



Appeal Decision

Site visit made on 20 August 2024

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2024

Appeal Ref: APP/P1615/W/24/3343376

Long Meadow, Mill End, Clearwell, Gloucestershire GL16 8NF

- 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 Alan Humphreys against the decision of the Forest of Dean District Council.
 - The application Ref is P1479/23/FUL.
The development proposed is the conversion of a barn to form an annexe/workspace, including a single-storey extension with hard and soft landscaping. Change of use of a portion of the field to host a single-storey garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council determined the application a new version of the National Planning Policy Framework (the Framework)¹ came into effect. During the appeal, the main parties have had the opportunity to provide further comments on the revised Framework and, where received, I have taken them into account in my decision. I am satisfied no party would be prejudiced by determining the appeal accordingly.
3. In November 2023, all designated Areas of Outstanding Natural Beauty (AONBs) in England, including the Wye Valley AONB, became known as National Landscapes. Their statutory status remains unchanged.
4. I have removed details which are not development from the description in the banner head above.
5. The proposed development is located within 2km of the Wye Valley and Forest of Dean Bat Sites Special Area of Conservation (SAC). Although not a reason for refusal, it is incumbent upon me as the competent authority to consider whether the proposed development would be likely to have a significant effect on the integrity of the SAC. Comments were sought from the main parties and Natural England, and I have taken them into account in my reasoning. Therefore, neither party would be prejudiced by this matter being dealt with as a main issue.

¹ December 2023

Main Issues

6. The main issues are:

- whether the proposed development would be likely to have a significant effect on the integrity of the SAC;
- the effect of the proposed development on the character and appearance of the area, with particular reference to the setting of the Wye Valley National Landscape (the WVNL);
- whether the appeal site is suitable for the proposed development, with regard to the local development strategy; and
- whether the proposed development would be appropriately located with respect to flood risk.

Reasons

The integrity of the SAC

7. A SAC is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations). The special interest of the SAC relates to the area's support of lesser and greater horseshoe bats. Whilst bat populations are protected within the designated site, bats are also species protected under Part 1, Schedule 5 of the Wildlife and Countryside Act 1981 (as amended). The area surrounding the SAC provides feeding opportunities as well as satellite and night roosts which are under threat from, amongst other things, increased urbanisation, newly built forms, lighting and the loss of night roosts.
8. The Bat Emergence Survey Report (the BES)² submitted with the planning application identified the presence of different bat species, albeit in low numbers, with lesser horseshoe bats recorded emerging or entering the barn. Consequently, the BES concludes that the existing barn is being used as a bat roost, with lesser horseshoe bats roosting in the barn's roof void.
9. As the proposed development involves the conversion of the existing barn for residential use, the appeal scheme will involve works to the roof void in addition to the building structure. This would impact the bat roost itself and the access points currently used by the bats to enter/exit the barn. Therefore, when taken both in isolation and cumulatively with other projects, the appeal scheme would have a significant adverse effect on the integrity of the SAC. Consequently, it is necessary for me, as the competent authority, to conduct an Appropriate Assessment concerning this significant adverse effect.
10. The BES recommends the preparation of a comprehensive mitigation plan, including an appropriately designed compensatory roost with flight line access. No mitigation plan is before me and, whilst an alternative bat roost has been created above a nearby existing shed, the Council have raised concerns that its size and use of materials is not appropriate for all bat species observed in the barn. Additionally, it is unclear if the location of the alternative bat roost has

² Prepared by NewWays Ecology, dated 3 November 2023

been selected relative to existing bat flight lines and foraging areas or driven by the presence of an existing structure. A Method Statement will be required as part of an application for a protected species mitigation licence from Natural England and this would need to include details of any mitigation or compensatory measures. However, planning permission is required before any licence application can be made. Furthermore, it may be necessary to undertake additional bat activity surveys before submission.

