



Appeal Decision

Site visit made on 25 June 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th September 2024

Appeal Ref: APP/J1860/C/23/3334212

Land on North West Side of Willow Road, Martley, Worcester WR6 6PS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Katie Jayne Stansbie against an enforcement notice issued by Malvern Hills District Council.
 - The notice was issued on 7 November 2023.
 - The breach of planning control as alleged in the notice is 'Non-compliance with condition 6 imposed by planning approval ref: 02/00285/FUL for the 'Erection of stable block'. Condition 6 - The Stables hereby permitted shall be used solely for private equestrian use and not for any commercial purposes or residential use. Reason: To define the permission. The Local Planning Authority would wish to consider other uses against their impact on the locality and against the relevant Development Plan policies and to protect the amenities of the area from inappropriate development.
 - The requirements of the notice are to: Cease the residential use of the building approximately edged blue on the attached plan and remove all domestic paraphernalia from the land edged in red on the attached plan.
 - The period for compliance with the requirements is 12 (twelve) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended) (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that:

- i. the enforcement notice be corrected by substituting "171A(1)(b)" with "171A(1)(a)"; and
- ii. the matter which appears to constitute the breach of planning control at part 3 of the notice be corrected by deleting the allegation and substituting it with "Without planning permission, the material change of use of the stable building to a single dwellinghouse."

2. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the material change of use of the stable building to a single dwellinghouse.

Matters concerning the notice

3. The notice was issued under s171A(1)(b) of the Act and the alleged breach of planning control was the failure to comply with condition 06 of planning permission 02/00285/FUL for the erection of the stable block. The condition and its reason are displayed in the banner heading above. The reasons for

issuing the notice refer to the breach occurring within the last 10 years. While the time limit is correct for a breach of planning control by virtue of s171B(3), a breach in relation to a change of use to a residential use is 4 years¹.

4. Notwithstanding this, in response to the way the parties had presented their cases, I wrote to both suggesting that the notice would be clearer if it was framed differently and issued under s171A(1)(a) of the Act, and the alleged breach of planning control corrected accordingly to a material change of use. As the appellant maintains that the change of use of the building occurred less than 4 years from the date of the notice, and there was no argument concerning immunity, I considered that there would be no injustice caused by the correction. I received agreement from both the Council and the appellant.

The appeal on ground (a) and the deemed planning application

Main issues

5. The main issues are whether the development is suitably located having regard to the development plan and national policies for new housing and its proximity to facilities and services.

Reasons

6. The appeal relates to a stable building originally granted planning permission in June 2002. Prior to a change of use to residential, the building had been redundant for some time. In 2022, the appellant purchased the site and occupied the building. From the photographs provided of the site before the development, the works to the previously disused building have enhanced its immediate setting and there have been no concerns raised otherwise.
7. The modest sized building provides space for a bedroom, shower room, utility room and a combined kitchen/living space. The L shaped building is constructed of blockwork and brick under a box profiled metal roof. There are three sets of sliding patio doors which open out onto an area laid with slabs to form an outdoor seating area. To the rear and one side the building is clad with horizontal timber boarding and there are three single-pane, bottom-opening windows. A stone driveway slopes down from the road to a parking area to the side of the building.

Suitability of location for housing

8. The appeal site is set back from the road and set behind the rear of neighbouring properties. Within proximity of the site, Willow Road is interspersed with residential properties and the appeal development itself is situated amongst three other houses. I consider the appeal development to be part of a cluster of dwellings. While not isolated, the site lies outside any defined development boundary within the South Worcestershire Development Plan 2016 (the SWDP). It is therefore within the countryside for the purposes of planning policy where development is restricted.
9. The justification for the restrictions imposed by Policy SWDP2 primarily relate to the protection of the character of the countryside, including the open character of identified 'significant gaps' and to ensure development is focused where it would have good accessibility to facilities and services. There are

¹ *FSS v Arun DC & Brown* [2006] EWCA Civ 1172

specified exceptions for dwellings in the rural areas, but the appeal development does not fall to be considered against any of these in the policy.

