



Appeal Decision

Site visit made on 12 September 2023

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd October 2023

Appeal Ref: APP/V3310/W/23/3319039

Swang Farm, Cannington, Bridgwater, Somerset TA5 2NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Tim Roe against the decision of Sedgemoor District Council.
 - The application Ref 45/22/00026, dated 29 July 2022, was refused by notice dated 23 September 2022.
 - The development proposed is the demolition of an existing open-market dwelling and associated garage/outbuilding at Swang Farm and the erection of a replacement open-market dwelling and garaging, etc, together with associated access driveway and improvements to an existing vehicular access on land off of Currypool Lane, Cannington, Bridgwater, Somerset, TA5 2NH.
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. The appeal application seeks to demolish an existing dwelling at Swang Farm, and replace it with a dwelling at another site, on Currypool Lane. The existing dwelling at Swang Farm is located some distance from the site of the proposed dwelling, separated by the A39 road and fields. The Council has determined the appeal application based on the proposal being for a replacement dwelling, as shall I.
3. The appeal application is in outline, with access and scale falling to be considered at this stage, whilst appearance, landscaping and layout are reserved for future consideration. Plans of the position of the replacement dwelling have been submitted, which I have treated as being illustrative.
4. At appeal stage, the appellant has provided further plans and information about other possible locations for a replacement dwelling, within land under the control of the appellant, and the effects of flooding on these sites. I understand that they have been discussed informally with the Council following the issuing of the Council's decision notice.
5. However, The Planning Inspectorate's 'Procedural Guide: Planning Appeals – England' advises that the appeal process should not be used to evolve a scheme. It also advises that I should consider essentially only what was before the Council and interested parties at application stage.
6. The proposal itself has not changed. However, in identifying and commenting in detail upon two alternative sites in particular, and by submitting further plans, the appellant's case has evolved considerably from the application stage. As such, it would not be fair to interested parties for me to consider this new

information. I shall therefore make my decision based on the plans and information that was before the Council when it made its decision.

Main Issues

7. The main issues in this appeal are the effect of the proposal on flood risk having regard to the application of the sequential test; and whether the proposal would accord with the strategy of the Development Plan, including its effect on the character and appearance of the area.

Reasons

Flood Risk

8. Policy D1 of the Sedgemoor Local Plan (SLP), adopted February 2019, refers to the National Planning Policy Framework (the Framework) and its requirement that inappropriate development in areas at risk of flooding should be avoided, by directing it away from areas at highest risk. Accordingly, the Framework sets out a sequential test, whereby development is not permitted in high-risk areas, unless there are no other reasonably available sites appropriate for the proposal in an area with a lower risk of flooding.
9. The site at Currypool Lane is steeply sloping. Its lowest parts, including the proposed main vehicular access, would lie within high-risk Flood Zones 2 and 3, due to its proximity to a water course. The indicative plans show that the siting of the proposed dwelling itself, together with its garage, would be on higher land within the site. The proposal also includes the provision of a secondary access from the replacement dwelling to the lane, to provide safe access and egress, should the driveway not be usable due to flood water. There is no dispute that, based on the indicative plans, the dwelling, garage and emergency route would be outside of Flood Zones 2 and 3, and within Flood Zone 1, thus at lowest risk of flooding.
10. Nevertheless, as proposed, parts of the site would remain within Flood Zone 2 or 3. These would include the main site access, driveway and areas of garden. These form part of the development, which the Framework seeks to direct away from areas at highest risk. The PPG¹ makes clear that, even where development can be made safe throughout its lifetime, the sequential test still needs to be satisfied. Therefore, it is necessary for the sequential test to be applied to the proposal, despite the suggested siting of the dwelling and garage.
11. For the reasons I have already given, I am not able to consider the merits or otherwise of the alternative sites referred to by the appellant. Moreover, the PPG² specifies that the area of search for alternative locations will be defined by local circumstances relating to the catchment area for the type of development proposed. SLP Policy D1 states that the search area could be the whole of the (former) District of Sedgemoor or, if justified, a more localised area.
12. In this case, the proposal is for an unrestricted market dwelling. There is little suggestion that the area of search for a replacement dwelling needs to be restricted because of, for example, a functional need relating to a business. As such, there is little justification to limit the search area to the appellant's

¹ Paragraph: 023 Reference ID: 7-023-20220825

² Paragraph: 027 Reference ID: 7-027-20220825

planning unit or land within his ownership. As a result, it has not been demonstrated that there are no other sites outside of Flood Zones 2 and 3 that could accommodate the proposal. Consequently, it follows that the sequential test has not been met.

