
Appeal Decision

Site visit made on 3 October 2024

by G Powys Jones MSc FRTPI

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

Decision date: 30 October 2024

Appeal Ref: APP/Y3940/W/24/3342862
Waterhay Barn, Leigh, Wiltshire.

- 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 Falgun Patel against the decision of Wiltshire Council.
 - The application Ref is PL/2024/01572.
 - The development proposed is described as replace barn with new build dwelling.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. Reference has been made by both parties to the planning history of the site. Pursuant to the Council's decision¹ on a prior notification submission '*permission*', in effect, was granted for the change of use of a barn on the site to a dwelling under the terms of Class Q of the Order².
3. Subsequently, an application to demolish the barn to be replaced by a new build dwelling was refused permission³.
4. Following this decision, the site was acquired by the appellant. However, during the Building Regulation design process the appellant was advised that no adequate foundations to support the steel columns were present in the barn and that a new floor slab would also be required.
5. The barn was demolished earlier this year, and the concrete slab of the former barn and its apron were broken up. Work commenced on the construction of foundations for a new dwelling.
6. No obvious trace of the barn existed when I visited. All materials and waste had been removed from the site, but I saw the excavations to form new foundations, although these had flooded.
7. The description of the proposed development is therefore inaccurate in that the barn no longer exists and, indeed, had been demolished prior to the submission of the application leading to this appeal.

¹ Ref PL/2021/07862 dated 30 September 2021

² The then Town and Country Planning (General Permitted Development) (England) Order 2015(as amended)

³ Ref PL/2022/03761 dated 6 July 2022

Main issues

8. The main issues are: (a) whether this is an appropriate location for a new build dwelling having regard to development plan policy and, if not (b) whether the material considerations indicate that a departure from the provisions of the development plan is justified.

Reasons

Location

9. The appeal site is bordered on three sides by hedges and trees, whilst it is fenced off from an open field to the north. Access is gained from a country lane by means of a field gate. The site is physically unrelated to any settlement and the surrounding uses are agricultural.
10. Reference has been made to several development plan policies, in particular Core Policies (CP) 1, 2 & 19 of the Wiltshire Core Strategy (CS).
11. The first two policies deal respectively with settlement strategy and delivery strategy for the County whilst the latter policy provides a spatial strategy for the Wootton Bassett and Cricklade area, within which the appeal site is situated. In essence the policies set out the Council's spatial strategy and distribution of growth, and provides that development will be focused in settlements within defined settlement boundaries or allocated land.
12. It is common ground between the parties that the site lies in countryside beyond a designated settlement boundary, as defined in local policy. I have no reason to disagree. Saved Local Plan policy H4, defines the circumstances where new dwellings may be permitted outside settlement boundaries. The proposal does not fall within any of the defined categories. Although the new dwelling would be reasonably well-screened, the largely undeveloped and unspoilt character of the local countryside would be harmed by the a new dwelling.
13. The appellant acknowledges '*..that the proposal is technically contrary to..*' the provisions of the above policies. I share that view.
14. The Council's land supply for housing is such that it satisfies the terms of national policy as set out in the Framework⁴, and the appellant does not suggest otherwise. Accordingly, the policies referred to above are not out of date and relevant in my considerations. Both parties agree that the Framework's '*tilted balance*' does not apply.
15. Policies CP 60 & 61 are directed to sustainable transport and the means of achieving it in new development. In essence, new development should be located and designed to reduce the need to travel by car and to encourage the use of sustainable transport alternatives. Against this the Framework acknowledges that the opportunities to maximize sustainable transport solutions will vary between urban and rural areas.
16. The appellant has pointed to the opportunities available for walking and cycling. However, local highways are generally narrow, sometimes tortuous, unlit with no footways. It would be potentially hazardous for pedestrians and

⁴ The National Planning Policy Framework

cyclists to use them during the day, but even more so between dusk and dawn. There is little doubt in my mind that future residents of a new dwelling on this site would be heavily reliant on the private vehicle for movement.

17. Whilst the site may not be 'isolated' in the terms of the Framework⁵, this does not render it appropriate for development as a matter of course.
18. The site is clearly in open countryside which is subject to policies of restraint in respect of the type of development proposed, and its character would be harmed. Residents of the dwelling are likely to be heavily reliant on the private car for transport. In these circumstances I conclude that the site is not an appropriate location for a proposed new build dwelling given the degree of conflict with development plan policies.

