



Appeal Decision

Site visit made on 28 August 2024

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

Appeal Ref: APP/J1860/W/23/3335850

Wood Farm, Burnthorne Lane, Dunley, Worcestershire DY13 0TP

- 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 Corbo against the decision of Malvern Hills District Council.
 - The application Ref is M/22/01166/FUL .
 - The development proposed is Proposed erection of three new dwellings to replace two existing agricultural buildings (in lieu of Class Q prior approval conversion scheme).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. There is an extant consent for the conversion of the existing agricultural buildings at the appeal site to three dwellinghouses, under the provisions of Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('GPDO'), reference 21/01239/GPDQ. This constitutes, the appellant's 'fallback scheme.'
3. Because the appellant has already obtained consent for the fallback scheme, there is a greater than theoretical possibility of this being implemented. In determining this appeal, I have considered the proposal on its merits and also had regard to the fallback scheme based on the information before me.

Main Issues

4. The main issues are: i) The effect of the proposal on the character and appearance of the area; ii) the quality of the proposed development for its occupiers; iii) the effect of the proposal on protected species; and iv) whether the proposal makes acceptable provision for affordable housing.

Reasons

Character and appearance

5. The appeal site is in an attractive countryside location and incorporates two agricultural barns along with some land around them and the access into Wood Farm. To the rear of the appeal site but also part of Wood Farm is a detached two storey dwelling with some associated development. The appeal site is accessed off Jennings Wood Lane.
6. The landscape character is predominantly open countryside with a limited scattering of largely detached dwellings and other buildings accessed off Jennings Wood Lane.

7. The main barn at the appeal site is a single storey, open plan, 4 bay steel portal frame building with a concrete floor. The smaller barn is two storey and comprises concrete block masonry, metal cladding and pitched, corrugated roof. These barns are not of any significant architectural merit. Nonetheless, they are partially sunken into the ground giving a low-rise and utilitarian appearance. Due to this, and their simple forms, these existing barns are visually and physically settled within their context and contribute to and reinforce the rural character and appearance of the area.
8. Under the provisions of Class Q of the GPDO, the fallback scheme would largely utilise the existing form of the barns, and on the information before me, the conversion of these would have an understated, unfussy design which was considered acceptable and not harmful to the rural character of the area.
9. As part of the proposed scheme before me, the two barns would be demolished and replaced by three detached family dwellings. The wider site would also be redeveloped to provide turning, parking and gardens for these dwellings.
10. Overall, the proposed dwellings would be marginally taller than the existing barns. However, this increase in height would be exaggerated by the proposed courtyard arrangement, whereby the proposed dwellings would distinctly appear as a group of two-storey buildings.
11. The appellant suggests that the existing levels at the site could be maintained as part of the new build scheme. Given the varied topography of the site, this would require a degree of alterations to land levels and in the absence of any drawings to illustrate this, I cannot be certain about any subsequent visual effects.
12. Based on the existing and proposed layouts, the built form of the proposed new dwellings would extend beyond that of the existing barns. Also, the proposal would introduce three detached buildings, which would give the proposed development a stronger visual presence. I have also been advised that the gardens associated with the new dwellings would be considerably larger than those allowed under the fallback scheme. The larger gardens would also be able to support a greater extent of domestic paraphernalia, such as garden furniture and leisure equipment, which would be difficult to control.
13. The proposed dwellings would be of a distinctly modern appearance incorporating a variety of materials and a range of fenestration, including large elements of glazing, dormers and rooflights along with garage doors. These would be served off an engineered court yard. This, in part, would be dominated by areas for car parking. As such, this arrangement does not reflect the site and area.
14. Even though the proposed dwellings and associated gardens would be largely screened from public vantage points by established landscaping, on the information available to me, I cannot be certain that this would screen the extent of proposed development from the surrounding area particularly during winter months when leaf cover would be reduced. Irrespective of this, views of the development would be available from the access point to the site off Jennings Wood Lane and whilst some new landscaping is proposed, this would take time to establish.

