



Appeal Decision

Site visit made on 7 November 2023

by K Jones BA (Hons) DipLA CMLI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2024

Appeal Ref: APP/P1615/W/23/3320356

Land off Lime Street, Eldersfield, Gloucestershire, GL19 4NE

Grid Reference Easting: 381558, Grid Reference Northing: 229969

- 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 D Warmingham against the decision of Forest of Dean District Council.
- The application Ref P1652/22/FUL, dated 29 November 2022, was refused by notice dated 10 February 2023.
- The development proposed is the change of use of an agricultural building to a dwellinghouse (Class C3) alongside associated building operations, and ancillary works.

Decision

1. The appeal is allowed and planning permission is granted for the change of use of an agricultural building to a dwellinghouse (Class C3) alongside associated building operations, and ancillary works at Land off Lime Street, Eldersfield, GL19 4NE in accordance with the terms of the application, Ref P1652/22/FUL, dated 29 November 2022, subject to the attached schedule of conditions.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised in December 2023. I have consulted the main parties on the changes and have had regard to the representations received.
3. There are two previous applications relating to the appeal building. Prior approval¹ was not required in 2021 for the change of use of the barn to three dwellings with associated building operations under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015. A subsequent planning application² was approved in 2022 for the 'conversion of agricultural building to a dwelling with post and rail fencing and associated works'.

Main Issues

4. Having regard to the evidence and the planning history of the site, I therefore consider the main issues to be:
 - whether the site would be suitable for housing, having regard to the area's development strategy and the development proposed;
 - the effect of the proposal on the character and appearance of the area; and,

¹ P1164/21/PQ3PA

² P0536/22/FUL

- whether material considerations exist that are sufficient to outweigh any conflict with development plan policy in respect of the above issues.

Reasons

Suitability for housing

5. The appeal relates to an existing modern barn. It is an isolated building with a small number of associated outbuildings and storage containers, located at the end of a relatively long access track. Policies CSP.4, CSP.5 and CSP.16 of the Forest of Dean District Council: Core Strategy (February 2012) (the Core Strategy) set out the District's development strategy, supported by Policy AP 1 of the Forest of Dean District Council: Allocations Plan (June 2018) (the Allocations Plan).
6. Broadly, the strategy seeks to reinforce the existing settlement pattern and hierarchy by directing development to locations in towns and larger villages where it would maintain and enhance their functions. The site is not located within or close to any of the settlements listed, and is in the open countryside for the purposes of the strategy. The policies provide for limited departure from the strategy in the form of development including affordable housing and rural employment sites. Policy CSP.4 and the accompanying text to Policy CSP.16 also identify that exceptions may include building conversions.
7. The proposal would involve the replacement of all external walls and the roof of the barn with insulated sheeting and boarding, alongside the creation of external openings. My attention has been drawn to the Hibbitt Judgement³ with regard to understanding the distinction between conversion and rebuilding in relation to the conversion of a building under Class Q prior approval. However, while there may be similarities between that case law and the appeal scheme, both parties agree that the extent of works proposed go beyond this definition of a conversion. There is no substantive evidence to lead me to reach a different conclusion, and the proposal would not be a conversion as described by the policies of the development strategy.
8. Paragraph 84 of the Framework seeks to avoid the development of isolated homes in the countryside except in particular given circumstances, which include the re-use of redundant or disused buildings. Having regard to the evidence and my observations during my site visit, the site is physically remote from any settlement, and my attention has not been drawn to any services or facilities locally which might reasonably be accessible by means other than the private vehicle. Accordingly, I find that the site would be isolated for the purposes of the Framework. Both parties are also in agreement that the building is redundant, and I see no reason to disagree.
9. The appellant contends that the works would constitute the re-use of the building in line with the provisions of paragraph 84, directing my attention to an appeal decision⁴ in which a building proposed to be demolished and rebuilt elsewhere was considered to be re-use of the building. I do not have full details of this scheme, however, it appears that in that case, the building was to be rebuilt to a previously approved design, re-using the existing building materials with the exception of the roof. That is not the case with this site, which would have entirely new walls and roof. The extent of the proposed changes indicate

³ Hibbitt v SSCLG & Rushcliffe BC [2016] EWHC 2853 (Admin)

⁴ Appeal Decision W/4000640 - Elliotts Farm, Harty Ferry Road, Leysdown

that, while the internal frame and foundations of the building would be retained, and while the proposed external appearance may be similar to the existing building, the proposed dwelling would be a substantially new build. In my view, this would not therefore represent the re-use of a redundant building.

