



Appeal Decision

Site visit made on 26 June 2024

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 July 2024

Appeal Ref: APP/D3125/W/24/3336443

Drovers Barn, Church End, Swerford, Oxfordshire OX7 4BA

- 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 J Smith of Charlbury Building Co Ltd against the decision of West Oxfordshire District Council.
 - The application Ref is 23/01193/FUL.
 - The development proposed is the conversion of builder's yard storage building to dwellinghouse and associated alterations and operations.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are:
 - whether or not the appeal site is an appropriate location for the proposed development having regard to the development plan and national policies relating to development within a small village;
 - whether or not the proposed development would preserve or enhance the character or appearance of the Swerford Conservation Area, conserve the landscape and scenic beauty of the Cotswolds Area of Outstanding Natural Beauty (AONB) and would preserve the setting of listed and locally listed buildings; and
 - the effect of the proposed development on ecology with particular regard to great crested newts.

Reasons

Whether or not an appropriate location

4. It is common ground between the main parties that the appeal site is located within an area categorised in the settlement hierarchy as "small villages, hamlets and open countryside." Policy OS2 of the West Oxfordshire Local Plan 2031 (WOLP) adopted September 2018 sets out that in such an area development will be limited to that which requires and is appropriate for a rural

- location and respects the intrinsic character of the area and that proposal for residential development will be considered under Policy H2 of the WOLP.
5. Policy H2 of the WOLP sets out that new dwellings within an area categorised in the settlement hierarchy as "small villages, hamlets and open countryside" will be limited to certain types of development including the re-use of appropriate existing buildings. However, any proposal should not only lead to an enhancement of their immediate setting, but also it needs to be demonstrated that the building is not capable of re-use for business, recreational or community uses, tourist accommodation or visitor facilities or where the proposal will address a specific local housing need which would otherwise not be met.
 6. It has not been demonstrated that the current building is not capable of re-use for the specified activities. In fact, the appellant confirms, and I accept that the appeal property is in active use as a commercial storage facility to support the appellant's small construction firm. As a result, the appeal site does not meet any of the specific limited types of development set out in H2 of the WOLP and therefore relevant development plan policies do not support the introduction of a dwelling at the appeal site.
 7. Although the appeal site is located within the village, due to the lack of facilities and services in terms of the relevant development plan policies it falls within the same category as open countryside.
 8. Taking account of the available evidence and my own observations, Swerford has limited services and facilities and the appeal site is not located within a convenient walking distance of a bus stop that would provide access to more extensive services and facilities. As a result, given the location of the appeal site relative to services and facilities I consider that it is more likely than not that future occupiers of the proposed dwellings would be reliant on the private car.
 9. The appeal site would therefore not represent a location which is sustainable as contrary to the National Planning Policy Framework (the Framework) it would not be located where the need to travel would be limited. Further, services and facilities within Swerford are limited and the proposal would make only a very modest contribution to enhance or maintain the vitality of the rural community. This would be clearly outweighed by the fact that the proposal would not be located where the need to travel would be limited.
 10. Although the proposal would result in the re-use of the appeal building, as the proposal would not be for employment, tourism or community use and would in fact result in the loss of an existing business use the proposal would conflict with policy E3 of the development plan.
 11. I therefore conclude that the proposed dwellinghouses would not be located in an appropriate location having regard to the settlement hierarchy and would not accord with development plan and national policies relating to development within the countryside. However, the appeal site is located within a village which does have some, albeit limited services and facilities and I afford this matter moderate weight in the determination of the appeal.
 12. The proposal would therefore conflict with Policies OS2, H2, E1, E3, T1, T3, CN2 of the WOLP which among other things seek to locate development in the

right place, resist non-employment use on an existing employment site, or the redevelopment of non-residential buildings except in certain specified situations, which do not apply here, prioritise new development in areas with convenient access to a good range of services and facilities, where the need to travel by private car can be minimised and opportunities for walking, cycling and the use of public transport are maximised and development with the Chipping Norton sub-area away from Chipping Norton will be limited to meeting local community and business needs and steered towards the larger villages.

