
Appeal Decision

Site visit made on 31 August 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 September 2023

Appeal Ref: APP/C1625/W/23/3319522

Park End Cottage, A38, Moreton Valence, Gloucestershire GL2 7NG

- 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 Fry against the decision of Stroud District Council.
 - The application Ref S.22/0773/FUL, dated 23 March 2022, was refused by notice dated 18 November 2022.
 - The development proposed is described as 'Retention of storage building previously erected. Use for parking/turning. Building to be used class B8.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposed development took place prior to the planning application being made and so, it was made retrospectively.
3. The appellants submitted a Surface Water Flood Risk Statement dated 14 August 2023 with their final comments on the appeal. No explanation was provided as to why this had not formed part of the appellants' appeal statement. The Procedural Guide: Planning appeals – England, updated June 2023 sets out the timetable for the written representations appeal process. It states that an appellant may add to the information they provided to the Council in their original planning application as part of the appeal but confirms¹ there is no opportunity to add to the full statement of case later in the appeal process. Hence, appellants should only make their appeal when they are sure they have finalised their case. The final comments stage is an opportunity to comment on the Council's appeal statement and/or any representations received. It should not introduce new material or technical evidence.
4. The submitted Surface Water Flood Risk Statement had not been seen by the Council, and furthermore there would have been no opportunity for the Council to comment on it. Consequently, it would have been contrary to the procedural guidance, and more significantly, procedurally unfair to the Council to take it into account. Accordingly, the document was returned to the appellants, and it has had no bearing on my determination.

¹ Paragraph 9.5.2.5

Main Issues

5. The main issues are:

- Whether the site provides a suitable location for the proposal having regard to local and national planning policies;
- The effect of the proposal on the character and appearance of the area, and;
- Flood risk.

Reasons

Location

6. Policy CP2 of the Stroud District Local Plan, November 2015 (LP) sets out the approach to strategic growth and development locations for the plan period. This includes 58 hectares of additional employment land for the period 2006-2031. It identifies strategic sites for employment development but confirms that outside of these, development will take place in accordance with the settlement hierarchy set out in policy CP3. This policy ranks identified settlements into five tiers according to their size and their range of services and facilities. In broad terms, a commensurate level of growth is supported to ensure that development reduces the need to travel and promotes sustainable communities based on the services and facilities that are available in each settlement.
7. Paragraph 2.77 of the LP explains that very small settlements not mentioned in the settlement hierarchy will be treated as open countryside, where development will be restricted to that which contributes to diverse and sustainable farming enterprises, recreation, tourism and essential community facilities, in accordance with policy CP15 of the LP. This reflects the aim of reducing the need to travel and positioning most development in areas that are more accessible by a range of transport modes. Effectively, those in less accessible locations require specific justification.
8. These policies broadly align with the government's approach to supporting a prosperous rural economy outlined in paragraphs 84 and 85 of the National Planning Policy Framework (the Framework).
9. The appeal site is in Moreton Valence, a settlement not mentioned in policy CP3. As such, for the purposes of the LP it is open countryside. It is not part of the appellants' case that any of the exceptions specified in policy CP15 for development in the open countryside apply, and they accept the development does not meet the requirements of the LP². Hence, the proposal conflicts with the locational strategy in the development plan.
10. In support of the proposal, the appellants contend that there are other industrial and employment developments that represent departures from the LP. I have considered the 8 sites³ identified by the appellants that lie along the A38. Save for in relation to Elm Farm, no specific planning decisions are cited, rather the sites are referred to as 'established'. As such, despite the map extract and photographs provided, it is not clearly demonstrated that these examples result from planning applications considered against the policies of

² Paragraph 7.0, Appellants' Appeal Statement

³ Paragraph 10.0, Appellants' Appeal Statement

the LP. Moreover, most are a considerable distance from the appeal site, and the majority concern former farm buildings. Furthermore, one site mentioned appears to concern a travelling show persons operation, for which specific national policy applies.