10. Taking all of the above into account, I conclude that the proposal would not constitute an appropriate location for housing having regard to the area's spatial strategy and the development proposed. It would therefore conflict with CSP.4, CSP.5 and CSP.16 of the Core Strategy and Policy AP 1 of the Allocations Plan. Taken together, amongst other matters, these policies seek to ensure that development comes forward in suitable locations in accordance with the development strategy for the area. There would also be conflict with the Framework where it seeks to avoid isolated homes in the countryside.
11. The Council has drawn my attention to an appeal decision⁵ at Bayliss Farm, Staunton. Each case must be considered on its own merits, and I have reached my own conclusions based on the evidence for the current appeal. However, there are some parallels between that proposal and the appeal scheme, and my overall conclusion on this main issue is consistent with that decision.
12. The Council has also referred to Policy CSP.1 of the Core Strategy in relation to this main issue. Although I accept that this policy derives from a strategic objective which seeks to guide development to the right locations, this is primarily a design and environmental protection policy, without reference to the spatial strategy or location of development. I will consider the design of the proposal later in this decision, but find no conflict with Policy CSP.1 in respect of the location of the development.

Character and appearance

13. The context of the appeal site is a relatively flat agricultural landscape. Numerous development features are present in this area, typically comprising buildings associated with agricultural or equestrian uses, and sporadic residential properties. The existing barn is a simple building form, clad in a mixture of green metal sheeting and timber boarding. Its agricultural character reflects its previous functional use, and it makes a consistent contribution to the character of the area.
14. The barn is discretely positioned some distance along the private access track. Although a public footpath passes in relatively close proximity to the south, the barn is not visible from this direction, lying beyond an intervening residential house and garden with associated boundary vegetation. A distant glimpse of part of the building is available from Lime Street along the access track. Further west, a footpath traversing slightly higher ground also affords limited views of the roof of the barn.
15. Although much of the building would be replaced, its overall scale would be very similar to the existing structure, and the building would be clad in a relevant palette of materials including timber cladding and metal sheeting. I accept that the proposal would introduce new openings into the elevations, however these would be modest and functional, and would not fundamentally alter the character or appearance of the building. Similarly, the proposed solar panels to the roof would not be out of place in an agricultural context.

⁵ APP/P1615/W/20/3255038

16. Even with the proposed elevation and roof changes, there would be a clear reference to the form, scale, materials and overall proportions of the existing building. In its context and certainly in available views, it would retain a simple agricultural character. Small scale changes associated with residential use can cumulatively erode the rural character of the countryside. However, given the heavily restricted visibility of the site, any such changes would be limited, and could be acceptably controlled by conditions in this instance.
17. For these reasons I find that the proposal would not harm the character and appearance of the area. The proposal would therefore accord with Policy CSP.1 of the Core Strategy and Policy AP 4 of the Allocations Plan. Taken together, these policies seek, amongst other matters, high quality design which establishes or supports a strong sense of place, taking account of local character. On this basis, I also find no conflict with the Framework in respect of achieving well-designed and beautiful places, and ensuring that developments are sympathetic to local character.
18. I am not convinced that the intention of the last bullet point of Policy AP 4 (Design of Development) and its accompanying text, was to direct the location of development under the terms of inclusivity and accessibility. To my reading it is clear that these provisions relate to the designed inclusivity of development, in order to accommodate the accessibility needs of all users. There is no substantive evidence to show that the proposal would not be, or could not be made, suitably accessible, and I therefore find no conflict with this aspect of the policy.

Other material considerations

19. Of principal importance in the material considerations put forward by the appellant are the extant prior approval for a Class Q conversion of the building to three dwellings, and the extant planning permission for the conversion of the building to one dwelling.
20. The prior approval conversion to three dwellings is a markedly different scheme to the subject of this appeal. While it would be possible for the appellant to implement the development, the subsequent planning application for a single dwelling and the current appeal scheme indicate that this is not the appellant's intention. There is therefore little compelling evidence that this is a greater than theoretical possibility. As a consequence, I find this suggested fallback position to carry limited weight in the determination of the appeal.
21. The extant planning permission for a conversion of the barn to one dwelling is substantially the same as the proposal before me. Notwithstanding the external changed materials and altered configuration of windows and doors, the accommodation provided and internal configuration of the barn appears to be identical. Given the cessation of agricultural operations at the site, and the continued approach taken by the appellant, I find that there is a real prospect that the planning permission would be implemented should this appeal fail. It therefore represents a genuine fallback position.
22. The conflict I have identified with the spatial strategy and with the Framework derives from the suitability of the location for a residential dwelling. However, any harm in this regard would be substantially moderated by the fact that the existing building could be converted to a very similar dwelling even in the event the appeal fails. The consented dwelling would introduce the same level of

accommodation as that proposed, in the same isolated location. Although there would be some external differences between the appeal proposal and the fallback scheme, these would not be substantial, and in any event, I have not found harm to the character and appearance of the area resulting from the appeal scheme.