15. For the above reasons, and irrespective of the quality of the dwellings, the proposed scheme because of its context, layout and overall scale, would lead to further encroachment into the open countryside. Also, the overtly domestic appearance of this development, which includes its associated gardens and parking areas, would introduce a significant degree of suburbanisation, to the detriment of the prevailing rural landscape. Accordingly, the proposal would harm the character and appearance of the area.
16. Therefore, the proposal conflicts with DP Policies SWDP 2, SWDP 21 and SWDP 25. Amongst other things, these policies seek to safeguard and (wherever possible) enhance the open countryside; ensure that the siting and layout of a development reflects the given characteristics of the site in terms of its appearance and function, and that developments are appropriate to, and integrate with, the character of the landscape setting. This is consistent with the National Planning Policy Framework ('the Framework') which says that decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting.

Living conditions

17. Because of the proposed courtyard arrangement. Units 1 and 3, would extend considerably forward of the front elevation of Unit 2. This arrangement would have an enclosing effect on the front elevation of Unit 2 and is likely to breach the 45 degree rule in respect of the ground floor window serving the lounge and the first floor windows serving bedrooms 2 and bedroom 3 for Unit 2.
18. Therefore, and despite Unit 2 incorporating some large areas of glazing, I cannot be certain that the proposed arrangement would not result in unacceptable overshadowing and/or loss of light to the detriment of the living conditions of the occupants of Unit 2.
19. Also, due to the close arrangement of the new dwellings, the window serving bedroom 2 for Units 1 and 3 would be particularly close to Unit 2. Based on the submissions before me, there is no certainty that this would not cause any unacceptable overshadowing and /or loss of light to these habitable rooms.
20. For the above reasons, I cannot be certain that the proposed layout would provide acceptable living conditions for the occupiers of the proposed development.
21. Accordingly, the proposed development is contrary to the aims of DP Policy SWDP 21, which requires that development should provide an adequate level of privacy, outlook, sunlight and daylight, and should not be unduly overbearing. This Policy is consistent with the Framework which also seeks to create places with a high standard of amenity for existing and future users.

Protected Species

22. The submitted Preliminary Ecological Appraisal and Bat Roost Assessment confirms the presence of a bat roost within Barn 1, which is the smaller of the existing agricultural buildings. As such, without appropriate mitigation, the proposed development would result in the loss of a building which currently supports a bat roost for soprano pipistrelle and lesser horseshoe bats.

23. Bats and their roosts are afforded strict protection under UK and European Law. Indeed, Regulation 9 (3) of the Conservation of Habitats and Species Regulations 2017 (the Regulations) imposes a duty on me to have regard to the likelihood of bats, a European Protected Species, being present and affected by the proposed development.
24. Both parties agree that a bat mitigation licence would need to be obtained from Natural England ('NE') before any works can commence. Decisions about whether a licence can be granted are the responsibility of NE and are dealt with under a separate process.
25. Nevertheless, as the decision-maker I am required by the Regulations to have regard to the requirements of the Habitats Directive in the determination of this appeal. In effect, I am required to consider whether there would be a reasonable prospect of a licence being granted by applying the three derogation tests: (a) preserving public health or public safety or other imperative reasons of overriding public interest; (b) that there is no satisfactory alternative; and (c) that the action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range.
26. In respect of test (a), the proposal would make a contribution to the supply of housing and an affordable housing contribution in an area which, on the evidence before me, has a shortfall in supply. Therefore, I acknowledge that there would be some social, economic and environmental benefits associated with the proposal, as set out in the appellant's submissions. However, I have found that there would be some harm to the character and appearance of the area and the living conditions of the occupiers of the development. Furthermore, because of the modest scale of the development (3 dwellings) and given that the fallback scheme could also provide the same quantum of new dwellings with some associated benefits, in my view, this would not be sufficient to amount to an imperative reason of overriding public interest.
27. With regard to test (b) an alternative in the form of the fallback scheme exists, which allows for the conversion of the existing agricultural buildings to three dwellings. The appellant asserts that drawing no. 3836-02D does not reflect the retention of a roof void within Barn 1 and advises that the existing roosting space would be lost as a result of the fallback scheme. However, this drawing is not before me. Therefore, I cannot be certain that the fallback scheme would result in the loss of the existing bat roost.
28. In light of the above reasons, two of the derogation tests would be unlikely to be met. In order for NE to issue a licence, all three of the tests must be met. Accordingly, I consider that there is insufficient evidence for me to deduce that there would be a reasonable prospect of a derogation licence being granted by NE. Therefore, I cannot be certain that the proposal would not compromise the favourable conservation status of protected species (bats).
29. Accordingly, I conclude that the proposal does not satisfactorily demonstrate that the scheme would have an acceptable effect on the biodiversity of the site, in particular in respect of bats. For this reason, the proposal would be contrary to DP Policy SWDP 22, which says that development which would compromise the favourable conservation status of European or nationally protected species or habitats will not be permitted. This is consistent with similar aims of the Framework.