11. It has been suggested that negatively worded conditions could be imposed were I to allow the appeal. These would prevent any development commencing until a Construction Environmental Plan (CEMP) and a Landscape and Ecological Management Plan (LEMP) are submitted to the Council for approval. The Planning Practice Guidance (PPG) sets out that the use of a negatively worded condition is unlikely to be appropriate in most cases³. Where there is clear evidence that the delivery of the development would otherwise be at serious risk, exceptional circumstances could allow the imposition of such a condition.
12. However, as I have reasonable scientific doubts regarding the suitability of the compensatory roost and further surveys may be necessary, I cannot conclude with certainty that the appropriate mitigation can be achieved. Regardless, this has not been demonstrated in this case as the circumstances before me could also apply to other proposals involving the conversion of barns and outbuildings within 2km of the SAC.
13. The PPG also states that the use of a planning obligation, before granting planning permission, is the best way to deliver sufficient certainty for all parties. No such legal agreement has been provided as part of the appeal.
14. In the absence of an approved CEMP and LEMP, a comprehensive mitigation plan, or an appropriate legal agreement, I must adopt the precautionary principle embedded in the integrity test. I, therefore, conclude that the development would result in an adverse effect on the integrity of the SAC and would not accord with the Habitat Regulations. In the absence of the necessary mechanism required to secure appropriate mitigation measures, it would be contrary to Policy CSP.1 of the Core Strategy⁴. This policy requires, amongst other aspects, new development to consider its impact on any protected sites. It would also conflict with the key objective of the Core Strategy which seeks to improve and protect the environment.
15. It also conflicts with Chapter 15 of the Framework which seeks the protection and enhancement of habitats and biodiversity, including internationally designated sites.

Character and appearance

16. The appeal site comprises part of the property known as Long Meadow and includes an existing barn and an area of hardstanding used for parking. Whilst the appeal site is not located within the WVNLI, it adjoins it and, therefore, I have a duty to have regard to its setting. In so doing, I have had regard to the Framework's requirement that great weight should be given to conserving and enhancing the natural beauty of the area, reflecting the statutory purpose of the designated landscape.

³ Paragraph: 010 Reference ID: 21a-010-20190723

⁴ Forest of Dean District Council Core Strategy Adopted Version (the Core Strategy)

17. The proposed development includes a new garage/carport which would be built into the sloped part of the site as the topography gently rises from Valley Brook. Given its distant relationship with the existing barn and main dwelling, the garage/carport's siting away from the road would lead to the introduction of an isolated building into an otherwise open and undeveloped paddock. Although it would be partially screened by existing field and roadside hedgerows nearby, nevertheless the garage would be visible in views from the road and the nearby public footpaths within the valley floor, including those within the WVN. Medium picturesque views from the valley floor are one of the key characteristics of this part of the WVN as identified in the Management Plan⁵. As the garage/carport would be a discordant feature in views from the designated landscape, it would be detrimental to the WVN's special qualities.
18. The proposed development includes the conversion of the existing barn. It would retain much of the stone structure, including the main two-storey barn section. An extension is also proposed, replacing the blockwork storage buildings adjoining the barn. The Officer's Report refers to the size of the extension exceeding the threshold for a conversion. However, no policies or supplementary planning documents which justify this threshold are before me.
19. Although occupying a larger footprint than the storage buildings, the extension would be the same height, have a similar roof pitch as the part of the barn it adjoins and incorporate materials to match the existing barn. No new openings are proposed and features of the existing barn would be included in the extension. It would, therefore, constitute a sympathetic addition to this largely redundant building.
20. Nonetheless, I have found the proposed garage/carport would result in the introduction of built form into the landscape which would be detrimental to its local context. Consequently, I conclude that the proposed development would harm the character and appearance of the area, with particular reference to the WVN. It would be contrary to policies CSP.1 of the Core Strategy and policies AP.1 and AP.4 of the Allocations Plan⁶. In combination, these policies, require development to reflect the characteristics of the local environment, including landscape and the WVN, amongst other aspects.
21. The proposed development also conflicts with the Design Guide⁷ and the Management Plan, both of which require development to be sympathetic to the setting of the district. Given the harm I have identified, the proposed development conflicts with the PPG⁸ which supports the Framework's objective of conserving and enhancing the natural beauty of the area.
22. The decision notice refers to the Landscape Character Assessment (November 2002) which covers the district, in particular Section 1. This, however, is not an adopted Supplementary Planning Document, contains an analysis of the characters of the landscape in 2002 and remains in draft form, it is not determinative in this case.

