



Appeal Decision

Site visit made on 6 July 2023

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2023

Appeal Ref: APP/U2235/W/22/3302553

Foxden Farm, Claygate Road, Yalding, Maidstone ME18 6BD

- 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 J Bowley against the decision of Maidstone Borough Council.
 - The application Ref 21/506575/FULL, dated 7 December 2021, was refused by notice dated 18 February 2022.
 - The development proposed is described as proposed conversion of agricultural barns into 2 units of residential accommodation including a change of use of existing studio into ancillary accommodation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of the appeal submission, the appellant has put forward a number of documents and drawings. These include updated drawings showing a first-floor refuge area. However, I am mindful that 'The Procedural Guide to Planning Appeals – England' states that the appeal process should not be used to evolve proposals and if amending the application will overcome the reasons for refusal a fresh application should be submitted. Moreover, it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. I have had regard to the Wheatcroft Principles¹ and the interests of fairness. I have therefore determined the appeal on the basis of the plans and information that were before the Council when it made its decision and on which parties were consulted.
3. The Council's second reason for refusal (rfr) identifies conflict with Maidstone Borough Local Plan (MLP) Policy DM31. Amongst other things, DM31 requires that buildings to be converted are of a permanent, substantial and sound construction and are capable of conversion without major or complete reconstruction. The Council's decision notice does not identify a conflict with this element of the policy. However, the Council's Officer report does clearly set out that the Council do not, in their opinion, have sufficient evidence to demonstrate that the existing buildings are structurally capable of conversion. As the appellant has had the opportunity to comment during the course of the appeal, they would not be prejudiced by me considering this in the appeal process. I have therefore determined the appeal on this basis.

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

Main Issues

4. The main issues are:

- whether the appeal site is a suitable location for the proposed development having regard to local and national planning policy for the delivery of housing and accessibility to services and facilities;
- whether it has been demonstrated that a reasonable attempt has been made to secure a suitable business re-use for the existing buildings on site;
- the effect of the proposal on the character and appearance of the area; and
- whether the occupants of the proposed dwellings would be safe from the risk of flooding

Reasons

Suitable location

5. MLP Policy SS1 sets out the spatial strategy and the settlement hierarchy for the area. The proposal would be located outside any defined development boundary and, therefore, would be within an area of open countryside. Consequently, the proposal conflicts with the locational strategy of the development plan.
6. No substantive evidence has been provided to demonstrate that public transport is readily accessible near the appeal site. From my observations, the closest bus stop was located some distance to the west near the public house on Laddingford.
7. Walking to the bus stop, which would allow for onward travel to reach other facilities and services, would entail the use of unlit roads with no pavements. The unlit nature of these routes and the lack of accessible verges would limit the prospect of future occupants of the proposed development using them to regularly access a range of services and facilities year-round. In addition, the roads are narrow with no cycle lanes.
8. Given the above future occupiers of the proposed development would have poor access to services and facilities and would be reliant on a private motor vehicle to access them on a regular basis. For those that did not have access to a private vehicle, the services and facilities in nearby towns and villages would not be accessible due to the lack of safe pedestrian and cycle routes and having limited options for alternative modes of sustainable transport.
9. Even if I were to agree with the appellant that there would be a reduction in vehicle movements as a result of the buildings being in residential use or the potential for heavy goods vehicles using the road, this would not overcome my concerns regarding the absence of an appropriate environment for pedestrians and cyclists. Similarly, the absence of past accidents and approval of other developments nearby would not overcome my concerns for the same reasons.
10. Notwithstanding my findings above regarding access to facilities and services, the appeal site is located close to an existing residential dwelling, and other nearby dwellings and commercial businesses are found along Claygate Road. I

note the findings of the Inspector with regard to the provided appeal decision². However, the location of existing development found nearby would ensure the proposed dwellings are not isolated for the purposes of Paragraph 80 of the National Planning Policy Framework (the Framework).

11. Nonetheless, for the reasons given above I conclude that the appeal site is not a suitable location for the proposed development and there would be a conflict with Policies SS1, SP17, DM1 and DM5 of the MLP. Amongst other things, these policies seek to ensure development is directed towards sustainable locations within the borough and accords with other relevant development plan policies. In addition, the proposal would also fail to accord with the Framework in respect of achieving sustainable development.

