



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: 11 October 2023

Appeal Ref: APP/H1840/W/22/3300286

The Caravan, Radford Road, Rous Lench WR11 4UL

- 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 S Lee against the decision of Wychavon District Council.
- The application Ref 21/00712/FUL, dated 18 March 2021, was refused by notice dated 20 December 2021.
- The development proposed is described as replacement of existing dwelling and ancillary buildings with construction of new two bedroom bungalow together with relocation of vehicular access track.

Decision

1. The appeal is allowed and planning permission is granted for the replacement of existing dwelling and ancillary buildings with construction of new two bedroom bungalow together with relocation of vehicular access track at The Caravan, Radford Road, Rous Lench WR11 4UL in accordance with the application Ref 21/00712/FUL dated 18 March 2021 subject to the schedule of conditions at the end of this decision.

Main Issue

2. The main issue is whether the proposed development would be consistent with local and national planning policies relating to the location of new housing.

Reasons

3. The appeal site is located within open countryside approximately 1km from the development boundary of Rous Lench. The site is irregular in shape located within a wider site that includes gypsy and traveller pitches and an orchard. The site is set some distance from the road and the boundary at

development specifically permitted by other SWDP policies including Policy SWDP 18.

6. Policy SWDP 18 permits the replacement of an existing dwelling in the open countryside with another single dwelling. It makes clear in criterion i that the existing dwelling cannot be a caravan, mobile home or subject to a temporary planning permission. The supporting text indicates that for the purposes of the policy the dwelling to be replaced must have established use rights as a dwelling.
7. My attention has been drawn to a Certificate of Lawful Existing Use or Development (CLEUD) issued in February 2010 for a 'residential caravan with workshop, store, garage, garden, brick outbuilding and further caravan all used for ancillary purposes' at the appeal site. It is widely accepted that for the purposes of planning caravans and mobile homes are not considered to be buildings. As such, the consequence of the CLEUD is that it has established a residential use on land defined by the red line plan.
8. Whilst the CLEUD has been granted the Council contend that the residential use has been abandoned. Based on the evidence before me there is nothing to suggest that the precise position of the caravans is defined by the CLEUD. Caravans by their very nature are mobile and whilst they may well have been moved around the site, they were still present during visits to the site by the Council. To me, the precise stationing of the caravans whether fully within the site or outside is not an indication that the use has been abandoned.
9. I am not persuaded that the use of the buildings for the storage of miscellaneous items indicates that the residential use of the site has been abandoned or that the lawful use of the land has deviated from a residential one. Moreover, I am not aware that planning permission has been granted for an alternative use at the site.
10. There is no definitive information indicating when the day room and structures were last occupied or used. Whilst the buildings are showing signs of deterioration, they are not in such a poor physical condition that one could say that they are derelict or that they have blended into the surrounding landscape.
11. Taking all of the above into account, I am satisfied that on the balance of probabilities the residential use of the site has not been abandoned. Therefore, the use of the land for residential purposes established by the CLEUD continues.
12. On this basis there is an expectation for an entity providing residential accommodation to be on the site for an indefinite period. The caravans referred to are not specifically the ones identified in the CLEUD or the caravan stationed on the site during my visit and could be reasonably changed in the future.
13. Whilst there may well be a principal or main caravan it is evident that there is a functional relationship between it, the second caravan and day room as well as the other structures on the site. All of which have distinct domestic functions, but that are also interdependent upon one another to provide a holistic, practical and functional living environment for the occupiers.
14. To me, in this instance, and in the context of Policy SWDP 18 the "existing dwelling" or in this case the residential use is not limited to just the main

caravan but includes the second caravan and structures. Therefore, in my judgement, the appeal site has established rights for residential use which extends beyond a main caravan and includes the other structures within the red line plan.

15. The Council have referred to a High Court decision which they consider relevant to the appeal. However, this judgment was considered in the context of paragraph 79 of the National Planning Policy Framework (the Framework) and how subdivision of a dwelling was to be interpreted, ie. a narrow interpretation relating to a single physical building or a wider one relating to a residential unit. The merits and circumstances of this decision is materially different to those of the appeal proposal before me. Whilst I have paid regard to it, it does not lead me to reach a different conclusion on the matter.
16. I conclude that the proposed development would accord with Policies SWDP 2 and SWDP 18 which, amongst other things, permit the replacement of existing dwellings in the open countryside with another.