13. For these reasons, I conclude that the proposal would have a harmful effect on flood risk, having regard to the application of the sequential test. As such, it would conflict with SLP Policy D1, as well as the Framework, to which I give substantial weight.

Character and Appearance

14. The site of the existing dwelling is bounded on three sides by the yards and buildings of Swang Farm and Cannington Enterprises. These uses involve heavy agricultural vehicles and lorries, which pass and manoeuvre within close proximity to the existing dwelling and its garden. On the fourth side is the A39, busy with traffic including heavy lorries. The site of the proposed dwelling, at Currypool Lane, is in countryside and consists of greenfield land, opposite existing large commercial and agricultural buildings.
15. SLP Policy CO1 requires that specific needs for development in the countryside are demonstrated, unless addressed by other Local Plan policies. SLP Policy D11 is one such policy, which relates to replacement dwellings. Despite the distance between the existing and proposed dwellings, there is no dispute that the proposal amounts to a 'replacement' and that the first criteria of Policy D11, relating to lawful use, has been met.
16. The second criterion only allows a replacement dwelling where it would be sited on or close to the position of the existing dwelling, and within its lawful curtilage, unless significant benefits would result from changing its siting. Examples of such benefits include a reduced impact on neighbouring uses. The distance between the two sites means that the proposed dwelling would not be close to the existing dwelling or within its curtilage.
17. The existing dwelling is somewhat screened from surrounding uses by fencing, a wall and vegetation. Even so, it is positioned amongst the heavy industrial uses of Swang Farm and Cannington Enterprises, and adjacent to a site access and the main road. This may well result in noise, disturbance and poor air quality to the occupiers of the dwelling, and potential for conflict between the commercial and residential uses. As such, by removing the existing dwelling from its current position, the proposal would bring benefits to the surrounding business uses and to the current and future occupiers of the dwelling.
18. The site of the proposed dwelling is opposite existing commercial and agricultural buildings, which may well themselves generate the movement of large vehicles. The proposed dwelling would also be adjacent to other agricultural fields, the use of which may also create noise and disturbance. However, although only a snapshot in time, on my visit I found the adjacent country lane to be much less busy than the A39. Furthermore, the proposed dwelling would not be surrounded by the adjacent buildings and their access, in contrast to the existing site. As such, significant benefits would flow from the proposal, and so the second criteria of Policy D11 would be satisfied.
19. The site of the proposed dwelling is located in countryside and on rising land. As a result, the proposal would have a greater visual prominence in the

countryside than the existing dwelling, which has other buildings around it and benefits from existing screening. However, Policy D11 does not require the appellant to demonstrate that there are more visually suitable sites available than the proposal, only that significant benefits would result from a change to the siting of the dwelling.

20. The third criteria of Policy D11 requires that the replacement dwelling must complement the built form, character and appearance of the local area, and is sympathetic in terms of size and materials. Some of these would need to be resolved at reserved matters stage. However, the proposal would include new trees, hedges and landscaping that would help to ameliorate the visual effects of the proposal, which could be secured at reserved matters stage or by condition.
21. Despite its concerns about the visual prominence of the proposal, the Council's evidence is that the proposal would not conflict with this third requirement of Policy D11 and I see little reason to disagree. Accordingly, I conclude that the proposal would not conflict with the strategy of the Development Plan, including its effect on the character and appearance of the area. It would therefore comply with SLP policies D11 and CO1.

Other Matters

22. The replacement dwelling would be constructed to higher environmental standards than the existing dwelling, with for example better insulation and heating. The provision of bird boxes and other features may also provide ecological benefits. However, as they relate to a single dwelling, these benefits would be small, and so I give only limited weight to them. I have also noted comments made about the Council's handling of the case, but this has had no bearing on my consideration of the planning merits of the appeal.

Planning Balance and Conclusion

23. I have considered whether the benefits of the proposal, including because of the improved living conditions of the occupiers of the existing dwelling, and to surrounding business uses, would outweigh the harm that I have identified. However, for the reasons given above and as a matter of planning judgement, I conclude that the benefits would not outweigh the harm.
24. I have found that the proposal would accord with SLP policies D11 and CO1, but that it would conflict with SLP Policy D1. It would therefore conflict with the Development Plan when read as a whole. The material considerations in this case do not indicate a decision other than in accordance with the Development Plan. This leads me to conclude that the appeal should be dismissed.

O Marigold

INSPECTOR