23. I therefore conclude that, in the particular circumstances of this case, there are material considerations present that are sufficient to outweigh the aforementioned conflict with the development plan and with the Framework.

Planning Balance

24. Both parties agree that the Council cannot currently demonstrate a 5 year housing land supply, and so paragraph 11d) of the Framework is engaged. In these circumstances, this sets out that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
25. In the context of the Government objective to significantly boost the supply of homes, a single dwelling would make a small contribution towards the provision of housing in the area. The appellant has also highlighted energy efficiency improvements associated with the proposal and its construction with insulated cladding. Although the Council has challenged the validity of these efficiencies, there is no substantive evidence that the scheme would not provide the identified improvements over the lifetime of the building. Alongside the social and economic benefits associated with the construction and subsequent occupation of the dwelling, these matters weigh in favour of the appeal.
26. As set out above, I have found that the proposal would conflict with the spatial strategy of the development plan, and would not be a suitable location for housing under the provisions of the Framework. However, I have also identified that a valid fallback position exists, and that this carries sufficient weight to outweigh these conflicts. Given the small quantum of development, I afford limited positive weight to the housing land supply benefits, along with the economic, social, and energy efficiency benefits of the scheme.
27. On balance, having taken all matters into consideration, the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The proposal therefore benefits from the presumption in favour of sustainable development.

Conditions

28. I have considered the conditions put forward by the Council against the advice in the Framework and Planning Practice Guidance (PPG). As a result, I have amended some of them in relation to the six tests, and omitted others.
29. In the interests of certainty and proper planning I have included conditions relating to commencement and plans. Conditions concerning foul and surface water drainage works are also necessary to ensure satisfactory drainage of the development, safeguard the living conditions of future and neighbouring occupiers, and to ensure flooding is not exacerbated in the locality.

30. A condition securing details of any new external materials of the building is necessary in order to safeguard the character and appearance of the area. For the same reason, conditions securing hard and soft landscape details, including boundary treatments, are necessary.
31. A condition securing biodiversity mitigation and enhancement measures along with a condition securing details of external lighting are necessary to safeguard biodiversity. However, given the scale and nature of the site and the details contained in the ecology report, separate conditions for biodiversity mitigation and biodiversity enhancement are not reasonable or necessary.
32. In the interest of highway safety it is necessary to secure the suitable construction of the vehicular access. However, the installation of electric vehicle charging points for new dwellings is covered by the Building Regulations, and so a condition in that respect is not necessary.
33. General site works management and monitoring conditions in relation to bats, nesting birds, and Great Crested Newts are reasonable in respect of the biodiversity interests at the site. It is also necessary to secure the timely removal of the temporary static caravan when no longer required, in the interest of visual amenity.
34. The Council suggested that some permitted development (PD) rights should be removed through condition to ensure the satisfactory external appearance of the development in the interests of visual amenity, and to protect the residential amenity of neighbouring occupiers. The Framework advises that conditions should not be used to restrict national PD rights unless there is clear justification to do so. There is sufficient separation between the appeal site and neighbouring properties to avoid any harm to living conditions. I consider that there is some justification to limit permitted development rights in so far as they relate to roof enlargement and alterations, chimneys, and satellite antenna given the simple agricultural character of the building and the available views of the roof. I do not consider that clear justification exists to restrict development under Classes D, E and F given the limited visibility of the site, the presence of existing outbuildings, and the details secured by conditions 6 and 7.

Conclusion

35. For the reasons given above, I conclude that the proposal would not comply with the development plan when read as a whole. However, there are material considerations in this instance which indicate that the decision should be made otherwise than in accordance with the development plan. I therefore conclude that the appeal is allowed.

K Jones

INSPECTOR

SCHEDULE

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (994); Site Plan (1674/1 Rev. A); and Proposed Plans and Elevations (Unnumbered Rev. A).
- 3) No development shall take place until a full surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the size, position and construction of the drainage scheme to BRE 365 (or any subsequent version), including results of soakage tests carried out at the site to demonstrate the infiltration rate. The scheme shall also include a management plan setting out the maintenance of the drainage scheme. The drainage scheme shall be implemented prior to the first occupation of the development hereby approved and shall be maintained in accordance with the management plan thereafter.
- 4) The foul drainage for the development hereby permitted shall be undertaken in accordance with the Local Planning Authority's Technical Guidance Document "Drainage requirements for domestic extensions and single dwellings" (or any subsequent revisions). The foul drainage shall be in place and operational before the development is occupied and thereafter be permanently maintained in accordance with that guidance.
- 5) Notwithstanding Condition 2, prior to development above slab level, full details and samples of all external materials for the dwelling shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and shall thereafter be retained.
- 6) Notwithstanding Condition 2, prior to development above slab level, a scheme for hard landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
 - a) Details of all hard surfacing; and
 - b) The positions, height, design, colour, materials, and type of all existing and proposed boundary treatments.

