



Appeal Decision

Site visit made on 4 June 2024

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2024

Appeal Ref: APP/J3720/W/24/3337652

**Bungalow Farm Site, London Road, Kitebrook, Little Compton,
Warwickshire GL56 0PG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr & Mrs R Dunham against Stratford-on-Avon District Council.
 - The application Ref is 23/00199/FUL.
 - The development proposed is demolition of existing barns and removal of mobile home and erection of one self-build two-storey dwelling with attached double garage.
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Decision

1. The appeal is dismissed and planning permission for demolition of existing barns and removal of mobile home and erection of one self-build two-storey dwelling with attached double garage is refused.

Applications for costs

2. An application for costs was made by Mr & Mrs R Dunham against the decision of Stratford-on-Avon District Council. This application is the subject of a separate decision.

Main Issues

3. The Council has confirmed that if they had been in a position to determine the proposal, they would have recommended refusal of the application. In light of the putative reasons for refusal set out within the Council's statement, the main issues in this appeal are:
 - Whether the proposed development would be in a suitable location, having regard to the local development strategy; and
 - The effect of the proposed development on the character and appearance of the site and the surrounding area.

Reasons

Whether in a suitable location

4. The appeal site comprises agricultural land with a vehicular access to London Road. The site boundary intersects the footprint of an existing agricultural building. A further agricultural building and mobile home are situated to the immediate west of the site outside of the appeal site, but within land owned by the appellant.

5. The site is outside the built area of any settlement. In this location Policy AS10 of the Stratford-on-Avon District Core Strategy 2016 (CS) applies for the purpose of maintaining and enhancing the rural character of the district. Policy AS10 supports certain types of development in the countryside including, at criterion (f), the development of a replacement dwelling, with further criteria provided by CS Policy CS20.
6. Policy CS20 supports proposals for replacement dwellings where the existing dwelling is not considered suitable for retention and the existing dwelling has a lawful planning use as a dwelling. The mobile home has been in situ for more than ten years and a Lawful Development Certificate confirms a larger replacement mobile home would be lawful. No evidence has been provided to demonstrate the mobile home is unsuitable for retention.
7. Prior approval was granted in May 2022 for the change of use of the two agricultural buildings to dwellings. Conversion of the agricultural buildings has not commenced and could not reasonably be considered to comprise dwellings. Therefore, while the agricultural buildings benefit from planning permission, the change of use to dwellings has not occurred. Therefore, I do not consider that the proposal represents a replacement of an existing dwelling.
8. Even if I were to accept the proposed dwelling as a replacement of the agricultural buildings and mobile home, Policy CS20 requires the replacement dwelling be well-sited in relation to the existing site and buildings, not be visually intrusive, and not be significantly larger than the dwelling it replaces. In addition, Policy AS10(f) requires the scale and design not cause harm.
9. The existing agricultural buildings are single storey with an open front elevation and modest footprint. The existing mobile home has the typical appearance and proportions of a static home unit. Conversely, the proposed dwelling would be large, comprising two storeys with five-bedrooms with ensuite bathrooms, multiple reception rooms, roof terrace and attached double garage. The proposed dwelling would be significantly larger in height and floorspace than the existing units.
10. The proposed dwelling would be set back from the existing units, occupying undeveloped agricultural land and utilising a different vehicular access. The siting of the proposed dwelling would therefore appear unrelated and not well-sited in relation to the existing units.
11. The mobile home and agricultural buildings are sited principally outside the appeal site boundary but occupy land within the appellant's ownership and therefore I am satisfied the units are within the control of the appellant. It is suggested the removal of the mobile home and demolition of the agricultural buildings could be secured through a planning condition. However, I have not been provided with agreed wording for such a condition.
12. A condition for the removal of the agricultural buildings and mobile home would take effect only upon implementation of the proposal. It is unclear how such a condition would operate if the prior approval scheme were implemented prior to commencement of the appeal proposal. Furthermore, siting of a mobile home on the site may not constitute development and therefore it is uncertain whether the condition would prevent the mobile home from being re-sited after the development has commenced. Therefore, there is insufficient certainty that

the condition would prevent the implementation of the prior approval scheme and siting of a mobile home.

