



Appeal Decision

Site visit made on 30 March 2023

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 April 2023

Appeal Ref: APP/Z1510/W/22/3308484

Unit 1 at land adjacent to Pony Acres, Rotten End, Wethersfield, Braintree CM7 4AL

- 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 Trevor Bearman against the decision of Braintree District Council.
 - The application Ref 22/00395/FUL, dated 9 February 2022, was refused by notice dated 7 April 2022.
 - The development proposed is change of use of barn to a self-contained independent dwelling house.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of barn to a self-contained independent dwelling house at Unit 1 at land adjacent to Pony Acres, Rotten End, Braintree CM7 4AL in accordance with the terms of the application, Ref 22/00395/FUL, dated 9 February 2022, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the approved plans numbered: 1PA_000; 1PA_002; 1PA_003; 1PA_004 Rev A; 1PA_005 Rev A and 1PA_006
 - 3) No development shall be commenced until a schedule of the types and colours of the materials to be used in the external finishes has been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
 - 4) Development shall not be commenced until a scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall incorporate a detailed specification including plant/tree types and sizes, plant numbers and densities, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying where appropriate.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in the first planting and seeding seasons after the commencement of the development unless otherwise previously agreed in writing by the local planning authority.

All hard surface areas agreed as part of the scheme shall be carried out before the first occupation of the buildings or upon the completion of the development whichever is the earlier.

Any trees or plants which die, are removed, or become seriously damaged, or diseased within a period of five years from the completion of the development shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives written consent to any variation.

Preliminary matters

2. The description of development set out in the heading to this decision is taken from the application form. This differs slightly from the wording used by the Council in its decision notice. The subject building is described as a barn and, judging by its construction and appearance, I have no doubt it was originally built as such. However, on 3 September 2003 the Council issued a Certificate of Lawfulness confirming that land to the east, north and south of the adjoining bungalow Pony Acres was lawfully in use as a garden and recreation area, in association with that dwelling.
3. The Council suggests that the certificate does not apply to the subject building because it is not expressly mentioned. I disagree. The subject building is shown as being within the land covered by the certificate on the attached plan. I saw that the building is currently in use for various purposes, including a home office, a workshop and storage for domestic and garden equipment, all of which appeared to me to be consistent with the lawful use of the building as part of the garden and recreation area associated with Pony Acres.
4. At the time of determining the planning application, the development plan included the Braintree District Local Plan Review (2005) and the Braintree District Core Strategy (2011), as well as Section 1 of the Local Plan 2033. The decision notice makes reference to the following policies:

Local Plan Review (2005)

- RLP38 – Conversion of Rural Buildings
- RLP90 – Layout and Design of Development

Core Strategy (2011)

- CS5 – The Countryside
- CS7 – Promoting Accessibility for All

5. The Council has confirmed that these plans have been superseded by the adoption of the Braintree District Local Plan 2013 – 2033 (the Local Plan).

Main issue

6. The main issue is whether the proposal would be an acceptable re-use of a rural building.

Reasons

7. Local Plan Policy LPP 40 relates to the residential conversion of buildings in the countryside. Although no survey has been provided, there is no dispute that

the subject building is of permanent and substantial construction which is capable of conversion without complete rebuilding. The policy sets out five criteria, all of which must be met.

8. Criterion (a) is that the site is no longer suitable for commercial use and has been marketed for that purpose. The appellant argues that the policy is directed solely to commercial buildings and is therefore not engaged in this case. However, whilst the policy sets out the approach to buildings that are currently in commercial use, I do not consider that the scope of the policy is limited to such buildings.
9. The subject building is a permanent building in the countryside. In my view, it falls within the scope of Policy LPP 40. Moreover, it is no longer suitable for commercial use, having been subsumed within a residential garden for many years. There has been no marketing, as required by the second part of criterion (a). However, marketing the building for commercial use would be a pointless exercise, given the fact that it is part of a residential garden. Provided that all the other criteria were met, I do not consider that the absence of marketing would render the appeal proposal contrary to the policy as a whole.
10. The Council does not suggest that there would be any harm to protected species or heritage assets. I see no reason to disagree, so criterion (b) is met.
11. The site is served by a field gate and track leading from Water Hall Lane. I saw that visibility at the site access is satisfactory. There is therefore a suitable existing access, consistent with criterion (c).
12. Criterion (d) requires that there should be no unacceptable impact on residential amenity. The subject building is set at an angle to the existing dwelling at Pony Acres, such that there is potential for oblique views from new windows in the converted barn towards windows to the side and rear of Pony Acres. Full height glazing is proposed to the living room of the proposed dwelling. However, any views from the side of the proposed dwelling towards Pony Acres would be at an angle that would preclude harmful overlooking of the flank windows at Pony Acres. Although south-facing windows to the living room would look towards the rear elevation of Pony Acres, there is an intervening garden shed which would prevent any overlooking at this point. Other proposed south-facing windows would be sufficiently far away from Pony Acres to avoid any harmful impact. Whilst there would be some mutual overlooking of parts of the respective gardens, both existing and proposed dwellings would have extensive garden areas providing good quality living conditions.
13. The Council is concerned that traffic to and from the proposed dwelling would cause harmful noise and disturbance to the occupiers of Pony Acres. I saw that the existing layout would provide a degree of separation between the existing dwelling and the route to the proposed parking area. Having regard to the limited traffic likely to be generated by a single dwelling, I do not think that there would be an unacceptable impact on living conditions. The proposal would therefore comply with criterion (d).
14. Criterion (e) relates to the character and appearance of the area. The subject building is not widely visible from the public realm, although it can be glimpsed from Water Hall Lane. The proposals would not alter the form or scale of the building. Cladding the roof in slate and the walls in weatherboarding would

