



Appeal Decision

Site visit made on 17 June 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th June 2024

Appeal Ref: APP/K3415/W/23/3329369

**Portway Farm, Portway Lane, Harlaston, Nr Tamworth, Staffordshire
B79 9LA**

- 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 Portway Farm Estate against the decision of Lichfield District Council.
 - The application Ref is 23/00568/FUL.
 - The development proposed is the erection of commercial building (Use Class E) to replace existing Dutch barn, erection of new building to form dog day care facility, and creation of additional car parking (Amendments to Application 20/01006/FUL).
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal would be within a suitable location having regard to local and national policies, and
 - The effect of the proposed development on highway safety.

Reasons

Suitability of location

3. The Lichfield District Local Plan [2015] (LP) establishes the Council's approach to the distribution of development across the district. LP Core Policies 3 and 5 and ST1 describe the Plan's spatial strategy for the delivery of sustainable development. LP Core Policy 3 seeks development that contributes to the creation and maintenance of sustainable communities through meeting a series of criteria. These include seeking development that promotes social cohesion and inclusion, provides access for the community to employment opportunities, and for development to be of a scale and nature appropriate for its locality.
4. LP Core Policy 5 relates to sustainable travel. This requires development to be well served by an attractive choice of transport modes, including public transport, footpath and cycle routes and to reduce the need to travel. Moreover, LP policy ST1 with respect to sustainable travel, requires development that that serves a large number of people to be located where it is accessible by non-car means of transport.

5. The appeal site is outside the settlement of Harlaston, beyond its development boundary and within the countryside for policy purposes. LP policy NR1, with respect to countryside management, recognises the important economic role of the countryside and supports development that would assist in the delivery of diverse and sustainable farming enterprise. The policy also supports countryside-based enterprise, including those that promote the recreation and enjoyment of the countryside. The policy explains that 'countryside-based enterprise' would include forestry, horticulture, fishing, equestrian activities and crops for energy generation. This is not a closed list but clearly describes activities that have a strong relationship with the countryside. The associated commentary explains that new development in the countryside will be strictly controlled.
6. The Council's Rural Development SPD [2015] identifies the key economic drivers affecting rural areas which include farm diversification, conversion of rural buildings and home working. This SPD supports the reuse of rural buildings and states that conversions, among other matters, should not require extensive alteration or extension.
7. The proposed development seeks to erect two buildings as a revision to a previously approved scheme. The dog care facility would be relatively small-scale. Being within a rural location, and having access to an adjacent field, the facility would provide suitable outdoor space for dogs to be exercised. The building would include a first floor that would be set partly within the pitched roof space, providing a staff room and a support office. This building would be similar to the rural vernacular of existing farm buildings on site and would complement the character and appearance of the area. This element of the scheme would be of an acceptable scale and would support rural enterprise. It would therefore be within an acceptable location.
8. The proposed commercial building would provide a farm shop of around 160sqm at ground floor with separate office space above. The farm shop would consist of a restaurant (including kitchen, store and dining area) of around 75sqm, a retail area (including store) of 85sqm and toilets of about 30sqm. The office area would be around 100sqm with ancillary space adding a staff room and toilet area. There is no dispute between parties that the office provision, at first floor, would be small-scale and is supported by the Council in providing small startup space that would encourage rural enterprise.
9. Nonetheless, the Framework seeks to locate retail and leisure activities in town centres where these can promote a town's vitality and viability. Paragraph 91, of the Framework requires main town centre uses (including retail) to be in town centres, then in edge of centres and only if suitable sites are not available, out of centre sites should be considered. Paragraph 95 states that where an application fails to satisfy this sequential test, it should be refused.
10. Paragraph 92, of the Framework, states that the sequential approach should not be applied to applications for small scale rural offices or other small scale rural development. Small-scale is not defined in the Framework and such assessment is therefore a matter of planning judgement. The retail/restaurant unit would occupy a relatively large floorspace that would act as a key driver of business activity on site. Further, the evidence for the retail/restaurant element of the scheme does not demonstrate a clear link to local rural businesses. Therefore, it would not serve as a 'countryside-based enterprise', that would be

sought by LP policy NR1. This use would be likely to act as a destination in its own right, irrespective of the other services available on site and would not therefore comply with the Council's countryside related policies.

