



Appeal Decision

Site visit made on 6 March 2024

by E Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2024

Appeal Ref: APP/E3715/W/23/3327074

Merlin Field Farm, Gibraltar Lane, Leamington Hastings, Warwickshire CV23 8EX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr L Tomes against the decision of Rugby Borough Council.
 - The application Ref is R23/0090.
 - The development proposed is the conversion of an agricultural building to 4 no. dwellinghouses.
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of an agricultural building to 4 no. dwellinghouses at Merlin Field Farm, Gibraltar Lane, Leamington Hastings, Warwickshire CV23 8EX in accordance with the terms of the application, Ref R23/0090, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published. This has not raised any new matters which are determinative to the outcome of this appeal.
3. The site has been subject to a previous appeal decision¹ which was dismissed, for a similar development to that currently proposed. I have taken the previous Inspector's findings into account in my decision. Nonetheless I have reached my own findings based on the circumstances of the present case.

Main Issues

4. The main issues are whether the proposed development would provide a suitable location for housing, having regard to policies in the Rugby Local Plan 2011-2031 (LP) and the Framework; and whether there are any other material considerations that would weigh in favour of the proposal.

Reasons

Location

5. The appeal site comprises a steel portal framed agricultural building, access to which is via a gated access from the highway. It is in a rural, but not isolated location, being opposite an existing dwelling.

¹ APP/E3715/W/22/3296706

6. Policy GP1 of the LP sets out the presumption in favour of sustainable development, that improves the economic, social and environmental conditions in the area. LP Policy GP2 sets out the Council's spatial strategy for the location of new development in the Borough. The settlement hierarchy directs new development to Rugby town, which is the focus for all new development. Development will also be permitted on sites within the existing boundaries and on allocated sites within the Main Rural Settlements and within existing boundaries in Rural Villages. Policy GP2 indicates that new development in the countryside will be resisted unless supported by national policy. The supporting text highlights that development away from defined settlements is unlikely to meet all the elements of sustainable development, including access to services.
7. Policy GP3 of the LP supports the conversion of existing buildings in rural areas where specific criteria are met, including that the location of the building makes it suitable for re-use or adaptation.
8. The appeal site is located beyond a settlement boundary in an area of open countryside. It is some distance from the nearest settlement, Broadwell, where there are only limited facilities in any case, or any other services or facilities in the locality, including bus stops. Moreover, access by foot to Broadwell would necessitate walking along rural lanes devoid of pavements and streetlights. Accordingly, future occupants of the development would, in my view, be highly reliant on the use of private vehicles for meeting their day-to-day needs. The proposal would therefore lead to additional traffic movements and the associated effects as a consequence of an increase in vehicular emissions.
9. I therefore conclude that the site would not provide a suitable location for housing as it would conflict with the Council's spatial strategy and settlement hierarchy that establish the location of new development. Accordingly, it would be contrary to Policies GP1, GP2 and GP3 of the LP and the aims of the Framework with regards to achieving sustainable development and managing patterns of growth in terms of promoting sustainable transport.
10. The refusal reason also refers to Policy SDC1 of the LP, which requires development to demonstrate high quality, inclusive and sustainable design and to ensure that the living conditions of existing and future occupiers are safeguarded. However, there is no substantive evidence that the proposal would have any tangible effects in terms of pressure on the existing amenities in the locality, as such it has not been shown that planning harm would arise in that regard.

Material considerations

11. The Council has confirmed it is able to demonstrate a five-year supply of deliverable housing sites, therefore the benefits arising from the development through the provision of additional housing in the borough would be limited.
12. The site benefits from an extant prior approval under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for the change of use of an existing agricultural building to 4 dwellinghouses and associated building works² (PA) granted on 28 November 2022. A condition of Class Q requires the work to be completed

² LPA ref R22/1021

within 3 years of the prior approval date, it is therefore still reasonably capable of being implemented within the prescribed time.

13. The appellant asserts that their efforts and investment to date in securing the relevant permission indicates a commitment to carrying out the conversion and confirms that the new dwellings would be provided irrespective of my decision. There is nothing before me to suggest otherwise. Consequently, there is a real prospect of the development taking place and the PA scheme is therefore a realistic fallback position which is a material consideration.
14. Aside from the inclusion of the access and land to the front of the building within the site, the appeal scheme is the same as the PA development. The dwellings would include ground floor accommodation only and would be the same layout and size, with the same number of bedrooms and parking spaces. As such, the proposal would have an identical occupancy capacity and subsequent impacts in terms of the number of journeys by private car generated by the development.
15. The PA scheme would require the completion of the development in a specific timeframe, whereas in the case of an express planning permission, the precise time of delivery cannot be guaranteed. Nevertheless, the planning harms identified in respect of the location of the site would ultimately be the same in the case of both developments.
16. The effects of the proposed development would therefore be almost identical to the extant PA scheme. Furthermore, as there is a real prospect it would be implemented, the fallback position attracts significant weight which would outweigh the harm identified in terms of the location of the development.

