



# Appeal Decision

Site visit made on 27 June 2023

**by Bhupinder Thandi BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 July 2023**

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**Appeal Ref: APP/H1840/W/21/3276064**

**Land to the north side of The Nook, Tyrells Lane, Lower Bentley, Bromsgrove B60 4HX**

- 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 Charles Bratton against the decision of Wychavon District Council.
  - The application Ref 20/02716/FUL, dated 2 December 2020, was refused by notice dated 1 April 2021.
  - The development proposed is the residential conversion of former agricultural building.
  - *This decision supersedes that issued on 20 June 2022. That decision on the appeal was quashed by order of the High Court.*
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## Decision

1. The appeal is allowed and planning permission is granted for residential conversion of a former agricultural building at land to the north side of The Nook, Tyrells Lane, Lower Bentley, Bromsgrove B60 4HX, in accordance with the application, Ref 20/02716/FUL, dated 2 December 2020 subject to the conditions set out in the schedule to this Decision.

## Preliminary Matters

2. This decision supersedes that issued on 20 June 2022. That decision on the appeal was quashed by order of the High Court. My role now is to redetermine the case afresh in light of any material change in circumstances, but not to review the previous appeal decision.
3. The main parties have had the opportunity to present representations on the case following the quashing of the previous appeal decision and I have taken these submissions into account. I have also considered any relevant evidence previously submitted unless it is expressly superseded by its originator during the redetermination process.

## Main Issues

4. The main issues are:
  - Whether the appeal site is an appropriate location for residential development with regard to local and national planning policies;
  - The effect of the proposed development upon the character and appearance of the area; and
  - Whether an affordable housing contribution is required to make the proposal acceptable in planning terms.

## Reasons

### *Appropriate location*

5. The appeal site is formed of an agricultural building located within a gated field accessed off Hill Lane. The building has a double height central section with subservient wings either side. The central section has a steel frame sitting on a concrete base with a corrugated sheet roof.
6. The appeal site is located in open countryside as defined by Policy SWDP 2 of the South Worcestershire Development Plan (2016) (SWDP) which outlines the development strategy for new development in the area. Part C of the policy states that permission for development in the countryside, beyond any development boundary will only be granted in certain circumstances.
7. The site is some distance from local services in nearby settlements. The surrounding roads are devoid of footpaths and street lighting and there are no cycle routes linking the site. Walking and cycling to and from the site to local services would be difficult and would be especially so for the young, the elderly and those with mobility issues. This would be particularly so during the hours of darkness and inclement weather.
8. In these circumstances the use of a private motor vehicle is the only practical means for residents to access the services they require. This combination of factors demonstrates that the appeal site is not in a location where a new dwelling would normally be considered acceptable.
9. The proposed development would be isolated within open countryside with poor access to services and facilities. It would, therefore, not be an appropriate location for new housing contrary to SWDP Policy 2. It would also be contrary to SWDP Policy 4 which, amongst other things, requires proposals to offer genuinely sustainable travel choices.
10. The National Planning Policy Framework (the Framework), which is a material consideration, at paragraph 80, seeks to avoid the development of isolated homes in the countryside except in certain circumstances. One such exception is where the development would re-use redundant or disused buildings and enhance its immediate setting.
11. Both main parties consider that the appeal site is isolated located within open countryside. Based on the evidence before me I can only come to the same conclusion. The Framework does not set out a definition of 'redundant' or 'disused'. Therefore, I consider it sensible to consider the words in their plain meaning. In this context redundant should be taken to mean 'no longer needed or useful' and disused – 'no longer being used'.
12. Despite the Council's comments, based on the evidence before me including my observations at the site visit the building is no longer being used for any purpose and lays vacant. It is therefore disused.
13. The Council contend that the building could be marketed to others. However, I have not been directed to any local planning policies that require a marketing exercise to be undertaken to demonstrate that the building is no longer required for its original intended use or another one. Nor does the Framework include such a criterion. As such, I give this aspect of the Council's argument negligible weight in coming to my decision.

14. Taking the above into account and the evidence before me, in my judgement, the site is therefore isolated and the building redundant or disused in the context of paragraph 80 of the Framework. I now turn to whether the proposal would lead to an enhancement of the site.

*Character and appearance*

15. The barn is of a relatively modern construction and has a utilitarian appearance. The appellant's structural information indicates that the building is of robust and permanent construction and minimal works are required to existing structural elements to enable the proposals.
16. In my view the proposed development would be sympathetically designed reflecting the functional appearance of the existing building. Whilst the proposed development would lead to parked cars and domestic paraphernalia it would be limited by the extent of the plot. Given the size of the dwelling and plot it is unlikely that any domestic paraphernalia would be spread over a large area. Parked vehicles would be viewed against the backdrop of the existing building. Furthermore, the site would be enclosed by fencing and planting screening the proposed development from the surrounding area.
17. I am satisfied that urbanisation of the site would be limited and that vehicles and associated domestic paraphernalia would not adversely affect the rural character and appearance of the area.
18. Therefore, the proposed development would accord with SWDP Policy 21 which, amongst other things, requires developments to integrate effectively with its surroundings and to respond to the landscape quality of the local area. It would also lead to an enhancement of the site in the context of paragraph 80 of the Framework.