11. Planning reference S.21/0047/COU in relation to Elm Farm refers to a change of use of a building and land rather than the construction of a new building. In this regard, that development is unlike the appeal proposal. In any event, given the limited details before me, none of the examples are shown to be directly comparable to the circumstances of the appeal proposal whereby a building has been erected in open countryside to cater for a new B8 storage use. As such, the examples attract little positive weight as they only generally serve to illustrate the presence of some commercial premises along the A38.
12. My attention is drawn to the recent approval of a large solar farm, in part adjacent to the appeal site⁴. However, the efficiency of such energy generation equipment is often heavily dependent upon site specific attributes such as land position and form, orientation relative to the sun and grid connectivity. To my mind, the nature and scale of such development and its associated benefits is entirely different from the appeal scheme. Consequently, little support for the appeal proposal can be derived from the existence of this permission.
13. Reference⁵ is generally made to the permitted development rights that allow for the conversion of existing agricultural buildings to other uses. However, as these are not shown to apply in this case, they have little relevance to my determination which must be assessed against the policies contained in the development plan. Overall, I cannot agree with the appellants contention that a general precedent has been set for commercial uses along the A38 with a more dispersed development pattern than that envisaged by the LP, that would justify the appeal proposal.
14. It is stated that the appellants sought suitable premises for 2 years prior to the purchase of Park End Cottage. The business has security and access requirements but that is hardly unique, and the same could be said for most commercial operations. There is little evidence to show that no more suitable sites exist that are compliant with the development plan's locational strategy.
15. Accordingly, I find that the site does not provide a suitable location for the development, and it is contrary to policies CP2, CP3 and CP15 of the LP.

Character and appearance

16. The appeal site is located on the west side of a section of the A38. Although there are sporadic clusters of residential and commercial development, the land in the surrounding area is predominantly comprised of fields, hedgerows, and pockets of woodland. Notwithstanding the recent permission for the solar farm, the spacious and fundamentally rural character of the locality would be likely to remain.
17. There is nothing before me to suggest that prior to its construction the area of the appeal site contained any built form, and so the land would have been open. As such, it would have contributed positively to the spacious and rural qualities of the locality.

⁴ Planning reference S.21/0465/FUL

⁵ Paragraph 12.0, Appellants' Appeal Statement

18. The development has introduced additional built form into this context. At approximately 11m x 24m and 6m to the roof ridge⁶ the built form is not inconsiderable. It has notably increased the presence of buildings at Park End Cottage and distributes it further westwards. This has adversely diluted and eroded the rural and spacious qualities of the surroundings.
19. I accept that in form and materials the building is like some modern agricultural buildings and is not intrinsically offensive. Nevertheless, this would not fully address the harm arising from its presence at this location, which can be glimpsed from the A38 despite the set-back.
20. I agree with both parties that the building is sufficiently removed from the Thatched Cottage, a Grade II listed building on the opposite side of the road, such that it does not form part of its setting.
21. Even so, overall, the building has a harmful impact on the rural character and appearance of the area. Therefore, it conflicts with policy CP14 of the LP which requires development to protect, conserve and enhance the built and natural environment. It goes on to set out the necessary criteria for development to be supported. Amongst those listed, sub-paragraph 5 qualifies that support will only be given to development that achieves an appropriate design and appearance, which is respectful of the surroundings, including the built environment.

Flood risk

22. Paragraph 159 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. However, if development is necessary in such areas, then it should be made safe for its lifetime without increasing flood risk elsewhere.
23. Planning Practice Guidance (PPG) provides further explanation of the Government's general approach to planning and flood risk, which includes the following steps. Firstly, to assess the flood risk, and then avoid higher risks by taking a sequential approach. Only where development needs to be in locations where there is a risk of flooding, as alternative sites are not available, does it become necessary to ensure that the development is safe and resilient to flooding and will not increase flood risk overall.
24. The Flood Risk Assessment (FRA) provided states that the appeal site is in Flood Zone 1 and therefore, is at low probability of river or sea flooding. However, the Council's Water Resources Engineer⁷ indicates that the site lies in a significant surface water risk location. PPG⁸ further confirms that flood risk includes all sources of flooding, including surface water flood risk.
25. Paragraph 162 of the Framework clearly stipulates that the sequential approach should be used in areas known to be at risk now or in the future from any form of flooding. It further confirms that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