Location

⁵ Wye Valley Area of Outstanding Natural Beauty Management Plan 2021-2026 (the Management Plan)

⁶ Allocations Plan 2006 to 2026 Adopted June 2018 (the Allocations Plan)

⁷ Forest of Dean Residential Design Guide (Alterations and Extensions) (the Design Guide)

⁸ Paragraphs: 041 Reference ID 8-041-20190721 and 042 Reference ID 8-042-20190721

23. Policy CSP.4 of the Core Strategy expects new development to take place within the existing settlement boundaries to ensure it contributes to reinforcing the existing settlement pattern. However, this policy does indicate that exceptions to this may include, amongst other developments, building conversions.
24. Whilst the proposed conversion would include the necessary day-to-day living facilities of a dwellinghouse, the evidence before me indicates that the barn would enable the appellant's son to live and work as independently as possible given his disability yet be close to the family home. Although not located adjacent to the host dwelling, the dependency on the main dwelling would be maintained by the needs of the appellant's son.
25. The Design Guide seeks to ensure that an annexe is designed so that it can be linked with or accessed from the original building. However, this guidance relates to the construction of a new annexe, rather than the conversion of an existing outbuilding. Notwithstanding this, given the son's dependency on the appellant, the shared access and parking area and the use of the path access to Long Meadow there is a functional and physical link between the barn and the host dwelling.
26. To prevent the creation of a single dwellinghouse, a suitably worded condition could be imposed restricting the occupation of the barn to purposes ancillary to the residential use of the dwelling known as Long Meadow, were I to allow the appeal. As a separate housing unit would not be created, I don't need to assess whether or not the barn constitutes an isolated dwelling in the countryside, or its accessibility to local services and facilities, including public transport.
27. I conclude that the appeal site is suitable for the proposed development, with regard to the local development strategy as it comprises the conversion of a building thereby meeting the exception set out in Policy CSP.4 of the Core Strategy. It also accords with policies CSP.1 and CSP.16 of the Core Strategy and policies AP.1 and AP.4 of the Allocations Plan which, together, set out and reinforce the strategy's settlement hierarchy. Additionally, I find no conflict with the Design Guide's approach to annexes.

Flood risk

28. The appeal site is located in Valley Brook. The main parties agree that part of the site lies within Flood Zone 3 which is at risk from fluvial flooding. The Framework aims to avoid inappropriate development in such areas by steering new development to areas with the lowest risk of flooding from any source. However, where development is necessary in such areas, the development is required to be made safe for its lifetime without increasing flood risk elsewhere.
29. As the barn would be converted and extended to provide residential accommodation, the use falls under the Framework's *more vulnerable* classification. In most scenarios, planning applications for new residential development within Flood Zone 3 would be required to apply a sequential, risk-based approach to the location of development to avoid, where possible, flood risk to people and property. Where this is not possible, an exception test should be applied given the *more vulnerable* classification for residential development.