Material considerations

19. Since the barn has been demolished and removed, the appellant acknowledges that no 'fall-back' exists. Indeed, in my view, the demolition of the barn effectively reverted the lawful use of the land to its former agricultural use.
20. However, the appellant takes the view that the planning history of the site, notably that the right to convert the barn to a dwelling was once established, should be regarded as a weighty material consideration.
21. The appellant argues that the dwelling proposed now is little different in scale and appearance to the permitted development scheme; that issues of locational sustainability would be similar; that no harm would be caused to the local landscape, particularly given the visually sheltered, screened nature of the site and that the barn had become a feature of the local landscape in any event. In effect, the appellant argues that the impacts of a new dwelling on issues of planning significance when compared to a converted barn would not be dissimilar.
22. These arguments suggest that I should possibly overlook the fact that the barn no longer exists. That is not a practical proposition since the demolition opened a new chapter in the site's planning history.
23. It is also significant that the permitted development right under Class Q is not unconditional. In particular, barns must be capable of conversion involving no more building operations than reasonably necessary to achieve the conversion. This is explained in further detail in national guidance:

*"It is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. Therefore, it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right"*⁶.
24. In applying the appellant's technical evidence, it would be reasonable to conclude that the barn was never suitable for conversion in the terms of Class Q since the structural frame had no or inadequate foundations and the slab was also inadequate for the proposed use - it is what led to the demolition. This, of course, is at odds with the technical evidence presented to the Council in 2021.

⁵ As established in the Courts

⁶ Planning Practice Guidance When is Permission Required? paragraph 105.

25. Had the Council been presented with the appellant's current technical evidence 3 years or so ago, it is extremely doubtful whether its decision on the prior notification submission would have been the same. It could therefore be justifiably said that the Council was misinformed and possibly misled into making its decision in 2021. On this basis, the Council's stance on the current proposal can be fully understood, and it is one that I support.
26. The planning history therefore attracts very little weight in my considerations given that the barn no longer exists, and the appellant's evidence demonstrates that the barn was not suitable for conversion even in 2021, notwithstanding the Council's decision at the time.
27. It is said that the appellant is inexperienced in development, was not properly advised before he took the decision to demolish the barn and faces financial difficulties should his appeal fail.
28. The initial appeal statement says that:
- The ground conditions report, submitted with the appeal application, demonstrated that foundations of at least 1.3m would be required, but the building control officer has since signed off on foundations as deep as 2.5m to 3m. The structural engineer reported to the appellant in September 2023 that the current foundations were insufficient and that a new foundation would be required.*
29. The initial ground conditions report supporting the planning application was prepared in April 2023 by GW – a firm of geotechnical and environmental consultants. Their investigation informed the recommendation made by the Structural Engineer the following September⁷. However, GW's April 2023 report contains the following statement:
- Discussion with the client suggested the original foundations will not be used, and new foundations are expected to be constructed.*
30. Accordingly, the report contains relatively detailed recommendations on foundation design. There is no clear indication before me as to whether 'the client' in the above-mentioned quotation and the appellant are one and the same, and I draw no firm conclusions on this aspect. However, it seems clear that the appellant was involved with and advised by persons and firms well versed in development including a structural engineer and others providing advice on Building Regulation matters⁸. A contractor was also involved. This being the case, it seems surprising to me that planning issues were not raised, particularly given the significant departure proposed from the deposited class Q plans.
31. I find it equally surprising that the appellant appears not to have taken professional advice when purchasing the barn given the costs of acquisition.
32. Personal circumstances rarely outweigh general planning considerations and they do not in this case given the substantial conflict with policy and that the circumstances surrounding this case potentially bring the proper operation of the class Q procedure into disrepute.

⁷ Appendix 7 to appellant's appeal statement

⁸ Although no evidence has been presented as to whether and when a Building Regulation submission was made

33. Reference has been made to other appeal decisions⁹ to demonstrate that issues relating to the planning history of sites and personal circumstances can be material considerations in planning decisions. There is no dispute about that, but it is a matter for the decision-maker to determine what weight these should attract having regard to the facts and circumstances of each individual case. I should add that whilst extracts from the appeal decisions have been referred to, the decisions should be read as a whole. When that is done, the details and circumstances of the 3 cases referred to are clearly distinguishable from those in the case before me.
34. Accordingly, I conclude that the material considerations in this case do not indicate that a departure from the policies of restraint contained in the development plan to be justified.

Other matters

35. I note that the ecological information submitted originally has been updated, and this in my view adequately overcomes one of the Council's concerns.
36. The representations of the Parish Council and local residents are also noted, and I have already dealt with the main planning points raised.
37. All other matters referred to in the representations have been taken into account, but no other matter is of such strength or significance as to outweigh the considerations that led me to my conclusions.

G Powys Jones

INSPECTOR

⁹ APP/C1760/W/20/3247857; APP/N4720/C/20/3258467; APP/J1915/W/23/3317491