13. For these reasons, I do not consider the proposal would satisfy the criteria for a replacement dwelling. Policy AS10 states all other types of development will need to be fully justified, offer significant benefits to the local area and not be contrary to the overall development strategy for the district. Whilst I have considered the benefits of the scheme as other considerations, below, the proposed development would not be of a type supported in the countryside by Policy AS10 and would be contrary to the overall development strategy.
14. CS Policy CS1 requires development be located and designed so that it contributes towards the maintenance of sustainable communities within the district. The appeal site is located on the north side of the A44 London Road which has a national speed limit and no pedestrian footway, cycle infrastructure or streetlighting, and is distant from any settlement. CS Policy CS15 sets out a pattern of balanced dispersal which directs development toward the district's settlements to address a wide range of factors, including the need to travel. Due to the site's poor accessibility, future occupants of the site would be dependent on use of a car to access services and facilities.
15. Paragraph 83 of the National Planning Policy Framework (the Framework) promotes sustainable development in rural areas, indicating housing should be located where it will enhance or maintain the vitality of rural communities. However, the site is outside the built area of any settlement, and it is unclear how the site will contribute toward the vitality of any community.
16. Having regard to the local development strategy, the proposed development would not be in a suitable location. The proposal would conflict with CS Policies CS1 and CS15 which direct new development to a range of sustainable locations. In addition, the proposal would not comply with CS Policy AS10 which, in the interests of maintaining rural character, generally limits development in the countryside. However, since relevant policies do not make provision for self-build and custom housebuilding, I attach moderate negative weight to the proposal's conflict with the local development strategy.

Character and appearance

17. The site comprises part of an open field, and at the south-west corner of the site are the two modest-sized agricultural buildings positioned on either side of an unmade track between the public highway and a field gate. The mobile home is sited behind the agricultural buildings, and thus generally obscured from view from the access.
18. London Road is interspersed with occasional buildings. However, the surrounding area primarily consists of agricultural fields which, along with hedgerows and tree belts at verges and boundaries, provide a verdant character. Whilst the site is not within the Cotswold National Landscape, its undeveloped, vegetated, open appearance contributes positively to the rural character of the area.
19. The small cluster of existing buildings is somewhat enclosed, with a tree belt and fencing providing separation between the buildings and open fields. Conversely, the proposed dwelling would be set back from the highway and would straddle this boundary, encroaching into the open field. Its driveway with

fencing and planting, would bisect the field, leaving two small field parcels at the front and side of the dwelling. The siting of the proposed dwelling would therefore be insensitive to the open character and field structure of the surrounding landscape.

20. In addition, the proposal would introduce large areas of hardstanding, including a paved patio area, and the tarmac and gravel driveway and turning areas. The development would have an urbanising effect on the site and result in a loss of the site's open character.
21. The design incorporates features found in the local vernacular. However, the proposed dwelling would be a substantial two-storey dwelling. Whilst the existing mobile home and agricultural buildings would be removed, the proposal would introduce built form of significantly greater scale and bulk than the existing units to this predominantly undeveloped site.
22. The hedgerow along the highway verge and additional planting would aid in screening the proposed development from view from the highway. However, views into the site would remain from the site's vehicular access, from the existing field access and through gaps in the foliage. The extent of screening would be insufficient to mitigate the substantial scale of the dwelling and would fail to assimilate the development into the surrounding agricultural landscape.
23. For the reasons set out above, the proposal would harm the character and appearance of the site and surrounding area. The proposal would therefore conflict with CS Policies CS5 and CS9 which together seek to maintain landscape character and quality requiring proposals reflect local distinctiveness, protect landscape character and avoid detrimental effects on features which make a significant contribution to character.

Other considerations

Fallback Position

24. The appellant has indicated that there are material considerations, such as the fallback positions which comprise a lawful development certificate and prior approvals that have previously been granted by the Council.
25. The weight to be given to a fallback position is a matter of planning judgement. However, I have considered the Court of Appeal decision¹ which concluded that the clear desire of the landowner to develop and maximise the value of the site was sufficient to demonstrate that there was a real prospect to a fallback position. As such, I have had regard to the clear desire on the appellants part to redevelop the site in considering the weight to be given to the schemes which have already been given consent.
26. Considering the proposals to convert the two agricultural buildings into two 2-bedroom dwellings, it has not been demonstrated in the evidence before me that it would be the clear intention of the appellant to convert the outbuildings in the manner proposed should a scheme for their replacement not be forthcoming.
27. Even if I were to accept it as a realistic alternative, the converted buildings do not result in the same level of projection into an area that is currently largely

¹ Mansell v Tonbridge and Malling Borough Council 2017 EWCA Civ 1314

undeveloped. The greater extent of encroachment is more harmful than that of the permitted schemes. Therefore, I consider that the fallback position to convert the two existing buildings would not be significantly more harmful than the appeal scheme and therefore I have given it limited weight.