represent a modest visual improvement compared with the existing situation. Full details of facing materials could be controlled by a condition. The general character of the site is that of a low-rise, low density residential site bordering open countryside. That character would not be materially altered. Consistent with criterion (e) there would be no harm to the character of the site or the surrounding countryside.

15. The Council's second reason for refusal states that the site is outside development boundaries and has poor accessibility to services and facilities. The reason for refusal cites Policy CS7. However, that policy has been superseded and the Council has not highlighted any alternative policy from the current development plan that is pertinent to this reason for refusal.
16. The Council draws attention to two appeal decisions, at Brick Kiln Green, Blackmore End, Braintree¹ and Bardfield Road, Shalford, Braintree². The Brick Kiln Green decision related to a proposal for a new dwelling rather than the conversion of a rural building. The Bardfield Road decision also related to a new dwelling, albeit that a temporary dwelling was proposed in that case, together with other development. Both Inspectors found conflict with Policy CS7, which has now been superseded. I therefore consider that these decisions are of limited relevance to the current appeal.
17. That said, I note that the Inspector for the Bardfield Road decision found that the appeal site was in an area of sporadic development, approximately 1.1km from the nearest village, Shalford. He found that Shalford has very limited facilities and services to meet day to day needs and that it would be necessary to travel to Braintree to access these. Those circumstances appear to be broadly comparable with the current appeal site, which is a kilometre or so from Shalford.
18. The appeal site is not within any of the development boundaries referred to in Policy LPP 1. The policy states that development outside development boundaries will be confined to uses appropriate to the countryside. Policy LPP 40 deals specifically with the residential conversion of buildings that are in the countryside. It follows that a proposal that is found to accord with Policy LPP 40 would be appropriate to the countryside in the terms of Policy LPP 1.
19. Local Plan Policy LPP 42 seeks to ensure that new developments contribute to promoting sustainable modes of transport and Policy LPP 52 states, amongst other matters, that the use of sustainable modes of transport will be promoted in the design and layout of new development. To my mind, these policies have limited applicability to proposals such as this to convert an individual rural building. The Council has not highlighted any specific conflicts in this respect.
20. The Council and the appellant have made submissions on the applicability of policy RLP38. However, it is not necessary for me to comment further on that matter because the policy has been superseded.
21. Drawing all this together, I note that the site is not within any settlement and that Shalford, the nearest settlement identified as such in the development plan, has limited services and facilities. However, the Local Plan makes provision for the conversion of buildings in the countryside to residential use, subject to criteria which would be met in this case.

¹ APP/Z1510/W/21/3284864

² APP/Z1510/W/21/3278776

22. I conclude that the proposal would be an acceptable re-use of a rural building and would accord with Local Plan Policies LPP 1 and LPP 40. It would also accord with Local Plan Policy LPP 52, insofar as that policy states that development should not have an unacceptable impact on the amenity of any nearby properties, including with respect to privacy. It would accord with the same policy insofar as it states that design should be in harmony with the character and appearance of the surrounding area.

Other matters

23. I have taken account of the personal circumstances referred to in the appeal documents. Such circumstances can change over time whereas the proposal is for a permanent form of development. I have attached limited weight to this matter.

24. The Council cannot currently demonstrate a five-year supply of deliverable housing sites. The approach to decision making set out in paragraph 11 of the National Planning Policy Framework is therefore engaged. However, as I have found that the proposal would accord with the development plan, this does not alter my conclusions on the main issue.

Conditions

25. A condition requiring development to be carried out in accordance with the plans is needed in the interests of clarity and certainty. Although a general indication of materials has been provided, it is necessary to require submission of further details in the interests of the character and appearance of the area. A condition requiring details of hard and soft landscaping is also needed in the interests of the character and appearance of the area. These are pre-commencement conditions because they relate to design details that would need to be settled at an early stage.

26. Having regard to the small scale of the proposal, I do not consider that a condition on hours of working during construction is necessary. I do not consider that there are any circumstances that would justify the removal of the permitted development rights that would normally apply to a dwelling. Consequently, I have not imposed suggested conditions relating to these matters.

Conclusion

27. For the reasons given above, I conclude that the proposal would accord with the development plan. I have not identified any considerations that indicate a decision other than in accordance with the development plan, so the appeal should be allowed.

David Prentis

Inspector