13. The proposal would also be at odds with the Framework as the proposal would not be located where the need to travel would be limited.

Character and appearance

14. The appeal site is located within the Swerford Conservation Area (SCA) which has two separate and distinct built portions. The appeal site is located within the built portion known as Church End which according to the SCA Character Appraisal (SCACA), took shape around the military religious and feudal focal points of the castle, church and nearby manor house respectively.
15. Church End features a variety of houses and cottages. The appeal site is located to the rear of St Mary's Lane, where the properties are linear and comprise attractive buildings including listed and locally listed buildings.
16. The significance of Church End derives from the enduring historic pattern of development particularly set around the church and the interest in the built form, which provide both aesthetic and historical value.
17. The appeal site comprises an existing stone-built storage building which is at a scale and architectural design which is compatible with its sensitive setting being close to listed and locally listed buildings and surrounded on three sides by residential gardens with an access road to the west.
18. The proposal would involve little change to the building itself as it would not change the mass, scale, or footprint of the existing building. Rather it would result in the introduction of windows and other openings to allow the conversion of the building for residential use. These changes would be relatively minor, would not disrupt the historic linear pattern of development and would therefore have a neutral impact on the SCA. Moreover, I observed that the area surrounding the current building is unkempt and includes some building material storage. As a result, the introduction of a residential garden and parking area would result in a limited improvement to the appearance of the area.
19. Consequently, the proposal would preserve or conserve the character or appearance of the SCA and would not harm the landscape and scenic beauty of the AONB. The Framework advises that when considering the impact of development on the significance of designated heritage assets (DSA) or the landscape and scenic beauty of an AONB, great weight should be given to the conservation of the DSA and conserving and enhancing the landscape and scenic beauty of the AONB. The proposed development satisfactorily achieves such objectives.
20. I am aware that Corner Cottage, Woodlea and Lyndhurst, located to the south-east of the appeal site are all Grade II listed buildings. Mindful of the statutory duty set out in s66(1) of the Planning (Listed Buildings and Conservation

Areas) Act 1990 (the Act), I have had special regard to the desirability of preserving their setting. The historic nature of these buildings located within the core of the Church End part of the village positively contribute to their significance. Nevertheless, given the location and extent of the proposed development, I consider that it would preserve the setting of these listed buildings and the contribution they make to their significance. I note the Council had no concerns in this regard either.

21. The eastern boundary of the appeal site is located adjacent to New Cottage and Bailgate to the east. Immediately to the north of these two cottages are Mary Cottage and Tuer Cottage. These are all identified as locally listed buildings in the SCACA. The appellant highlights that these properties were built in the 1970s, and their heritage interest is limited to their architectural interest as cottages constructed in the local vernacular. Conversely, the Council consider that the entire row of houses along the western side of St Marys Lane represent the historic linear character and appearance of the SCA and the newer houses replicate and reinforce the historic form and character of the area. I agree with the Council's position and consider that notwithstanding that they are more modern dwellings, the fact that they have been designed to ensure they are sensitive to the historic form and have adopted compatible design features define the significance of these buildings.
22. However, like my assessment in relation to the overall impact of the proposed development on the SCA, given the limited changes involved to the building and my finding that the proposal does not harmfully disrupt the historic linear pattern of development I consider that the proposal would not harm the setting of these non-designated heritage assets.
23. Overall, I therefore conclude that the proposal would preserve and conserve the character or appearance of the SCA, would not harm the landscape and scenic beauty of the AONB and would preserve the setting of the listed and non-listed buildings in the vicinity of the appeal site. Consequently, the proposal would accord with Policies EH9, EH10, EH13, EH16 of the WOLP which among other things seeks to conserve or enhance the significance of the District's heritage assets, including conservation areas and not cause unacceptable harm to the historic landscape character.