All hard landscaping and means of enclosure shall be completed in accordance with the approved details prior to first occupation of the dwelling hereby permitted, and shall thereafter be retained.
- 7) Notwithstanding Condition 2, prior to development above slab level a scheme for soft landscaping of the site (incorporating existing flora), shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
 - a) A plan showing existing vegetation to be retained and safeguarded during construction;
 - b) Detailed planting / sowing specifications including species, size, density, spacing, cultivation, protection (fencing, staking, guards) and methods of weed control for any new planting;
 - c) A timetable for implementation;

- d) A schedule of establishment maintenance and ongoing management for new and existing planting for a minimum period of five years following implementation.

The scheme shall be implemented and maintained in accordance with the approved details. 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, unless the Local Planning Authority gives written consent to any variation.

- 8) Prior to development above slab level, a scheme for biodiversity mitigation and enhancement shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the location, design, and specification of the features or measures proposed. These shall include a minimum of:

- a) Two externally mounted swallow nest boxes installed at the gable apexes of the dwelling;
- b) Two externally mounted Schwegler Bird Home 1MR installed on the dwelling between two and four metres above ground (minimum 1m from swallow nest boxes); and
- c) Suitable mitigation for the loss of the Little Owl perch in the open storage area of the building.

All features and measures shall be implemented in accordance with the approved details prior to completion or first occupation of the dwelling hereby permitted, whichever is sooner. All features and measures shall thereafter be retained and maintained for their purpose.

- 9) Prior to development above slab level, details of all external lighting shall be submitted to and approved in writing by the Local Planning Authority. The details shall clearly demonstrate that lighting will not cause excessive light pollution or disturb or prevent bats or other species using key corridors, foraging habitat features or accessing roost sites. The details shall include:

- a) A drawing showing sensitive areas and/or dark corridor safeguarding areas;
- b) Technical description, design or specification of external lighting to be installed including shields, cowls or blinds where appropriate;
- c) A description of the luminosity of lights and their light colour;
- d) A drawing(s) showing the location and where appropriate the elevation and height of the light fixings;
- e) Methods to control lighting control (e.g. timer operation, passive infrared sensor (PIR)); and
- f) Lighting contour plans both horizontal and vertical where appropriate and taking into account hard landscaping, etc.

All external lighting shall be installed in accordance with the specifications and locations set out in the approved details, and shall be maintained thereafter in accordance with these details. No other external lighting shall be installed.

- 10) Notwithstanding Condition 2, prior to the occupation of the dwelling hereby permitted, the vehicular access shall be laid out and constructed in accordance with the submitted Site Plan drawing number 1674/1 Rev A, with the first 5m of the access track (measured from the carriageway edge of the public road) fully surfaced in bound permeable material. The vehicular access to the site shall be maintained thereafter.
- 11) All works undertaken at the site shall be carried out in accordance with section 5.9 of the All-Ecology Report (Inspection Survey for Bat Roost Potential) dated March 2021.
- 12) All vegetation within the works area shall be maintained at a maximum height of 30mm until construction is completed through regular mowing or grazing in order to discourage great crested newts (GCN) from using the site. All works shall be carried out in accordance with the following measures:
 - a) Any trenches or excavations left overnight shall be covered or provided with ramps to prevent GCN from becoming trapped. Excavations shall be checked for the presence of animals before being filled.
 - b) Any building materials will be stored on pallets or in jumbo bags/containers to discourage GCN from using them as shelter.
 - c) Any demolition materials/waste will be stored in skips or similar containers, or spread or removed immediately.

If a GCN is discovered during site preparation or construction phases, then all works must stop until the advice of a suitably qualified ecologist and Natural England is obtained, including the need for a licence.

- 13) No works to the roof shall take place between 1st March and 31st August inclusive, unless a careful, detailed check for active birds' nests has been undertaken immediately before works commence. If an active nest is discovered, all works to the structure shall cease immediately and proceed only in accordance with the advice of a suitably qualified ecologist.
- 14) The occupation of the static caravan on site shall cease as soon as the dwelling hereby permitted is first occupied. Thereafter, the static caravan shall be permanently removed from the site by no later than 3 months from the date of the first occupation of the dwelling hereby permitted.
- 15) Notwithstanding the provisions of Part 1 of the Second Schedule to the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no development as specified in Part 1 (Classes B, C, G and H), other than such development or operations indicated on the plans hereby approved, shall be carried out.