28. Considering whether the appeal proposal would result in a reduced intensity of development and traffic generation and therefore would be less harmful than the fallback position, there is uncertainty that the appeal proposal would prevent implementation of the permitted schemes. However, the fallback position would provide a greater quantum of development in this location than the appeal proposal.
29. It is reasonable to estimate the fallback position would generate more traffic than the appeal proposal, commensurate in scale with the net difference of two units. I have no evidence to suggest the fallback position would be harmful to highway safety. However, taking into account other harmful effects associated with traffic such as emissions and congestion, the lower traffic volume associated with the appeal proposal relative to the fallback position carries limited weight in its favour.
30. The fallback position was established through exercising permitted development rights and through confirming that an existing and proposed use is lawful for planning purposes. Such rights are provided by legislation and therefore cannot be in conflict with the local development strategy. The lesser number of units in this location is therefore neutral, weighing neither in favour nor against the appeal proposal.

Self-Build and Custom Housebuilding

31. The Self-Build and Custom Housebuilding Act 2015 as amended (SBCH Act) requires the Council establish and publicise a register of those who are seeking to acquire serviced plots of land in the authority's area for their own self-build and custom housebuilding (SBCH). Unless exempt, section 2A of the SBCH Act includes a duty requiring the Council give suitable development permission in respect of enough serviced plots of land to meet the demand for SBCH in the authority's area arising in each base period. The Council identifies a significant shortfall in supply for SBCH.
32. There is agreement between the parties that a planning condition could be imposed to secure the development only of a dwelling that meets the definition of SBCH. The appellant refers to other appeal decisions which indicate delivery of SBCH is capable of being a material consideration. I am content that the provision of one SBCH unit is a benefit of the scheme.
33. The Council has failed to comply with its duties under the SBCH Act resulting in a shortfall in supply. However, the appeal proposal would comprise one dwelling and therefore its contribution to meeting the shortfall in supply of SBCH would be small. Therefore, I attach moderate weight in favour of the appeal proposal.

Paragraph 11d of the Framework

34. The appellant contends that in the absence of a policy for SBCH, there are no relevant development plan policies and the provisions of paragraph 11d) of the Framework should be applied. The appellant cites an appeal decision for nine SBCH dwellings in Mid Suffolk where the Inspector reached this conclusion.

35. However, Policies CS1 and CS15 distribute housing growth to a range of settlements and sustainable locations. Similarly, the Framework indicates significant development should be focused on locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes, and states that in rural areas housing should be located where it will enhance or maintain the vitality of rural communities. In addition, Policies CS5 and CS9 seek to conserve and enhance landscape character, reflecting the provisions of the Framework which require decisions recognise the intrinsic character and beauty of the countryside. Therefore, policies relevant to the appeal are broadly consistent with the Framework.
36. Furthermore, Policy AS10 applies in this location and, whilst it does not make provision for SBCH, it requires all other types of development not covered by a specific policy to be fully justified, offer significant benefits to the local area and not be contrary to the overall development strategy for the district.
37. Consequently, in this circumstance I do not consider there to be no relevant development plan policies and therefore the provisions of paragraph 11d) of the Framework are not engaged.

Planning Balance

38. As set out above, the provision of one SBCH dwelling carries moderate weight in favour of the proposal, with the lower traffic volume relative to the fallback position carrying limited weight. However, the conflict with the development plan arising from the harm to landscape character carries significant weight against the proposal, even when the effects of the fallback position are taken into account. In addition, there would be moderate negative weight arising from the conflict with the local development strategy. Therefore, I find that the harm would outweigh the benefits in this instance.

Conclusion

39. For the reasons given above, having assessed the case against the development plan as a whole and having had regard to all other relevant material considerations, I conclude that the appeal should be dismissed, and planning permission be refused.

E Dade

INSPECTOR