10. While the building is in the countryside where SWDP policies restrict new development, the National Planning Policy Framework (the Framework) identifies at paragraph 84 exceptions where certain circumstances apply. Paragraph 84(c) lists one of these exceptions where there would be a re-use of a redundant or disused building and enhancement to the immediate setting. I have not, however, been made aware of any comparable policies within the SWDP that specifically refer to the re-use of redundant buildings for residential uses. The Framework does not set out a definition of 'redundant' or 'disused' but I consider the plain meaning to be 'no longer needed, no longer being used or useful'. In the case of this appeal, the evidence supports the contention that the building complied with the description.
11. National policy further promotes an effective use of land in meeting the need for homes, particularly in the form of under-used land and buildings and previously developed land. The Framework glossary describes this as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes agricultural or forestry buildings; land developed for minerals extraction or waste disposal by landfill; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.
12. Although there is conflict with the development plan due to the location of the development outside any development boundary as defined in the SWDP, there is support for the re-use of redundant rural buildings in national policy, and for previously developed land. Therefore, I give substantial weight to the Framework as a material consideration in support of the appeal development.

Proximity to facilities and services

13. The site is located 1.2 miles south of Martley village which is listed as a Category 1 village and is one of the more sustainable villages as defined by the development plan. Martley has a wide range of services and facilities including a doctors' surgery, village shop, public house, petrol station, primary and secondary schools, public sports hall, cricket club, church, village hall, skate park and the bus service to Worcester.
14. While the local rural roads provide no pavements and are unlit, the village of Martley is of a distance that is accessible by foot and by bicycle. Public transport options have also been brought to my attention and although limited, sustainable transport is available to access both Martley and Worcester. Notwithstanding this, the location of the site is likely to result in a dependence on the private car to reach most travel destinations and to that extent there would be some conflict with Policy SWDP4.

Planning balance

15. The Council submits that it is not able to demonstrate a five-year housing land supply with a figure of 3.31 years. Where there is a shortfall, paragraph 11 d) of the Framework, concerning the presumption in favour of sustainable

development, is engaged. Accordingly, planning permission should be granted unless the application of other policies in the Framework that protect areas or assets of particular importance, provide a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

16. Overall, I find that there are no adverse impacts of the proposal that would significantly and demonstrably outweigh the benefits of providing more housing and utilising a redundant building when assessed against the policies in the Framework taken as a whole. In this case the presumption in favour of sustainable development is a material consideration which outweighs any conflict with the development plan and reasons for issuing the notice.

Other matters

17. A previous appeal decision² has been brought to my attention which dismissed a proposed re-use of the building in 2012. The proposal sought to substantially extend the building for use as a live-work unit. The development was considered to conflict with a policy contained within the Malvern Hills Local Plan 2006 which stipulated that the building must be capable of accommodating the use without excessive rebuilding, extension or alteration and which can achieve the re-use with minimum alterations to the appearance of the building. The Malvern Hills Local Plan 2006 has been superseded by the SWDP and no similar current policy has been referred to within the appeal documents. Nonetheless, although I am not aware of the full circumstances of the former proposal, for the reasons given above, I consider that the previous decision is of limited relevance to the case before me.

Conditions

18. The council suggested a condition to secure superfast broadband facilities or alternative solutions to serve the dwelling. As this is already provided, such a condition is not necessary. There are no further conditions that have been suggested and given the Council's reasons for issuing the notice, I consider that there is no clear justification to impose any further conditions.

Conclusion

19. For the reasons given above I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the corrected notice. The enforcement notice as corrected will be quashed. As the appeal has succeeded on ground (a) it follows that the appeal on ground (g) does not fall to be considered.

S A Hanson

INSPECTOR

² APP/J1860/A/12/2173948