⁶ Appellants' Design and Access Statement, paragraph 6.0 and drawing no. 1402 2A

⁷ Comments dated 18.10.22

⁸ Paragraph 001 Reference ID: 7-001-20220825

26. The FRA provided states that rainwater from the building is taken to the ditch along the rear boundary, and that there is a small watercourse to the rear of the building. Extracts from the EA's basic check for long term flood risk⁹ are provided, which report that the surface water risk is very low. However, I am doubtful that the information provided accurately reflects the surface water flood risk at the appeal site as the proposed building lies further north-west than the position pinpointed on the map extract. This would be closer to an area of the map where surface water flooding is shown. My concerns are reinforced by the comments from the Council's specialist in this respect. Given their local expertise, I have given them greater weight.
27. As such, I am not assured that the development does not lie in an area at increased risk from surface water flooding. It follows that the FRA fails to convincingly demonstrate that the proposal has not exacerbated the situation.
28. Furthermore, there is little evidence that the sequential approach advocated in national policy and guidance has been followed. The FRA states¹⁰ that the proposal is not subject to either the sequential or exception tests, and so there is no evidence that the sequential test has been carried out. Footnote 56 to paragraph 168 of the Framework defines the developments that need not be subject to those tests. The proposal is not householder development nor solely a change of use. Neither would it constitute a small non-residential extension as it constitutes a new building. In any event, the dimensions given in the Design and Access statement show a footprint that is not less than 250m². On the evidence before me, I am not assured that the proper sequential approach has been applied.
29. The appellants suggest that requirements to reduce future surface water risk could be covered by condition. Whilst it may be possible to mitigate surface water impacts (although that is not certainly shown), such an approach would not comply with the government's sequential approach which is to avoid increasing risk in the first instance. As such, I am not persuaded that planning conditions would overcome my concerns in this respect.
30. Accordingly, I find harm arises due to the likely increase in risk of surface water flooding arising from the development. Therefore, it conflicts with policies CP14(4) and ES4 of the LP which, amongst other things, seek development that does not increase the risk of flooding.

Other matters

31. The proposal would provide some economic growth and employment opportunities, a point emphasised by the representations made in support of the scheme, to which I have had regard. Even so, the extent of such benefit arising from the development is relatively small and so attracts limited positive weight.
32. The appellants highlight that no harm to the living conditions of residents or highway safety has arisen. Be that as it may, those would be required by other local and national policies. Therefore, these are neutral factors rather than benefits of the proposal in my assessment.

⁹ Appendix IV, Appellants' Appeal Statement

¹⁰ Paragraph 11.0

33. I acknowledge that the refusal of the appeal will have financial implications for the appellants, who will no doubt be disappointed with the outcome. Nevertheless, this will have been aggravated by the appellants' having proceeded with the development in the absence of obtaining planning permission. Even if undertaken unintentionally, to be even handed and to ensure no benefit is derived from such actions, I have considered the proposal in the same way as if the development had not commenced. As such, this factor does not lead me to a different view.
34. Criticism is made that the permitted solar farm will have an impact on the appeal site and its occupants. I have confined my consideration to the merits of the proposal, taking into account the existence of the permission for the solar farm. It is not necessary, or within my remit to make any further observations on the merits of the approved solar farm scheme.
35. The Council state in their appeal statement that they also have concerns regarding the effect on highway safety owing to the access arrangements for the development but that they missed this off the refusal reasons cited on the decision notice in error. Be that as it may, given my concerns regarding the main issues, this matter is unlikely to be determinative in this case and so I have not considered it further.

Conclusion

36. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹¹. Neither the provisions of the Framework nor other matters raised lead me to determining the development other than in accordance with the adopted development plan. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹¹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.