Re-use of existing rural buildings

12. Policy DM31 of the MLP permits the conversion of rural buildings in the Countryside, subject to a number of detailed criteria. I deal with criteria ii. and iii later as they are closely related to character and appearance. With regard to criterion 3 i. of DM31, the policy requires proposals for the re-use of existing rural buildings for residential purposes to ensure that every reasonable attempt has been made to secure a suitable business re-use for the building.
13. In support of the proposal, the appellants have stated that the land is no longer being farmed, and some alternative uses are suggested but ultimately discounted. Even if I accepted the appellants' case that the suggested uses should be discounted, the evidence before me does not fully meet the policy requirement. The policy requires every reasonable attempt to be made to secure a suitable business use for the building. There is no substantive evidence before me to indicate that the appellant has considered any other options beyond those set-out.
14. Additionally, there is no evidence that a marketing exercise took place for other potential alternative uses, including holiday lets, farming or equine uses. The suitability of which could then be considered in greater detail. Consideration could also be given at that stage to any potential adverse effects on the occupiers of the nearby dwelling.
15. Paragraph 84 of the Framework advises that the re-use of existing buildings can help support a prosperous rural economy and this also includes growth and expansion of all types of business in rural areas. The proposal is not justified on the basis of this policy, and indeed the lack of evidence to demonstrate that business use has been fully explored does not support it.
16. A suggested fallback position is the scope to convert the buildings under Class Q of the Town and Country Planning General Permitted Development Order (England) 2015 (GPDO). However, in the absence of any substantive evidence to demonstrate this is possible within the provisions of GPDO, I attached little weight to this potential fallback. Indeed, the appellant states that a full planning application offers more flexibility, and the studio building would not benefit from the provisions of Class Q.
17. In conclusion, it has not been demonstrated that a reasonable attempt has been made to secure a suitable business re-use for the existing buildings. The proposed residential use would be inappropriate and would conflict with Policy

² Ref: APP/U2235/C/C18/3195078

DM31 (3)(i) of the MLP, which only permits the re-use and adaptation of buildings in the countryside into dwellings where every reasonable effort has been made to secure a suitable business re-use for the building.

Character and appearance

18. The appeal site contains a number of agricultural and equine buildings arranged around a broadly rectangular concrete-laid courtyard. The site is bordered to the southwestern area by Foxden Farmhouse, its garage, grounds and other ancillary buildings. To the north by a storage building and menage with fields beyond. A pond and field adjoin the west of the site. To the east are open fields with tree-lined boundaries. A small field also borders the south separating the site from Claygate Road. Given the arrangement, location and type of buildings the appeal site and buildings have a mixed agricultural and equestrian appearance. This is characteristic of the site's use and rural location, which is highly visible along Claygate Road.
19. Within the wider area are residential, agricultural, and commercial premises interspersed from each other by open fields, hedges, and trees. Of the buildings found nearby, there is variation in the distance they are set back from the road, with some having long driveways to reach the building.
20. The external dimensions of the workshop and machinery/storage buildings to be converted would remain largely unaltered such that the scale and mass of these buildings would not change. The use of metal cladding would also be in keeping with the appearance of both buildings' former agricultural past. However, the conversion of the buildings would require the introduction of windows and doors, and this would lead to a domestication of the buildings. The introduction of the doors and windows with large panes of glazing to serve both buildings would alter the character and appearance of the buildings and would mark a stark contrast from the existing simple and low key form of the buildings. As a result, a contemporary approach, in this instance, would jar with the area's rural character.
21. The proposal would also appear prominent in views from outside the site due to the site's fairly flat topography and limited screening from Claygate Road. In addition, the proposed dwelling would lead to a more intensive use of the site. This would include an associated increase in domestic paraphernalia, with the effect of eroding the open and rural character of the immediate area, even when taking into consideration existing planting and proposed post and rail fences. For these reasons, converting the buildings to dwellings in this location would alter the character and appearance of this rural site, where agricultural and equine equipment does not look out of place, resulting in an urban form that would intrude into the countryside. I do not find that it would be reasonable to condition the restriction of domestic paraphernalia such that the imposition of this as a condition would be unlikely to meet the test for the use of conditions.
22. In regard to the external alterations proposed to the studio building, these would be very minor. When taking into consideration the current appearance of the building, the limited external alterations would not harm the character or appearance of the area or the wider countryside. However, whilst limited in size, the introduction of domestic paraphernalia associated with the building would harm the rural character and appearance of the area for the reasons set out above. In reaching this conclusion, I note that this building has a certificate

of lawfulness for a residential studio but from the evidence provided and my observations on site this does not encompass the proposed curtilage area shown on the submitted plans.

