



Appeal Decision

Site visit made on 11 April 2024

by R Lawrence MRTPI, BSc (Hons), PGDip (TP)

an Inspector appointed by the Secretary of State

Decision date:

Appeal Ref: APP/L1765/W/23/3331039

The Hen House, Shepherds Lane, Compton, Winchester SO21 2AB

- 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 G Darrock against the decision of Winchester City Council.
 - The application Ref is 23/01064/FUL.
 - The development proposed is Change of Use of Agricultural Land to Residential Garden Land.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published on 19 December and updated on 20 December 2023. The main parties have had the opportunity to comment on the revised Framework in respect of the appeal, and I have determined the appeal in light of the updated Framework.

Main Issues

3. The main issues are:
 - whether there is an operational need for the proposed use to be located in the countryside, and
 - the effect of the proposed use on the character and appearance of the countryside.

Reasons

Location of development

4. The appeal site lies outside of the built-up areas and settlements identified within the Local Plan, within the countryside. The site is laid to grass and has the appearance of a paddock. The site's immediate surroundings include a small number of residential dwellings, these are of a modest scale and are separated by green, open spaces. These factors result in a very low density of development.
5. The tranquillity of the site and its surroundings is limited by a nearby motorway and a school, both of which are audible from the site. Nonetheless, mature vegetation separates the site from these uses and as such, the above

- characteristics contribute to a strong open rural setting, consistent with its countryside location.
6. Policy MTRA4 of Winchester District Local Plan Part 1 – Joint Core Strategy 2013 (LPP1) states that in the countryside, the Local Planning Authority will only permit four types of development. The latter three bullet points refer to the reuse or redevelopment of rural buildings or small-scale sites for tourist accommodation and are not relevant to the appeal scheme. The first bullet point refers to development which has an operational need for a countryside location, such as agriculture, horticulture or forestry. Residential gardens are not one of those uses.
 7. The subtext to Policy MTRA4 states that development which has an operational need for a countryside location, could include ‘certain types of open recreational uses’. This subtext does not form part of the policy itself, although it does indicate that development with an operational need is not limited to the three uses outlined above. However, as the proposal would be an enclosed private garden, it would not meet the definition of an open recreational use.
 8. The proposed garden would provide an extended amenity space to serve the Hen House. The appellant contends that there is an operational need for the garden space to be located in the countryside, in order for it to provide additional amenity space for the occupiers of an existing dwelling.
 9. The existing host property, the Hen House, was granted prior approval under Class Q of the General Permitted Development Order. The limitations of Class Q would confine amenity space to the curtilage land of the existing building, and I accept that the external amenity space originally approved is limited. However, the space meets a functional need as there is sufficient area to accommodate garden furniture, for sitting out, hanging washing, some of the typical activities that a private garden could be expected to accommodate. It therefore follows, that whilst a larger residential garden may be desirable, this does not amount to an operational need.
 10. My attention has been drawn to several examples where the change of use of land to residential garden land has been deemed acceptable by the Council. This includes the nearby Windrush Cottage. The cases referenced are for buildings as well as the change of use of land, and as such are fundamentally different proposals to that before me. In any event, the detail provided, in those cases, as to how the change of use of land to residential curtilage has been assessed against policy MTRA4 is very limited. Furthermore, each case must be assessed on its own merits, a matter which is emphasised in each of the examples provided. These examples do not therefore alter my findings in terms of compliance, or the lack of, with policy MTRA4.
 11. The provision of an extended garden space does not fall within any of the exceptions listed, and there is no substantive evidence that there is an operational need for it. Accordingly, the proposal would represent a use that would undermine the Council’s strategic land use aims.
 12. Given the above, there is no operational need for the change of use to be located in the countryside, and the proposal would conflict with Policy MTRA4.

Character and appearance

13. The proposal for an extended residential garden, although not including any operational development, would undoubtedly lead to a more formal grassed area which is mown, together with formal planting. Furthermore, the proposed use would likely lead to additional residential paraphernalia such as seating and play equipment. In addition, there would be a likely expectation for privacy and security within the residential garden, thereby giving a high likelihood of more formal boundary treatments.
14. The above works would domesticate and formalise the agricultural land. There would also be a clear sense of enclosure due to the shape of the land and the alignment of the site's boundaries. These effects would both detract from the semi-rural open character which currently exists.
15. Although public vantage points of the site are limited by existing mature planting, this is fairly typical of rural countryside locations. The lack of a site's prominence from public roads, footpaths or bridleways is not the only consideration. The site would be visible from the small number of neighbouring residents, situated in close proximity to the site. As such, some limited views do still exist, and a lack of views does not overcome the above harm to the character of the area.
16. Whilst enclosures could be controlled in favour of hedging along the boundaries through a condition, it would be unreasonable to control residential paraphernalia as those elements are unlikely to be fixed. Furthermore, the use of hedging would still result in a more formal boundary treatment than currently exists. It has been suggested that a condition could be attached to restrict permitted development rights for works such as outbuildings. Such a condition would not be reasonable given the level of restriction this would pose upon the appellants use of their private garden.
17. I acknowledge that the proposed landscaping scheme represents sensitive boundary treatments and that the proposed planting has the potential to enhance the site's biodiversity. Nonetheless, this scheme would not preclude the proliferation of domestic paraphernalia, and such does not satisfy me that it would prevent visual harm to character of the countryside.
18. The size of the proposed garden is broadly comparable with those serving neighbouring properties, including those of Windrush and Woodlands. Nonetheless, the low density of development is a key characteristic to the area. The extended residential garden would slightly increase the density of development in this location, and in turn, would erode the rural, open character that exists.
19. For the above reasons, the change of use would be harmful to the character and appearance of the countryside. The proposal therefore conflicts with Policies DM15, DM16 and DM23 of the Winchester District Local Plan Part 2, Development Management and Site Allocations 2017. These policies, insofar as relevant, require that development responds positively to the character, appearance and variety of the local environment and avoids an unacceptable effect on the rural character of the area. The proposal would also conflict with the requirements of the Framework at paragraph 180 which require the intrinsic character and beauty of the countryside to be recognised.

Other Matters

20. The aims of the Framework include enabling and supporting healthy lifestyles, especially where this would address identified local health and well-being needs. It has been submitted that the proposed change of use would facilitate a healthy lifestyle, and improved health and well-being. A larger space would undoubtedly provide increased opportunities for recreational activities and food production. However, there is no evidence before me that the existing limited garden area, together with the wider countryside within which the appeal site is located, would not be sufficient to meet the needs of the occupiers. As such, whilst a benefit to this scheme this does not outweigh the identified harm.
21. The proposed landscaping scheme has the potential to enhance the biodiversity value of the site. However, similar landscaping works could be undertaken without necessitating the change of use of the land to a residential garden, and as such this does not justify the identified harm. Given this, only limited weight can be attached to this as a benefit to the scheme and this does not outweigh the identified harm.
22. There is no evidence of the site being in, or close to, any fields in agricultural production. However, the absence of harm in terms of the loss of agricultural land is a neutral matter.
23. It is understood that the size of the proposed residential garden has been reduced from that subject of an earlier refusal by the Council. However, it does not follow that the current appeal scheme is therefore acceptable. I have assessed the appeal scheme on its own merits.
24. There are a number of letters from interested parties, indicating support for the scheme. The reasons given are explored elsewhere in this decision. Ultimately, whilst I note the views of interested parties, for the reasons set out above, I have come to a different view regarding the operational need for the development, and its effect upon the character and appearance of the countryside.

Conclusion

25. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.
26. For the reasons given above, the appeal should be dismissed.

R Lawrence

INSPECTOR