



Appeal Decision

Site visit made on 14 May 2024

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2024

Appeal Ref: APP/R3705/W/23/3335027

Land South of Wood Barn Farm, Coleshill Road, Ansley

- 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 Green against the decision of North Warwickshire Borough Council.
- The application Ref is PAP/2023/0120.
- The development proposed is the erection of replacement dwelling for Alltons Cottage.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The address in the banner heading above is taken from the Council's decision notice as it more accurately describes the location of the appeal site.

Main Issues

3. The main issues in relation to this appeal are;
 - i) Whether the site is in a suitable location for housing development having regard to the development plan;
 - ii) The effect of the proposal on the character and appearance of the landscape area; and
 - iii) Whether the proposed development is of an appropriate density.

Reasons

Suitable Location

4. Policy LP2 of the North Warwickshire Local Plan (LP) 2021, defines the borough's settlement hierarchy directing the majority of development towards its market towns and other defined settlements, with little development supported within the countryside.
5. The appeal site is located within the countryside such that it falls under category 5 'all other locations' of Policy LP2. It sets out that special circumstances should exist to justify new isolated homes in the countryside, noting examples of those that meet rural workers' needs, the optimal use of a heritage asset, the re-use of redundant buildings, the subdivision of an existing residential dwelling, or development of exceptional quality or innovative design, or for rural exception sites in line with national policy. In this respect, the wording of the policy generally reflects that of paragraph 84 of the Framework

which seeks to avoid the development of isolated homes in the countryside unless it meets a specified exception.

6. The appeal site is surrounded by agricultural land and thus does not form a cluster with any existing buildings, nor is it located within a settlement. Although the description of development suggests that the proposal is for a replacement dwelling there is no existing dwelling in situ on the appeal site. The proposal therefore amounts to the erection of an open market dwelling on a vacant plot of land. It does not meet any of the suggested exceptions set out within Policy LP2 and I find that in respect of paragraph 84 of the Framework the appeal site would be isolated.
7. The appellant asserts that the appeal site constitutes previously developed land (PDL). PDL is defined by the Framework as land that was occupied by a permanent structure including the curtilage of the developed land and any associated fixed surface infrastructure. The Council suggests that until recently the remains of a former dwelling on the site had blended into the landscape such that the appeal site could not be considered to be PDL.
8. Be that as it may, the clearing of vegetation has revealed the foundations of a former dwelling such that I am satisfied that the land can be considered to be PDL. In this regard my findings are consistent with those set out in appeal decision APP/R3705/W/20/3258573. PDL is distinct from determining a particular use of land and therefore my findings in respect of PDL do not infer acceptance of any particular use for the appeal site. I will return to this matter later in my decision.
9. Although the Framework encourages the use of PDL, it does so where suitable opportunities exist. In this case, the appeal site is not in a location that fits with the Council's spatial strategy for new development. Consequently, I find that the proposal would be in conflict with Policy LP2 of the LP as set out above, and the Framework with regard to rural housing.

Character and Appearance

10. The appeal site consists of a parcel of land contained by hedgerows adjacent to the B4114. The appeal site is located within the 'Church End to Corley-Arden Hills and Valleys' Landscape Character Area, as defined in the Council's Landscape Character Assessment (LCA) 2010. The LCA identifies the need to conserve and restore the typical rural 'Arden' landscape of this area, recommending that new developments should maintain the predominant historic dispersed settlement pattern of hamlets and scattered farmsteads.
11. I observed that there is sporadic development within the vicinity of the appeal site that has occurred organically over time. However, the overwhelming character is of wide-open rolling countryside contained by verdant hedgerows and trees. As a vacant plot free from buildings, the appeal site contributes positively to the undeveloped rural landscape.
12. Notwithstanding that the design of the proposed dwelling is not in dispute,¹ as a 2-storey building, its scale would be appreciable in public views along the main road, particularly across the access to Wood Barn Farm when travelling in a south-westerly direction. It would also be visible in localised views, above the existing boundary hedgerows as well as those proposed to the north-eastern

¹ The Council accepts that the design is acceptable within its officer report.

corner. Being visually and spatially detached from any other built form, the proposal would result in an intrusive form of development that would harmfully introduce a greater degree of urbanisation including car parking and domestic paraphernalia that is not characteristic of this location. It would therefore detract from the positive contribution the appeal site makes to the rural landscape. It would neither conserve the open landscape character, nor maintain the dispersed settlement pattern as required by the LCA, instead resulting in further sporadic development that would erode the openness of the countryside.