Affordable Housing

30. In order to support appropriate provision of affordable housing in the District, criterion B. v. of Policy SWDP 15 of the DP requires that, on sites of fewer than five units, a financial contribution towards affordable housing will be sought. This financial contribution is based on the cost of providing the equivalent in value of 20% of the units as affordable housing on site.
31. The submitted S106 Agreement provides an agreed obligation for the provision of a financial contribution towards affordable housing. Therefore, the submitted obligation accords with Policy SWDP 15 of the DP.
32. On the basis of the above reasons, the obligation is also directly related to the development, fairly and reasonably related in scale and kind to the development and therefore complies with the tests set out in the Framework and with Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended).

Other Matters

33. The main parties have referred to appeal decisions which relate to redevelopment of sites that already benefit from approvals under Class Q of the GPDO. However, each determination is largely based on site specific circumstances and the proposed redevelopment schemes. Also, none of these appeals include consideration of protected species. As such, these are not directly comparable to the scheme before me, and do not alter my findings on the main issues.
34. Whilst I do not dispute that courtyard arrangements have been provided in new build and conversion schemes across rural parts of the District, the specific details of any such schemes are not before me. In any event, there is nothing to suggest that such arrangements have resulted in the harms that I have identified.

Other Considerations

35. The Council's housing land supply stands at about 3.7 years. Consequently, Paragraph 11d) ii of the Framework applies. This says that where relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
36. I acknowledge that because the scheme before me is for full planning permission, conditions could be attached to any approval to secure planting and biodiversity gains, the use of sustainable drainage solutions to minimise flood risk and to secure better energy conservation. The proposed dwellings would also offer more generous internal and external living areas than the fallback scheme. Furthermore, the proposed scheme makes provision for affordable housing. Even so, for the reasons already given, these benefits would be at the expense of the character and appearance of the area, the living conditions of the occupiers of the development and protected species. As such, I afford limited weight to such benefits.
37. For significant weight to be afforded to the fallback scheme, there needs not only to be a real possibility of it being carried out, but it would also need to be

equally or more harmful than the appeal scheme. For the reasons already given, the fallback scheme would be less harmful than the proposed scheme. Therefore, the fallback scheme attracts limited weight.

Planning balance and conclusion

38. The proposal would provide three new dwellings that would contribute towards the district's housing supply including contributions towards affordable housing. These would support the Government's objective of significantly boosting the supply of new homes. The development would also contribute to the local economy during the course of construction, and upon occupation of the proposed dwellings. Nonetheless, given that the fallback scheme would also deliver the same number of dwellings with some associated benefits. I, therefore, afford any additional benefits arising from the proposal limited weight.
39. Against these benefits is the identified harm that would be caused to the character and appearance of the area, the living conditions of occupiers and protected species. As identified above, this conflicts with the DP and the aims of the Framework, to which I attach substantial weight.
40. Therefore, when assessed against the policies in the Framework taken as a whole, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. Consequently, the presumption in favour of sustainable development does not apply and this indicates that planning permission should be refused and the appeal dismissed.

M Aqbal

INSPECTOR