



Appeal Decision

Site visit made on 9 August 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 19 October 2023

Appeal Ref: APP/D3830/W/23/3317350

Yew Tree Barn, Turners Hill Road, Worth, West Sussex RH10 4PE

- 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 Mark Palmer against the decision of Mid Sussex District Council.
 - The application Ref DM/22/2508, dated 10 August 2022, was refused by notice dated 16 December 2022.
 - The development proposed is conversion of existing workshop to form a 1 bed annex.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the appeal site is an appropriate location for the proposed development, having regard to the development strategy and accessibility of services; and,
 - whether the proposal would satisfactorily address the potential loss, or otherwise, of habitat for protected species.

Reasons

Appropriate location

3. Policy DP6 of the Mid Sussex District Plan 2014-2031 (DP), March 2018, identifies that outside the defined built-up area boundaries the extension of settlements will be supported where it meets the criteria in the policy. The appeal site is outside the defined built-up area boundary and is therefore considered to be in the countryside.
4. DP policy DP12 indicates that development will be permitted in the countryside provided it maintains the character of the area and it is necessary for the purposes of agriculture or is supported by a specific policy elsewhere in the plan. The proposal would maintain the character of the area.
5. DP policy DP15 concerns new homes in the countryside. The policy indicates that new homes in the countryside will be permitted where special justification exists. DP policy DP15 defines 'special justification' as where accommodation is essential to enable agricultural, forestry and certain other full time rural workers to live on site or in the immediate vicinity, where the design is of

exceptional quality and it enhances its immediate setting, affordable housing in accordance with the DP policy DP32 and the proposed development meets the requirement of the DP Policy DP6 in relation to the settlement hierarchy.

6. It is not essential for agricultural, forestry or other rural workers to live at the appeal site. Although the design is considered acceptable and would preserve the character of the area, it is not of exceptional quality. The appellant contends that the proposal would be an affordable form of housing. However, no mechanism has been put forward to ensure the proposed dwelling would be an affordable house as per the definition in the National Planning Policy Framework (the Framework). For this reason, the proposal would also not be in accordance with paragraph 72 of the Framework.
7. The appeal site is located off Turners Hill Road which is a single carriageway road subject to the national speed limit. The appeal site is a significant distance from the nearest settlement, Crawley, which contains the facilities and services necessary to support future occupants' daily lives. This section of the road does not include a footpath or street lighting. Whilst there are a number of cycle routes in the area, including Worth Way, due to the distance to the nearest settlements and the characteristics of this section of the road, future occupants would be disincentivised from cycling or walking.
8. There is a bus stop close to the access of the site. Based on the evidence before me it forms part of a very limited service which operates between Monday and Saturday. It is therefore unlikely to be suitable to meet the demand generated by future occupants accessing services and facilities. For these reasons, future residents are likely to be heavily reliant on the use of private motor vehicles.
9. During my site visit I observed that the appeal site was amongst a small group of properties, and not one that could be identified as a small settlement or a hamlet. As such, the appeal proposal fails to conform with the criteria set out in DP Policy DP6 as it is not contiguous with the existing built up area of a settlement. Even if I were to agree with the appellant that the group of properties could be identified as a hamlet, the proposal would fail to accord with the criteria within DP Policy DP6 as it would not be in an accessible location, for the reasons given above. Due to the interrelationship between policies, as the proposal does not conform with DP Policy DP6 it would also not conform with policies DP15 and DP12 of the DP.
10. DP policy DP12 applies for all development in the countryside, regardless of scale. The only exception is proposals for the development of agricultural land.
11. The proposal would conform with the strategic objective of providing opportunities for people to live and work within their community, as identified within DP policy DP15. Notwithstanding this, it would fail to conform with the criteria defining special justification. Therefore, it would not be in accordance with the policy when read as a whole. Similarly, the same strategic objective is detailed within DP Policy DP14. Nonetheless, that policy concerns economic development in the countryside and therefore does not strictly apply to proposals for residential development.
12. As the building is located close to other dwellings it is not an isolated home, as termed within paragraph 80 of the Framework. Nevertheless, policies restricting development in the countryside still apply. Even if, the proposed

dwelling was considered to be isolated, it would accord with paragraph 80 as the development would involve the subdivision of an existing residential building.

13. The appellant contends that there are a number of policy statements which support the use of existing buildings within residential curtilages, especially if such dwellings would provide housing for key workers. There is no evidence before me of these policy statements.
14. I acknowledge the need for housing that is affordable to support local workers. However, it has not been demonstrated that there is not a suitable alternative to the proposal. Also, there is no evidence before me that the development strategy would not lead to a suitable provision of affordable housing in the area. Similarly, in these circumstances, it would not be reasonable for me to condition the occupancy of the house to the appellant's son and daughter either.
15. The appellant has indicated that the development at the Sleepy Hollow and The Spiral form a precedent for the proposed development. The most pertinent details of those developments have not been provided. Therefore, I cannot conclude that they set a precedent for the proposed development.
16. I acknowledge that the harmful effect of one dwelling in an unsustainable location would be less than a larger development of multiple dwellings. Nonetheless, harm would be caused, and the spectre of more harmful developments does not justify allowing an unacceptable proposal.
17. The appeal site is not an appropriate location for the proposed development, having regard to the development strategy and accessibility of services. It would be contrary to DP policies DP6, DP12 and DP15 for the reasons given above. It would also be contrary to DP policy DP21 and policy CNP14 of the Copthorne Neighbourhood Plan, June 2021. These policies indicate that development will be required to support the objectives of the West Sussex Transport Plan including providing appropriate opportunities to facilitate and promote the increased use of alternative means of transport to the private car; and development proposals will be supported where they promote sustainable transport.
18. The appeal proposal would not be in accordance with 110 and 152 of the Framework. These paragraphs advise that planning decisions should ensure that appropriate opportunities to promote sustainable transport modes can be or have been taken up; and the planning system should support the transition to a low carbon future.