23. The dwellings and studio building annexe would be accessed from a new track taken close to the existing site entrance. The converted buildings would be set beyond the existing farmhouse. However, as I have established, a number of buildings are found within the wider area that are set back from the road such that the proposed scheme would be characteristic of others nearby and would not appear as a form of backland development at odds with the prevailing character of the area.
24. The appellant states that a structural assessment of the existing buildings has been carried out and a method statement will be produced. I have not been provided with a copy of the structural assessment. From my observations, the buildings on site appeared to be in good condition. However, there is no substantive evidence to demonstrate that the buildings are capable of conversion without major or complete reconstruction for the intended residential purposes.
25. The Council have stated that the appeal site sits within the Laddingford Low Weald landscape character area. I have not been provided with a copy of the character area assessment. Nonetheless, for the reasons set out above, the proposal would not conserve or improve the character or appearance of this part of the countryside.
26. For the reasons set out above, the proposal would result in detrimental harm to the character and appearance of the area. Accordingly, the proposal would fail to accord with Policies SS1, SP17, DM1, DM30 and DM31 of the MLP. These policies seek, amongst other things, that new countryside development is of high quality, does not harm the character and appearance of the area and landscapes of local value are conserved, and the building is capable of conversion without major or complete reconstruction. It would also fail to accord with the provisions of the Framework, including those that seek to recognise the intrinsic character and beauty of the countryside.

Flood risk

27. The site entrance is within Flood Zone 2, with the majority of the site and buildings within Flood Zone 3, as confirmed by the appellant's Flood Risk Assessment³ (FRA). The FRA also confirms that the site is at a very low to medium risk from surface water flooding. MLP Policy DM1 seeks to avoid inappropriate new development within areas at risk from flooding or mitigate any potential impacts of new development within such areas, whereby mitigation measures are integral to the design of buildings.
28. The Framework and Planning Practice Guidance (PPG) provide advice on when the Sequential Test does not need to be applied. As the proposal would be for a change of use, a Sequential Test assessment is not required. PPG⁴ does however, state it is for the applicant (in this case, the appellant) to show that the change of use meets the objectives of the Framework on flood risk. PPG further states that changes of use can increase the vulnerability of the

³ Flood Risk Assessment and Foul Water Drainage Strategy for Planning, Prepared by UNDA dated August 2021

⁴ Paragraph: 052 Reference ID: 7-052-20220825

development or result in occupation or use by people who are more vulnerable than the previous occupants/users to risks from flooding.

29. Paragraph 159 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing it away from areas at highest risk. Moreover, where it is necessary, it should be made safe for its lifetime without increasing risk elsewhere. Paragraph 167 further advises safe access and escape routes are included where appropriate, as part of an agreed emergency plan.
30. The studio would be occupied by individuals connected with the workshop building such that they would have access to the building, including its upper floor, as a means of refuge. The barn building would be occupied over a single floor, so no dedicated refuge area would be available to future occupiers. The FRA highlights that floor levels would be raised within the buildings to try and avoid potential flooding. However, in the event of a flood event and even if I were to take the amended plans into account, occupiers of these buildings would potentially face long periods isolated within the properties.
31. The FRA does not provide details to establish the level of flooding likely to occur on nearby roads or access routes such that emergency service vehicles and future occupiers would have safe access and escape routes. During flooding events, some residents, particularly the elderly or those with more limited mobility, would potentially have significant difficulty evacuating a site where pedestrian and vehicle routes could be inundated.
32. The Environment Agency's flood alert system could make the occupiers aware of potential flooding. However, there is little evidence provided as to what measures might be capable of securing a more suitable refuge or evacuation route or, therefore, whether it could be achieved without undue risk to residents or those who might consequently be responsible for their evacuation. In that absence, this could result in an additional burden for emergency services, who would be required to assist, and the need to provide suitable accommodation until occupiers can return.
33. The appellant has drawn my attention to examples of development within the area liable to flood. Whilst I do not have full details of these schemes, the scheme at Still Waters Farm⁵ was allowed for an annexe only due to flood risk. The example at Croft Large⁶ Farm was for a conversion, so not dissimilar to the appeal scheme. However, I have not been provided with the specific details of either development with regard to flood risk, and therefore, I cannot draw any direct comparison that weighs in favour of the proposal.
34. I conclude that it has not been demonstrated that the development would avoid putting future occupiers at risk from flooding. The proposal therefore conflicts with MLP Policy DM1. It would also conflict with the provisions of the Framework for similar reasons.

Other Matters

35. In reaching my decision, I have had regard to the fact that there would be some benefits from the addition of two new dwellings to the Council's housing stock, and the proposed scheme would bring vacant buildings back into use.

⁵ REF: 19/504969/FUL

⁶ REF: 20/500980/PNQCLA

However, given the scale of the scheme these benefits would be small and the adverse effects of the proposal would significantly outweigh the benefits.

36. I note there have been no objections from neighbours. However, the lack of objections does not lead me to reach a different conclusion on the detrimental harms identified above.

Conclusion

37. The proposal conflicts with the development plan when taken as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
38. Therefore, I conclude the appeal should be dismissed.

A Hickey MA MRTPI

INSPECTOR