13. For the reasons given above, the proposed development would have an adverse effect on the landscape character of the area, contrary to Policies LP1, LP14 and LP30 of the LP. These policies require proposals to be consistent with the approach to place making including to conserve, enhance and where appropriate restore landscape character, objectives shared by the LCA.

Density of Development

14. Policy LP7 of the LP expects housing development to be built at a net density of no less than 30 dwellings per hectare to ensure an efficient use of land. Sites within a countryside location are not precluded from this requirement and indeed, a higher density is specified for development within town centre locations. Notwithstanding the suggested residential use of the appeal site and the countryside location, undisputed by the appellant, the Council suggests the proposed development would result in a density of 10dph² including accounting for biodiversity enhancement. It would therefore be a substantial shortfall from the LP requirement. There is no compelling evidence before me that such a low density would be appropriate in this instance, even in a countryside location.
15. The proposal would not provide for an appropriate density of development. Consequently, it would be contrary to Policy LP7 of the LP as set out above.

Other Matters

16. Historic maps indicate that a dwelling existed on this site for many years³. However, it was knocked down following a demolition order issued by the Council on 19th January 1978. I observed that only remnants of the footings of the former dwelling remain, the wider site consisting of mown grass.
17. The appellant makes the case that the residential use of the site has not been abandoned despite it being over 46 years since a dwelling existed, due to the ongoing maintenance of the land, the lack of an intervening use and the intention of the subsequent owners to pursue an application for a replacement dwelling⁴. However, limited evidence is provided to explain how the land has been maintained and importantly, how it has been used for residential purposes since the earlier demolition. Likewise, the evidence with regard to the intention to continue a residential use is vague, with reference to 3 planning refusals and a dismissed appeal that related to the erection of an agricultural rather than replacement dwelling, made over 40 years ago⁵. It is also noted

² As cited by the Council in its officer report.

³ As found within appendix A of the appellant's statement of case.

⁴ As set out in Section 4 Planning History of the appellant's statement of case.

⁵ Planning application references NW79/0488, NW79/1762, NW81/1636 and appeal reference APP/5395/A/82/04414.

that the appellant refers to the appeal site in the appeal documentation as a paddock,⁶ a term which usually connotes a small field where animals are kept.

18. The determination of whether the original use has been abandoned is complex as indicated by the number of relevant judgements made regarding this matter⁷. It is not for me as part of this S78 appeal to determine the lawful use of the land. It is a matter of fact that there is no longer a dwelling on the appeal site and moreover, there is no certificate of existing lawful use or development (CLEUD) before me to confirm whether the residential use remains extant.
19. Even if I could accept the appellant's position that the residential use of the land had not been abandoned, there is no reasonable expectation that permission would be granted for a new dwelling on the site. Planning law dictates that proposals must be determined in accordance with the development plan in effect at the time of decision-making, unless material considerations indicate otherwise. I have found the proposal fails to comply with the development plan and I cannot be satisfied on the evidence before me that the use of the appeal site remains residential, such that it would form a material consideration sufficient to outweigh the harm identified.
20. The appellant refers me to an appeal decision for a site within a different local authority area⁸. That appeal related to the refusal of the Council to grant a certificate of lawful use or development (LDC) for the residential use of land. That is a different type of application and appeal to that before me such that it is not wholly comparable. Evidence included a statutory declaration and an extensive planning history of attempts to gain planning permission such that the Inspector concluded that on the balance of probabilities the residential use of the land had not been abandoned. The previous appeal does not affect my findings.
21. Letters of support provided relate to a previous proposal for an agricultural worker dwelling, with one of them dating from 1982. Even if I could consider them relevant to the proposal before me, support for a proposal does not equate to a lack of harm. It is neutral in the planning balance, weighing neither for, nor against the proposal.

Conclusion

22. The proposal conflicts with the development plan when considered as a whole and there are no material considerations presented of sufficient weight to indicate that the decision should be made otherwise than in accordance with it. Accordingly, the appeal is dismissed.

M Clowes

INSPECTOR

⁶ Section 3 of the appellant's design & access statement and section 3 of the appellant's statement of case.

⁷ *Panton and Farmer v SSETR & Vale of White Horse DC* EWHC Admin 1138 [1999], *Hughes v SSETR and South Holland DC* (2000) EWCA Civ 506, *Trustees of Castell-y-Mynach Estate v SoS* 10/7/85 JPL 40.

⁸ Appeal reference APP/C3810/X/15/3035706.