Other Matters

17. I acknowledge that the use of a private motor vehicle is the only practical means for residents to access the services they require when taking into account the location of the site and the nature of the surrounding roads. However, as I have found that the proposed development accords with Policies SWDP 2 and SWDP 18 the location of the site with regard to Policy SWDP 4 is not determinative, in this instance, as these policies permit development beyond settlement boundaries and in open countryside, irrespective of accessibility to services and facilities.
18. The Inspector in relation to appeal Ref: APP/H1840/W/20/3245737 acknowledged that a CLEUD exists for a caravan. However, this appeal related to a materially different scheme. Based on the limited information before me there is nothing substantive to indicate that the Inspector was considering the merits of the CLEUD in detail or anything other than the physical presence of the structures on site.
19. The CLEUD shows the site to which the existing use relates to, and the same land would relate to the proposed dwelling formed of the bungalow and its plot. It would not sprawl into the surrounding land or result in an excessive development and given its position deep into the site it would be largely invisible from the public realm. A permanent dwelling would also represent an improvement in visual terms, particularly in regard to the use of higher quality and longer lasting materials and finishes. The amenity space proposed would be commensurate to the size of the proposed dwelling and overall would provide usable amenity space despite its irregular shape.
20. Despite the representations received there is nothing substantive to indicate that the proposed development would adversely impact upon trees, the orchard or increase the risk of flooding. Conditions have been imposed to ensure that appropriate tree protection is put in place, the development is carried out in accordance with the habitat and species assessment and for the drainage strategy to be agreed prior to implementation.

Conditions

21. I have considered the imposition of conditions in accordance with the Framework and Planning Practice Guidance. I have undertaken some rationalisation of the conditions proposed by the Council in the interests of precision and clarity.
22. I have imposed a condition specifying the relevant drawings as this provide certainty. In order to ensure satisfactory appearance conditions relating to the external materials and landscaping have been imposed.
23. In the interests of highway safety, I have imposed conditions in relation to the parking area serving the development.
24. In the interests of sustainability conditions relating to foul and surface water drainage, electric vehicle charging facilities, for at least 10% of the energy supply for the property to be from renewable or low carbon sources have been imposed.
25. Conditions for details of bat and bird boxes and for the development to be carried out in accordance with the conclusions and recommendations set out in the Habitat and Species Assessment have been imposed in the interests of biodiversity.
26. The Council has suggested removing permitted development rights for the enlargement, improvement or other alteration of a dwellinghouse, additions or alterations to the roof and the construction of a porch, falling within Classes A, B, C and D of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
27. 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 appropriate to its context.
28. The Council has suggested a condition for sheltered and secure cycle parking. The development is for a modestly sized dwelling, and it is likely that ownership or use of bicycles would not be hindered by the absence of dedicated cycle storage. Therefore, the condition has not been imposed.

Conclusion

29. 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: Proposed Elevations Drawing Number 71292:1001; Floor Plan and Drainage Drawing Number 71292:1002; Existing and Proposed Block Plan with Landscaping Detail Drawing Number 71292:1003 Rev B and Topographical Survey Drawing Number 71292:1004
- 3) No development shall commence, above ground, until details of the materials to be used in the construction of the external surfaces of the dwelling 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 shall commence, above ground, until details of renewable and/or low carbon energy generation measures have been submitted to and approved in writing by the local planning authority. The measures shall contribute to at least 10% of the predicted energy requirements of the development. Development shall be carried out in accordance with the approved details.
- 5) No development shall commence, above ground, until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 6) 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.
- 7) The development hereby permitted shall not be occupied until foul and surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
- 8) The development hereby permitted shall not be occupied until the details of bat and bird bricks/boxes have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) The development shall not be occupied until the proposed development has been fitted with electric vehicle charging points. The electric vehicle charging points shall be retained for the lifetime of the development.
- 10) The development shall not be occupied until 2 spaces have been laid out for cars to be parked and those spaces shall thereafter be kept available at all times for those purposes.

- 11) No external lighting shall be installed and brought into use until details of its nature and luminance have first been submitted to and approved in writing, and any external lighting shall then be installed and used in accordance with the approved details only.
- 12) The development shall be carried out in accordance with the conclusions and recommendations set out in the Habitat and Species Assessment dated November 2021.
- 13) 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 or alterations to the roof or construction of porches within Classes A, B, C and D shall be constructed.