11. Accordingly, due to the size of the restaurant and retail unit and being for retail use, the retail space would be too large to be considered as a small-scale rural development. Therefore, the sequential test should be applied. The Appellant has not adequately justified the proposed restaurant and retail area in an out-of-centre location. The Appellant refers to retail units, operating as farm shops, in the local area but has included insufficient detail for me to be satisfied that these are comparable developments. Also, the retail/restaurant part of the scheme would not contribute towards the delivery of a diverse and sustainable farming enterprise or be of a scale and nature appropriate for its locality.
12. Furthermore, paragraph 92 of the Framework explains that when considering out of centre sites, preference should be given to accessible sites which are well connected to the town centre. The site is remote from other development, with local settlements being small villages only. As such, customers and staff would be highly reliant on private cars to gain access to the site.
13. Although the Framework acknowledges that transport solutions will vary between urban and rural areas, the remote nature of the site would place substantial emphasis on the use of private vehicles for access. It is noted that residents living in the area are already reliant on the private car to access day-to-day services. However, the proposed development would be unlikely to operate purely based on passing or local trade and would be likely to attract a significant number of new visitors to the area.
14. The proposed retail unit would not be associated with a working farm, as such all the items for sale would need to be delivered to the site. As a result, it has not been shown that the proposed use would assist in the delivery of diverse and sustainable farming enterprise or the diversification of an existing farm holding. The evidence has therefore not demonstrated why a restaurant and retail use would be suitable in this rural location or would be considered as a small-scale rural development.
15. Consequently, the site is not considered to be a suitable location for the proposed scale of commercial development. As a result, the proposal would conflict with LP Core Policies 3, 5 and LP policies NR1 and ST1, the Council's Rural Development SPD [2015] and the Framework with respect to the suitability of the location. These seek, among other matters, for development to contribute towards sustainable communities, be of a scale and kind appropriate to its locality and to reduce the need to travel by focussing development on the most accessible settlements.

Highway matters

16. The proposed scheme would create a new two-storey building for commercial use, replacing the existing Dutch barn and a smaller two-storey building as a dog grooming facility. These would be served by 44 parking spaces and include 40 employees. The proposal includes a relatively large farm shop and cafe that would also attract a sizeable number of customers and delivery vehicles.
17. The appeal site is within the open countryside and consists of a range of former farm buildings and farmhouse. The nearest settlement, Harlaston, is around

1.4kms to the north, with Wigginton being further away to the south. Portway Lane is subject to the national speed limit and does not benefit from footways or streetlights. As a result, pedestrians would have to walk along the side of the highway.

18. The appeal has not been supported by any trip generation assessment, but it is apparent that most journeys to the site would be made by private vehicle. The access provides clear visibility in both directions and Portway Lane is marked as a suitable route for cyclists on the County Council's Advisory Cycle Route Map. Also, Portway Lane has not been subject to any Personal Injury Collisions within 215 metres of the site's access. The site is also within 5km of the two closest settlements for cycling, considered to be a reasonable cycling distance. However, the nearby villages are small and would be unlikely to be the origin for most customers or staff accessing the proposed development. Furthermore, the route to the site uses country lanes that are narrow in places with sharp bends and would be hazardous for cyclists and pedestrians in inclement weather or in the hours of darkness.
19. Accordingly, the site is not readily accessible by means other than the private car. As a result, whilst not especially dangerous to pedestrians and cyclists on a clear sunny day, local roads would present an unsafe and impractical alternative method for staff or customers to access the site instead of with a private car. Furthermore, any pedestrians or cyclists attending the site would be vulnerable to risk of accident in the highway due to the site's countryside context, a concern shared by the Highway Authority. The proposed retail and restaurant unit would be distant from an established centre, preventing customers from undertaking joined up travel movements, or to benefit from access by public transport.
20. Consequently, the site would be poorly located to encourage access other than by the private car. The proposed development would pose a risk to pedestrians and cyclists attending the site due to the distance from nearby settlements, and due to an absence of streetlights and footways. Accordingly, the proposal would not function well, would affect highway safety and would conflict with LP Core Policy 5, LP policy ST1 and the Framework with respect to highway safety matters. These require, *inter alia*, for development to improve road safety and be compatible with the transport infrastructure, taking into account highway safety.

Other Matters

21. The proposed retail/office building includes electric vehicle charging points and photovoltaic panels. These measures are supported by the Framework which seeks to reduce carbon emissions and encourages the transition to low carbon environment. Nonetheless, these could be equally applied to the approved scheme with similar benefits, attracting limited weight only.
22. The proposal consists of development of good design that would complement the character and appearance of the area. However, an absence of harm in this respect can only be considered as a neutral factor in the planning balance.
23. The proposed retail use may provide day-to-day goods for local people to address a local absence of such facilities. However, such provision may not be included in products sold by the retail unit. Also, it is asserted by the Appellant that local people attending the unit would only be travelling a short distance.