*Affordable housing contribution*

19. In order to support the appropriate provision of affordable housing in the district criterion B. v. of SWDP Policy 15 states that a financial contribution towards local affordable housing should be made on sites of 5 dwellings or fewer. Paragraph 64 of the Framework permits local planning authorities to seek affordable housing on smaller sites in designated rural areas.
20. The site is located within a designated rural area - and the appellant has provided a signed and dated Section 106 Agreement by which to deliver a contribution towards affordable housing in the district in accordance with Policy SWDP15.
21. Whilst an affordable housing contribution would not be applicable if the same building was converted under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO). The proposal before me has not been advanced as such and therefore I give this aspect of the appellant's argument limited weight.
22. I am satisfied that the contribution would satisfy the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations (2010). I find that the submitted planning obligation overcomes the Council's concerns in relation to this matter.

23. As such, the proposed development would accord with SWDP Policy 15 and paragraph 64 of the Framework which, amongst other things, seek to secure appropriate affordable housing.

### **Other Matters**

24. The site lies within the Green Belt. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Certain forms of development are not inappropriate in the Green Belt provided they preserve its openness. This includes the re-use of buildings provided that the buildings are of a permanent and substantial construction. I find that to be the case here and therefore the proposal is not inappropriate development in the Green Belt and very special circumstances do not need to be demonstrated in order to justify the proposal.
25. There is no substantive evidence that the access track is unsuitable or that the proposal would adversely affect highway safety.
26. In respect of protected species there is no substantive evidence that the development would result in material harm. A condition for an owl box has been imposed to mitigate any potential impact of the development.
27. Representations have been received concerning the impact upon the living conditions of the occupiers of The Nook in respect of overlooking and privacy. Taking into consideration the separation between the buildings and the orientation and spatial relationship between the main windowed elevations I am satisfied that the proposed development would not result in significant harm to the living conditions of existing occupiers.
28. Comments have been made that the proposal would set a precedent for similar proposals in the area. However, every appeal is considered on its own merits and there is no credible information to indicate that it would result in a precedent.

### **Planning Balance**

29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise.
30. Whilst the SWDP was adopted prior to the current version of the Framework, it sets out, at paragraph 219, that existing policies should not simply be considered out-of-date because they were adopted prior to the publication of it. Due weight should be given to policies depending on their degree of consistency with the Framework.
31. The proposed development conflicts with Policies SWDP 2 and SWDP 4 for the reasons set out above. These are policies that seek to direct new development to the most suitable and accessible locations.
32. Despite the above, the Framework states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities and paragraph 80 permits isolated new homes in the countryside in certain circumstances. The SWDP in this regard is not consistent with the Framework.

33. Having regard to the merits of the case before me the proposal is physically separated from any settlement and is in open countryside. In terms of paragraph 80 of the Framework the proposed development would result in an isolated home in the countryside. However, in my judgement, the development would re-use a redundant or disused building and enhance its immediate setting meeting the requirements of paragraph 80 c). Therefore, I give the conflict with the development plan limited weight.
34. The proposal would be contained protecting the surrounding landscape in accordance with Paragraph 174 b) of the Framework. The proposed development would contribute to the Council's housing supply and there would be economic benefits through the construction phase. There would also be some positive contribution, albeit limited, to the vitality of nearby rural communities, thus in this regard it would accord with Paragraph 79 of the Framework. These are all benefits of the scheme.
35. Taking the above into consideration the adverse impacts do not significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. The proposal therefore benefits from the presumption in favour of sustainable development.
36. In this case the presumption in favour of sustainable development is a material consideration which outweighs the conflict with the development plan. A decision should thus be taken otherwise than in accordance with the development plan.

### **Conditions**

37. I have considered the imposition of conditions in accordance with the Framework and Planning Practice Guidance. In addition to the standard time limit condition, I have imposed a condition specifying the relevant drawings as this provides certainty.
38. Conditions relating to materials and soft and hard landscaping have been imposed to ensure a satisfactory appearance. In the interests of sustainability, a condition for details of the surface and foul water drainage has been imposed. In the interests of safeguarding wildlife, a condition for details of an owl box has been imposed.
39. The Council has suggested removing permitted development rights for the enlargement, improvement or other alteration of a dwellinghouse, additions to the roof, or buildings or enclosures incidental to the enjoyment of the dwellinghouse falling within Classes A, B and E of Schedule 2, Part 1 of the GPDO.
40. I acknowledge that paragraph 54 of the Framework advises planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. However, in this particular instance it is necessary and reasonable to remove permitted development rights to ensure the satisfactory appearance of the development that reflects its rural context.

## **Conclusion**

41. For the reasons set out above the appeal succeeds.

*B Thandi*

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 following approved plans: Layout Plan and Location Drawing Number 20/340-01; Existing Plan and Elevations Drawing Number 20/430-02 and Proposed Plans and Elevations Drawing Number 20/340-03.
- 3) No development above ground shall commence until details of the materials to be used in the construction of the external surfaces of the proposed development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development above ground shall commence until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) The development hereby permitted shall not be occupied until works for the disposal of surface water and foul drainage shall have been provided to serve the development, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 7) The development hereby permitted shall not be occupied until a scheme of hard surfacing have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to occupation.
- 8) The development hereby permitted shall not be occupied until details of a barn owl box have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to occupation and retained thereafter for the lifetime of the development.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration of the dwellinghouse, additions to the roof, construction of buildings or enclosures incidental to the enjoyment of the dwellinghouse falling within Classes A, B and E shall be constructed.