Conditions

17. I have considered the conditions put forward by the Council in light of the requirements of the Planning Practice Guidance (PPG) and the Framework. Where I agree the conditions are necessary, I have amended the wording, in the interests of precision and clarity, and to comply with advice in the PPG. In addition to the standard timescale condition, I have imposed a condition specifying the relevant plans to provide certainty. A separate external materials condition is not required as these details are indicated on the drawings.
18. Conditions to secure details of a refuse collection area, lighting, the provision of parking spaces and visibility splays at the access to the site are necessary in the interests of the visual character of the area and highway safety.
19. A condition regarding contamination is necessary to ensure a safe development for construction workers and future occupiers of the development. This condition is required to be a pre-commencement condition as it is fundamental to have the information prior to any works being carried out on site.
20. The Council has suggested a condition to remove permitted development rights under Classes A to F of Part 1 of Schedule 2 of the GPDO. The Framework advises that conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Whilst the dwellings under the extant PA scheme, if implemented, would not benefit from permitted development rights, I have not been presented with any compelling evidence that the site circumstances are such to justify the removal of these permitted development rights or that harm would arise to the living conditions

of future occupiers or the character and appearance of the area in the absence of the condition. I have therefore not imposed this condition.

Conclusion

21. The proposal would be contrary to development plan policies which relate to the location of new development. However, the significant weight to be afforded to the fallback position in this case is sufficient to justify granting planning permission that would be contrary to the development plan.
22. I therefore conclude that the appeal should be allowed, subject to conditions.

E Worley

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: Site Location Plan dwg no. 2108-02E and Proposed Floor Plan Layout & Elevations dwg no. 2108-01F.
- 3) No above ground development shall commence until full details of the siting, design and materials of a roadside bin collection area have been submitted to and approved in writing by the local planning authority. The bin collection area shall be provided, in accordance with the approved details, prior to first occupation of any of the dwellings hereby approved and shall be retained thereafter in perpetuity.
- 4) No development other than that required to be carried out as part of an approved scheme of remediation shall commence until conditions (a) to (d) below have been complied with. If unexpected contamination is found after development has begun, development shall be halted on that part of the site affected by the unexpected contamination to the extent specified in writing by the local planning authority until condition (d) below has been complied with in relation to that contamination.
 - (a) An investigation and risk assessment shall be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme shall be subject to approval in writing by the local planning authority. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be produced. The written report shall be subject to approval in writing by the local planning authority. The report of the findings shall include:
 - (i) a survey of the extent, scale and nature of contamination;
 - (ii) an assessment of the potential risks to human health, existing or proposed property and buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments; and
 - (iii) an appraisal of remedial options, and proposal of the preferred option(s) to be conducted in accordance with UK Government and the Environment Agency's Land Contamination Risk Management (LCRM) 8th October 2020.
 - (b) A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be prepared and subject to approval in writing by the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site will not

qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

- (c) The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The local planning authority shall be given two weeks' written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be prepared and subject to approval in writing by the local planning authority.
 - (d) In the event that contamination is found at any time when carrying out the development hereby permitted that was not previously identified it shall be reported in writing immediately to the local planning authority. An investigation and risk assessment shall be undertaken in accordance with the requirements of condition (a) and where remediation is necessary a remediation scheme shall be prepared in accordance with the requirements of condition (b) which shall be subject to approval in writing by the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared, which shall be subject to approval in writing by the local planning authority in accordance with condition (c).
- 5) The car parking spaces shown on the approved drawing reference 2108-01F shall be provided prior to first occupation of any of the dwellings hereby approved. The spaces shall be retained permanently thereafter for the parking of vehicles and shall not be used for any other purpose.
 - 6) The development shall not be occupied until visibility splays have been provided to the vehicular access to the site with an 'x' distance of 2.4 metres and 'y' distances of 160 metres to the near edge of the public highway carriageway. No structure, tree or shrub shall be erected, planted, or retained within the splays exceeding, or likely to exceed at maturity, a height of 0.6 metres above the level of the public highway carriageway.
 - 7) Prior to the installation of any external lighting on the site full details of the type, design and location of the lighting shall be submitted to and approved in writing by the local planning authority. Only the approved lighting shall be installed.

*******end of conditions*******