Ecology and great crested newts

24. The Council highlight that the appeal site is located within the red impact risk zone for great crested newts where there is suitable habitat and a high likelihood of great crested newt presence.
25. The appellant has undertaken a preliminary ecological appraisal. This concluded that it was highly unlikely that great crested newts would bypass suitable terrestrial habitats closer to the ponds within 500 metres radius of the appeal site. However, they recommend a precautionary response.
26. Generally, I accept that the preliminary ecological appraisal provides a competent preliminary assessment and is up to date. However, having taken account of the proposal and the appellant's appraisal, the Council requested that the precautionary working approach should be strengthened and suggested three options that the appellant could follow, including providing a further precautionary working statement, provide further information in line with Natural England's standing advice or join the district licencing scheme.

27. Notwithstanding that the building works have largely been completed, the proposal would inevitably involve disturbance to potential refuge habitats, including existing log piles and building materials. In the circumstances the Council's recommended approach is reasonable. Without the further reassurance that would be achieved by each suggested option it is uncertain whether the impact of the proposed development can be satisfactorily determined. The appellant has not taken up the suggestion to follow any of these options.
28. I am mindful of the advice provided in Circular 06/2005 that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by a proposed development, is established before planning permission is granted. I am not satisfied that this is the case here.
29. Further, the imposition of a planning condition requiring that the appellant follows one of the options would not be reasonable and therefore would not meet the Framework tests and guidance in the Planning Practice Guide. Moreover, without sufficient information to establish what option is to be followed, I am unable to determine what would be the reasonable requirements of any condition.
30. As a result, based on the available evidence it has not been demonstrated that the proposal would not have an adverse effect on ecology, with particular regard to great crested newts. I afford this matter significant weight. The proposed development would therefore conflict with Policy EH3 of the WOLP which among other things seeks to protect and mitigate impacts on protected species. The proposal would also be at odds with the Framework which seeks to protect and enhance biodiversity.

Other Matters

31. I turn now to consider housing supply. The Council accept that they cannot demonstrate a five-year supply of housing. They note that following a recent appeal decision the Council's deliverable housing land supply equated to 4.38 years. Although they set out that this could potentially increase to 4.64 years if a site at Long Hanborough is included, for the purposes of this decision I have taken account of the lower figure. This is below Government expectations. Although the proposal would undoubtedly be valuable in boosting housing stock in circumstances where there is an existing shortfall, given that it would only result in the addition of one dwelling that tempers its weight.
32. I accept that the proposal would have a cumulative effect in the supply of housing and would have limited economic, social and environmental benefits. For example, it would broaden the availability of housing in the village and once occupied would support services and local facilities.
33. Further, as outlined above I have also found that the proposal would preserve and conserve the character or appearance of the SCA, would not harm the landscape and scenic beauty of the AONB and would preserve the setting of the listed and non-listed buildings in the vicinity of the appeal site. I also accept that there are benefits associated with the removal of unsightly commercial equipment and materials. Consequently, overall, I afford the provision of one dwelling modest weight in the determination of the appeal.

34. I have also taken account of the fact that if the existing use is retained it may result in a more intensive use in the future. However, given the size of the appeal site and the existing building, I do not consider that there is significant scope for the use to intensify to such an extent as to give this matter more than limited weight.

Planning Balance

35. I have afforded some matters weight as outlined above and I afford the totality of the benefits moderate weight in the determination of the appeal.

36. On the other hand, I have found that contrary to the relevant policies of the development plan, the appeal site would not represent a suitable location for residential development. Moreover, it has not been demonstrated that the proposal would not have an adverse effect on ecology, with particular regard to great crested newts. I have afforded these moderate and significant weight respectively. As a result, the proposal would conflict with the development plan and the Framework as a whole.

37. As set out above, based on the available evidence the Council accept that they cannot demonstrate a five-year supply of housing. As a result, Paragraph 11(d) of the Framework is engaged. However, for the reasons set out above, the adverse impacts of granting permission for the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

38. Consequently, the scheme would not represent sustainable development within the meaning of paragraph 11(d) of the Framework and this weighs substantially against the scheme.

Conclusion

39. The proposal conflicts with the development plan and the Framework and material considerations do not indicate that the appeal should be decided other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

S Rawle

INSPECTOR