

Appeal Decision

Site visit made on 18 July 2024

by G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 August 2024

Appeal Ref: APP/H1840/W/24/3341562

Shernal Brook Farm, West Side, North Littleton, WR11 8QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Lewis Albutt against the decision of Wychavon District Council.
- The application Ref is W/23/01228/FUL
- The development is the change of use of agricultural land to domestic garden.

Decision

1. The appeal is allowed and planning permission is granted for the change of use of agricultural land to domestic garden at Sernal Brook Farm, West Side, North Littleton, WR11 8QP in accordance with the terms of the application Ref W/23/01228/FUL.

Preliminary and procedural matters

2. At application stage a neighbouring resident (referred to hereafter as the 3rd party) who owns part of the track leading from the public highway to the site claimed that the application leading to this appeal was invalid, and that the description of the application was inaccurate. The Council, however, determined the application on the basis submitted. Its decision to deal with the application, as submitted, was not formally challenged. It is not within my powers to alter the fundamental particulars of the original application as determined by the Council.
3. The area subject of the change of use application is clearly defined by a red line, and the appropriate certificate in respect of the ownership of the land within the red line has been completed. I am content that I can deal with the appeal on this basis, notwithstanding the contrary view propounded by the 3rd party. Even so, the 3rd party has taken the opportunity to make representations, so his interests have not been prejudiced.
4. The unauthorised change of use has already been carried out. The land subject of the change of use stands alongside a dwelling formed following a successful appeal¹. The clear indications are that the change of use took place several years ago. The land is used partly as a lawned garden and is partly surfaced with permeable materials and used for car parking. I have treated the appeal as if the original application had been submitted under section 73A of the Act².

¹ Decision letter Ref APP/H1840/W/15/3137364 dated 5 May 2016

² The Town and Country Planning Act 1990 (as amended)

5. The 2016 appeal was concerned with the conversion of an existing agricultural building to a dwelling. This would be permitted development subject to prior approval not being deemed to be required. However, the Council had determined that prior approval was required on account of the transport and highway impacts of the development and objected.
6. The main issue in the subsequent appeal was centred on this aspect. The Inspector assessed the proposal *'..on the basis that it relates to a new dwelling for general residential use'*. Having carried out his assessment he concluded that he was *'..satisfied that the transport and highway impacts associated with the development proposed would be acceptable'*.
7. The Inspector was made aware of the designation of the track leading to the proposed dwelling as a bridleway. Additionally, a Court Order was brought to his attention by the 3rd party. He dealt with that aspect in paragraph 6 of his decision letter, and I concur with that observation.
8. The Council, Highway Authority and 3rd party take the view that in assessing the change of use, consideration should also be given to the implications of the appellant's use of the access track, particularly whether the appellant has a right to use it given its status as a bridleway. Indeed, the Council says in its reason for refusal that *'...domestic traffic is currently unauthorised and, therefore, committing an offence under Section 34 of the Road Traffic Act 1988.*
9. To my mind, however, it is neither essential nor necessary to revisit the highway impacts associated with the use of the dwelling. The appropriate planning assessment in this respect was conducted by the Inspector in the 2016 Appeal³. Whilst the Council, Highway Authority and 3rd party disagreed with the Inspector's decision, it was not challenged in the Courts by any of the parties, and the approval was implemented. Since then, for some years, the track has been used by the appellant for vehicular access to the approved dwelling. I have not been made aware of an accident record by the Highway Authority or the Council.
10. Notwithstanding his use of the track for several years, there is no indication before me that the appellant has been prosecuted under the provisions of the Road Traffic Act 1988. I do not consider it part of my planning duties, as seems to be implied, that I should examine or search for evidence that an offence has or is being committed. That is a matter for the appropriate authority with responsibility for that aspect of the law.
11. The change of use applied for would not in itself lead to an increase in traffic movements over and above those considered by the Inspector in 2016. It is patently apparent that traffic movements have taken place for several years from the property to the public highway, notwithstanding the argument that the 2 car parking spaces shown on the 2016 approved plan were not contained within the red line drawn around the approved curtilage. Even if those car spaces were not formally approved, sufficient space exists to park 2 cars within the curtilage of the property as depicted in 2016.

³ Reference has been made to 2 previous appeals, but they attract little weight as material considerations since the 2016 appeal decision was acted upon and implemented, thus starting a new chapter in the planning history of the land.

12. An application for costs has been made by the appellant against the Council. This is the subject of a separate decision.

Main issue

13. For the reasons provided above I do not consider that the main issue should centre, as would normally be the case, on the Council's reason for refusal. The main issue to my mind is the impact of the change of use on the character and appearance of the surrounding area.

Reasons

14. The land subject of the change of use is sited between the dwelling and an agricultural building. These, together with a timber fence, effectively screen the land from wider view, and the use is therefore unobtrusive in the landscape and public realm. The Council in its officer report saw no reason to object to the use on aesthetic or landscape grounds. To my mind, judging from what I saw, it had no justification for objecting on these grounds.
15. I conclude that the product of the change of use sits acceptably in its visual context without harming the character and appearance of the surrounding area. Accordingly, no material conflict arises with the main objectives of policy SWDP21 of the South Worcestershire Development Plan, since the use integrates effectively with its surroundings.

Conditions

16. The Council's has suggested the imposition of a condition in the event of the appeal succeeding but since the change of use has already been carried out, I do not consider any to be necessary.

Other matters

17. I have considered all the representations of the Highway Authority and note that it did not originally object. However, it changed its mind, recommended refusal, and judging from the planning officer report on the application, was instrumental in influencing the Council's decision, albeit that in its final response to consultation it acknowledged '*..it is for the LPA to determine if this recommendation is competent in relation to planning legislation*'.
18. The County Council Public Rights of Way team did not object to the application but explained the law and general obligations on public rights of way. The Parish Council indicated that it had no comment to make on the application.
19. I have also read and considered the many submissions made by the 3rd party at application stage and those made for the appeal.
20. I have taken account of all other matters raised but no other matter raised is of such strength or significance as to outweigh those considerations that led me to my conclusions.

G Powys Jones

INSPECTOR