Protected Species

19. Circular 06/2005¹ identifies that it is essential that the presence, or otherwise, of protected species, and the extent that they may be affected by the proposed development is established before planning permission is granted. Further to this, Circular 06/2005 caveats that developers should not be expected to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the decision.

¹ Government Circular: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system, Officer of the Deputy Prime Minister, August 2005

20. The appellant has provided correspondence between an ecologist and themselves. In an email to the appellant, the ecologist stated "Although the house had no evidence of void dwelling bats, the exterior of the house has features in which crevice dwelling bats can use. These include lifted roof tiles and lifted cladding. Whilst the preliminary roost assessment cannot confirm whether there are any bats roosting under these features, two bat emergence survey (BERS) will be needed. Two are needed due to the moderate habitat value which surrounds the site, which increases the chances of bats being present." In an email between the appellant and the agent, the appellant has clarified that there are no slipped tiles but there are handmade tiles which by their very nature do not lie flat.
21. Whilst there may not be lifted roof tiles, during my site visit I observed features on the building which would be suitable for crevice dwelling bats, including gaps in the cladding and within the roof tiles. Given the features present on the building, alongside the surrounding habitat, there is a reasonable likelihood that bats are present at the site. As per Circular 06/2005 it is essential the presence, or otherwise, of the bats and the extent they would be affected by the proposal is established before determining the application. Given the lack of survey data the presence of bats, or otherwise, has not been established in this proposal. It would not be appropriate to grant planning permission subject to conditions, without establishing the effect of the proposal on bats.
22. I note that no hedges or trees are proposed to be altered or removed as part of the appeal proposal. However, migrating bats could still be affected by the proposed development. Therefore, it would still need to be established whether bats are present on site.
23. The appellant indicates that the Government has stated on many occasions that the process of applying for planning permission should be one that is easier and less of a financial burden on the applicant. Nonetheless, no substantive evidence has been put before me that the Government has issued guidance which supersedes Circular Note 06/2005 or that there is a legislative requirement for me to make a decision contrary to the note.
24. To establish the presence, or otherwise, of bats, the required emergence surveys are required to be undertaken in the appropriate survey window and undertaken by a specialist. It would not be appropriate to determine an application without understanding the full effect on bats, even if this led to delays in determining the application as it was outside of the appropriate survey window.
25. I note that the proposal would include features which may provide opportunity to improve, enhance, manage and restore habitats on site. Nonetheless, this benefit would not mitigate the lack of knowledge on the effect of the proposal on bats.
26. The appellant indicates that development on neighbouring sites has led to the removal of protected woodland. I have not been provided with the pertinent details of how neighbouring development was permitted and whether ecological surveys were provided. Even if that development was undertaken without the necessary surveys, it would not justify granting planning permission at the appeal site until the full extent of the effect on bats has been established.

27. The appellant contends that DP policy DP38 focuses on development of multiple units only. However, the policy does not caveat that it only applies to larger scale developments. Therefore, it applies equally across all scales of development.
28. I conclude that the proposal would not satisfactorily address the potential loss, or otherwise, of habitat for protected species. It would therefore be contrary to DP policy DP38 which indicates that appropriate measures should be taken to avoid and reduce disturbance to sensitive species. It would also not be in accordance with paragraph 180 of the Framework which indicates that when determining planning applications, if significant harm to biodiversity resulting from a development cannot be avoided then permission should be refused. As the effect of the appeal proposal on bats has not been established, I cannot determine that it would not lead to significant harm.

Other Matters

29. The proposed dwelling could provide accommodation for a family member to support a relative, where the protected characteristic of disability is relevant. I appreciate that the appeal proposal would ensure that family members are more easily able to support their relative. Nonetheless, I have not been provided with evidence that the appeal scheme is the only feasible option to achieve the appellant's aims. Whilst I acknowledge the benefits the proposed dwelling brings; these attract moderate weight.
30. The conduct of the council may not have been in accordance with the guidelines set out within paragraph 38 of the Framework. Regardless, their conduct does not alter my assessment on the acceptability of the planning merits of the appeal proposal.
31. The appellant contends that if permission is not granted, the existing warehouse would fall into a state of disrepair and therefore the proposal accords with paragraph 119 of the Framework, which requires decisions to promote an effective use of land in meeting the need for homes. There is no substantive evidence before me that indicates that the warehouse would fall into a state of disrepair if it was unable to be repurposed as a dwelling.
32. Set against the harm, are the benefits of the reuse of a building, the provision of a small home suitable for family members within a small community, the increased population supporting the vitality and viability of facilities and services, and the sustainability credentials of the proposed dwelling including an air source heat pump, new insulation, a rainwater collection and release system, and a bio-rock sewer system. Nevertheless, these benefits do not outweigh the identified harm.

Conclusion

33. I have had due regard to the Public Sector Equality Duty set out under s149 of the Equality Act 2010, but the harm caused by the development outweighs its benefits, in terms of eliminating discrimination against people with protected characteristics, advancing equality of opportunity for those people and fostering good relations between them and others. I conclude that it is proportionate and necessary to dismiss the appeal.

34. Having taken account of the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be dismissed.

J Hobbs

INSPECTOR