30. However, some minor development applications, such as householder development, changes of use and non-residential extensions with a footprint of less than 250 sqm, should not be subject to the sequential or exception tests⁹. Instead, a site-specific flood risk assessment (FRA) is required. Given the appeal scheme comprises a change of use and an extension with a footprint of 25 sqm, and a new garage/carport structure, the sequential and exceptions tests are not necessary.
31. A site-specific FRA¹⁰ was submitted with the planning application which covers the five criteria required by the Framework to be demonstrably achieved. It considers the risk of flooding from all sources with fluvial and surface water flooding being the most relevant to the site.
32. As part of the extended barn would be located within Flood Zone 3, the increase in footprint will lead to the displacement of flood water. It is proposed to mitigate this by providing an area of compensatory floodplain on land beyond the site boundary, albeit within the ownership/control of the appellant. Subject to conditions requiring the submission and approval of further details relating to the proposed flood defences, flood-resistant and resilient construction methods and safe access and escape route plans, the Council's Flood Risk Engineer confirms the FRA is acceptable, in principle. No substantive evidence has been provided for me to conclude otherwise.
33. Although the compensatory floodplain would comprise an area larger than the displaced floodwater volume which would allow surface water flooding to be accommodated, a surface water management strategy has not been prepared. However, were I to allow the appeal, this could be secured by a suitably worded pre-commencement condition which prevents any development on the site before an appropriate strategy has been submitted to and approved by the Council.
34. I conclude that the proposed development would be appropriately located with respect to flood risk, in accordance with policies CSP.1 and CSP.2 of the Core Strategy. Taken together, these policies require development to respond to the characteristics of the local environment, including flood risk, and take into account measures that reduce the impact of climate change, amongst other requirements.
35. As the proposed development would incorporate measures to keep it safe for its lifetime, subject to conditions, without increasing flood risk elsewhere, it also complies with Chapter 14 of the Framework. As required by the PPG¹¹, the information in the FRA is credible, fit for purpose, proportionate to the degree of flood risk and appropriate to the scale, nature and location of development.

Planning Balance and Conclusion

36. The proposed development would provide social and economic benefits from the retention of an existing small business in the area. Environmental benefits would be derived from the use of a predominantly redundant building, the provision of solar panels on the garage roof and electric car charging points.

⁹ Paragraph 174 of the Framework and footnote 60

¹⁰ Ref MC0285 prepared by Meridian Civil Engineering Consultancy, dated July 2023

¹¹ Paragraph: 021 Reference ID: 7-021-20220825

However, given the scale of the proposed development, all these benefits would be limited and, therefore, I attach limited weight to them in my decision.

37. Within my decision, I have taken into account that disability is a relevant protected characteristic for the purposes of the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010 (the PSED).
38. The converted barn provides the appellant's son with accommodation to enable him to live a semi-independent life and prevent the need for him to seek state social and housing care, thereby providing indirect public benefits. Whilst these public benefits would be limited given the scale of the proposed development, they would have significant private benefits for the appellant and his son. It would also contribute to the PSED's aim of advancing equality of opportunity including the need to remove or minimise disadvantages. Nevertheless, planning is concerned, in general, with land use in the public interest rather than the protection of purely private interests¹². Although preferable to the appellant and his son, it has not been demonstrated that the proposed development is the only option available for them to achieve their desired aims. As such, I attach modest weight to these circumstances.
39. I have found that the appeal site is suitable for the proposed development, with regard to the local development strategy and the appeal scheme would be appropriately located in respect to flood risk. These are therefore neutral factors in my decision. Some social, economic and environmental benefits would arise from the proposed development, as set out above. However, these must be balanced against the harm I have identified to the character and appearance of the area, the adverse effect on the SAC, and the associated conflict with the development plan. I give substantial weight to this conflict. I also attribute great weight to the harm identified to the setting of the WVN, given its statutory purpose, as required by the Framework.
40. Having had due regard to the PSED and all matters raised, the harm I have identified above outweighs the benefits of the proposed development in terms of eliminating discrimination against persons with the protected characteristic of religion, advancing equality of opportunity for those persons and fostering good relations between them and others. Consequently, it is proportionate and necessary to determine the appeal in accordance with the development plan as a whole and to dismiss the appeal.

Juliet Rogers

INSPECTOR

¹² Paragraph: 008 Reference ID: 21b-008-20140306