However, there can be no certainty that customers would only be from the local area. As such, the potential benefit of the retail unit to local people can only be afforded limited weight.

Fallback 1

24. The site is subject to planning permission¹ in 2021 for the Conversion of a barn to offices (B1 use), for the alteration and conversion of a garage to offices (B1 use), the erection of an office building (B1 use) to replace existing Dutch Barn, the erection of a new building, the change of use of land to form dog day care facility, and the creation of new vehicular access and associated parking. Parts of this approval have been implemented such as the barn and garage conversion to offices. The replacement of the Dutch barn with a single-storey new office building has not been commenced. The new building, for a dog day care facility, has been partially completed with around 2 metre high walls erected. It seems, without evidence to the contrary, that the extant approval would be likely to be completed if no further permissions were given.
25. Nonetheless, the proposed Dutch barn replacement building would be substantially larger than the previously approved building, it would have a greater footprint and would be two-storey, with a ground and first floor of around 190sqm and 100sqm respectively. The proposed building would include retail/restaurant and toilet areas at ground floor and office above, as opposed to the approved single-storey office building of around 185sqm. The proposed dog day care building would have a similar sized footprint, but an additional floor to the approved version, resulting in an increased mass. Also, the increase in car parking would add a further 12 spaces, from the approved 32 spaces, creating a new total of 44 parking spaces.
26. The evidence demonstrates that the office element was approved on the basis that it was small-scale and would support rural start-up businesses, providing specialist services in the countryside. Conversely, the proposed restaurant and retail elements of the scheme would not be intrinsically linked to the local rural economy in a similar manner and cannot be directly compared to the benefits of the extant office use.
27. The previous scheme was approved with B1a office use, the planning permission did not include a condition that restricted the approval to office use only. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into effect on 1 September 2020, this created the Class E use class. This class includes commercial, business and service uses that broadly cover uses previously defined by classes including A1 (retail) use and B1a (office) use. This may allow for the approved office use to change to retail use, and therefore for the Appellant to rely on permitted development rights as a fallback. However, this presents only a potential alternative use for the extant permission and no Certificate of Lawfulness of Existing Use or Development has been submitted to confirm such an option exists.
28. In any event, whilst the site has the potential to incorporate a level of retail activity, the proposed development would result in a substantially greater intensity of commercial development than previously approved. Therefore, whilst the extant scheme could be fully implemented, the fallback position would have a reduced effect on the Council's spatial policies than the proposed

¹ Planning Application Reference: 20/01006/FUL

scheme in terms of the quantum of commercial space in an out-of-centre location. As the extant scheme would not lead to more harmful effects than the proposed scheme, I have only afforded modest weight to this fallback position.

Fallback 2

29. Planning permission was granted² in 2018 for the change of use of the barn, on the western boundary, to a shop with a combined sales area of around 88 sqm. The Council identified that economic growth in rural areas was supported by the LP Core Policy 7, the Framework and the Council's Rural Development SPD. In finding the scheme to be small-scale the Council was content that the proposal did not need to comply with the Framework's sequential test in first favouring town centres for new retail activity. Furthermore, the scheme was supported as it sought to convert an existing building. Although noted that the Council did not identify shortcomings in that the retail use did not contribute to farm diversification, the context of that decision was substantially different to the retail space now proposed.
30. This consent has now expired, and the barn has since been converted instead to offices. As such, I have afforded limited weight to this previous approved decision which was in any event for a smaller quantum of retail development.

Planning balance and conclusion

31. The LP, at Core Policy 7, supports the economic development and diversification of the rural economy. The Framework also provides significant weight to development that supports economic growth and productivity.
32. The proposal would generate commercial development that would support the local rural economy and employ around 40 people. However, the extant consent would also create a large proportion of the identified economic benefits, reducing the overall weight that I can ascribe to the economic benefits of the proposed scheme to being modest only.
33. Other benefits, including the provision of photovoltaic panels and the potential for the retail element to provide for the day-to-day needs of local people provide further, albeit limited, weight in support of the scheme. The fallback of the scheme approved in 2021 has been ascribed modest weight only.
34. In contrast, the proposal would include a large retail and restaurant element in an out-of-centre location. It has not been demonstrated why this should be located in the countryside as it would not deliver sustainable growth or the expansion of a business in a rural area. As such, the proposal would conflict with the Council's spatial strategy and the development plan as a whole. As a result, the economic benefits of the proposal and fallback position do not outweigh the identified conflict.
35. For the above reasons, the appeal is dismissed.

Ben Plenty

INSPECTOR

² Planning Application Reference: 18/1093/COU