the site, and the removal of the existing residential cabin, would not mitigate the harm identified. Therefore, the proposal would conflict with LP1 Policies STRAT1, STRAT2, STRAT8, STRAT9 and LP2 Policies DM19 and DM25, and paragraph 80 of the Framework.

Vitality and viability of town centres

34. Policy ECON2 of the LP1 promotes the long-term vitality and viability of the borough's town centres and requires that town centre uses be located in town centres and then in edge of centre locations. A sequential test will be applied to applications for main town centre uses that are not in an existing centre with preference given to accessible sites that are well connected to the town centre. This broadly reflects the requirements of Framework paragraph 87.
35. The definition of main town centre uses as set out in the explanatory text to LP1 Policy ECON2 includes leisure uses. Accordingly, the proposed café constitutes a main town centre use. However, it would not be located in an existing centre but within the countryside. The appellants have not provided a sequential test with the application or with this appeal to demonstrate that there are no other sequentially preferable sites within or well-connected to an existing centre.
36. The appellants contend that a sequential assessment should not be required on the basis that the café is to be ancillary to the equestrian centre for the benefit of the users of the equestrian centre and it is not intended to attract passing road users. However, the café would comprise of both indoor and covered outdoor seating areas, together with a kitchen, serving counter, store and

toilets. Both the appellants and the Council suggest that it would be capable of seating up to 50 customers.

37. In my view, a café of the size proposed would be capable of attracting visitors beyond those visiting the equestrian facilities and holiday lets, particularly given the proximity of the site to the A41. Whilst there may not have been issues with the running of the mobile catering unit at the site, it appears to have been a small scale operation whereas the proposed café would be a more permanent and substantial feature, and would be more likely to appeal to a wider customer base once it has become established, irrespective of whether there is signage on the A41. There is no substantive evidence before me to demonstrate that existing centres would suffer congestion in the event that the café was to located there, as suggested by the appellants.
38. I acknowledge that the café would provide additional employment on the site and suitable facilities for customers of the equestrian centre. Nevertheless, it is appropriate to apply the requirements of LP1 Policy ECON2 to the development, including the need for a sequential test. In the absence of a sequential test it has not been demonstrated that there are no sequentially preferable sites on which the proposed cafe could be accommodated. Consequently, it is not possible to determine the proposal's effect on the vitality and viability of existing centres.
39. The appellants state that the Council have recently supported a planning application for development at Kelsall Hill Equestrian Centre² which is also in the countryside. As I understand it, that development included a café, indoor arena and retail space. However, the substantive details and the planning history of that development have not been provided and so I cannot be sure it represents a direct parallel to the appeal proposal. In any event, I have considered the appeal on its own merits based on the specific circumstances of the site.
40. For the reasons given above, I conclude that it has not been demonstrated that there are no suitable sequentially preferable sites on which the proposed development could be located or that the proposal's effect on the vitality and viability of town centres would be acceptable. Accordingly, the scheme would conflict with LP1 Policy ECON2. It would also conflict with the Framework and Planning Practice Guidance³ regarding the sequential test and the desirability of ensuring the vitality of town centres.

Highway safety

41. The proposed development would be accessed via Bell O The Hill Road (also known as Wobbs Lane) using the existing site access point to the north. The lane appears to be lightly trafficked and vehicle speeds are likely to be low due to its narrow and winding nature with very few passing places.
42. Given my finding above regarding the proposed café use, I consider that there would be the potential for increased vehicle movements to and from the site as a result of the café. That would be likely to result in an increased likelihood of vehicles meeting one another and having to make potentially long reversing manoeuvres along the lane with limited visibility in places. Although vehicle speeds within the vicinity of the site are likely to be low, due to the narrow

² Council ref. 18/00749/FUL

³ Paragraph: 011 Reference ID: 2b-011-20190722

nature of lane with very few opportunities to pass, such manoeuvres would be potentially hazardous and would lead to conflict and inconvenience to highway users.

43. I note that the appellants would be willing to accept conditions restricting the use of the café to be in association with persons using the equestrian facilities, as well as limiting hours of operation. Whilst a condition to restrict opening hours would be reasonable, it is unclear to me how it would be practical to monitor the use of the café in this way. Consequently, having regard to guidance at Paragraph 56 of the Framework, I am not persuaded that a condition to limit the proposal in this manner would be enforceable.
44. For the above reasons, I consider that the proposal would pose an unacceptable risk to highway safety. Therefore, it would be contrary to LP1 Policy STRAT10 and LP2 Policy T5 which require, amongst other things, that additional traffic can be accommodated safely and that developments do not create any unacceptable impacts on road safety. In addition, I find that there would be a conflict with the Framework, where this seeks to achieve similar aims.

Other Matters

45. In relation to designated heritage assets, there is a large industrial building between the appeal site and the listed Tushingham House Farm and Tushingham House. On that basis, I see no reason to disagree with the Council's conclusion that the development would not be harmful to the setting of these listed buildings. However, that is a neutral factor rather than one that weighs in favour of the proposal. I note the range of other concerns raised by interested parties. However, as I am dismissing the appeal for other reasons there is no need for me to consider these matters further.
46. Paragraph 84 of the Framework supports the development and diversification of agricultural and other land-based rural businesses. The proposal constitutes a rural diversification scheme which would offer social and economic benefits, including the provision of new tourist accommodation and a new dwelling. The proposal would have economic benefits through supporting a rural business, employment opportunities would be created during the construction and operational phases of the development, and future occupants of the dwelling and the holiday lets would contribute to the local economy. I have attached some weight to these factors. However, given the modest scale of the development, the weight attributable to these matters is limited and is not sufficient to outweigh the harm that I have identified and the conflict with the policies I have referred to.

Conclusion

47. The proposed development does not accord with the development plan as a whole, and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this. For the reasons given above and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

M Ollerenshaw

INSPECTOR