

Appeal Decision

Site visit made on 16 October 2024

by E Pickernell BSc MSC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2024

Appeal Ref: APP/Y3940/W/23/3335927

Land parcel off the A429, Located north of Waitrose, Malmesbury SN16 9NZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mrs Orysa Lyvchanyn against Wiltshire Council.
 - The application Ref is PL/2023/03637.
 - The development proposed is the erection of a building for mixed agricultural uses including the storage of machinery and periodic housing of livestock.
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Decision

1. The appeal is dismissed and planning permission for the erection of a building for mixed agricultural uses including the storage of machinery and periodic housing of livestock at Land parcel off the A429, Located north of Waitrose, Malmesbury SN16 9NZ is refused.

Preliminary Matters

2. The appeal relates to a planning application that was not determined by the Council within the prescribed period. I note that the Council would have refused planning permission should it have made a decision on the proposal. I have had regard to the parties' submissions in establishing the main issues which I set out below.
3. The appellant considers that the proposal would be permitted development. It is not within my remit to determine whether the proposal is permitted development or not. This would be a matter for the appellant to pursue separately through the lawful development certificate procedure.

Background and Main Issues

4. The Council failed to determine the application within the prescribed period, however the Council has indicated in its statement that it would have refused planning permission had it retained the jurisdiction to do so. Based on the evidence before me, the main issues are:
 - the effect of the proposed development on the character and appearance of the area with particular regard to the Malmesbury Conservation Area, the setting of Grade II listed buildings and protected trees; and

- the effect of the proposal on highway safety.

Reasons

Character and appearance

5. The appeal site comprises part of a field which is accessed from the A429 which runs from north to south towards the eastern side of Malmesbury. Existing development in the surrounding area is mixed in character, comprising a modern supermarket to the south and dwellings adjacent to the River Avon to the north. To the southwest of the appeal site are dwellings and former mill buildings.
6. The appeal site is set within a landscape comprising a patchwork of green spaces which are interspersed amongst development in this part of Malmesbury, connecting the core of the settlement to the countryside beyond. The appeal site comprises the southeast portion of a wider field which slopes down to the north and west where it adjoins the River Avon. The majority of the field is open with well vegetated edges which combined with the riparian character of the site results in an attractive appearance. It is proposed to construct an agricultural building towards the southeast corner of the site.

Conservation area

7. The appeal site is located within the Malmesbury Conservation Area (MCA). The significance of the MCA is in part derived from its topography including steep slopes edged by the River Avon. The town has a rich history as a market town and a centre for the cloth industry which is reflected in many of the historic buildings which exist in the town and contribute to the significance of the MCA along with the river valleys, vegetation and open spaces. The field in which the appeal site is located is part of a river valley and due to its open nature contributes to the significance of the MCA.
8. The building would be located on sloping ground and the plans do not demonstrate how the land levels would be adjusted to accommodate the building. Nevertheless, due to its mass, bulk and position towards the top of the slope, the building would be an obvious, assertive incursion into the site which would be visible in public vantage points from the A429 and through gaps between buildings to the north. The utilitarian materials of the proposed building, whilst not unexpected for an agricultural building would contrast unacceptably with the existing, natural character of the site. The building, in combination with the proposed additional hardstanding areas, would erode and detract from the open nature of the site and the local landscape character by introducing prominent new built form. Consequently, the proposal would result in harm to the character and appearance of the area.
9. Therefore, having regard to my duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act (1990) (the Act), the proposal would fail to preserve or enhance the character or appearance of the MCA and would harm its significance.

Setting of listed buildings

10. The appeal site is within the setting of Avon Mills: Inner Buildings, Avon Mills: Outer Buildings, Conservatory Cottage, Goosebridge Cottage and Attached Wall and Baskerville Bridge. These are all Grade II listed buildings (LBs).
11. The Avon Mills Inner and Outer Buildings are both former mill buildings which are now in use as flats. They derive their significance from their history in connection with the cloth industry of the town and from their architecture including their limestone walls, slate roofs and characteristic window arrangements. Conservatory Cottage is located adjacent to the mill buildings and derives its significance from its history and its architecture including its characteristic limestone rubble walls with large quoins.
12. The appeal site is within a field which forms part of the historic rural backdrop of these buildings and therefore contributes to their significance. However, the presence of the adjacent supermarket and a substantial landscaping belt means that there would be limited intervisibility between the proposed building and these listed buildings. From some vantage points the proposed building and the larger mill buildings would both be visible. However given the separation between the listed buildings and the appeal site, the proposed development would preserve the setting of these buildings and the contribution it makes to their significance.
13. Goosebridge Cottage and attached wall are located on St Johns Street. The building and wall derive their significance from their history, dating from the early 19 Century and their architecture, both being constructed of limestone rubble. The significance of the building is also partly informed by features of interest including its characteristic windows with timber lintels. Baskerville Bridge is adjacent to Goosebridge Cottage and comprises a former packhorse bridge dating from the 18 Century. It derives its significance in part from its connection with the history of Malmesbury and its group value with other adjacent listed structures.
14. Although the appeal site is not adjacent to these buildings, it forms part of their wider setting as part of the rural hinterland of the area. However given the extent and location of the proposed development and the intervening development which exists, the proposal would preserve the setting of these buildings and the contribution it makes to their significance.
15. I conclude that the proposal would not have a harmful effect on the setting of these listed buildings. Therefore, having regard to my statutory duty under Section 66(1) of the Act, I find that the proposal would preserve the LBs, their setting, and any features of special architectural or historic interest which they possess.

Protected trees

16. The wider field in which the appeal site is located, is subject to a Tree Preservation Order (TPO) which specifies 4 individual trees. The proposed building would be located near to T4 of the TPO which is a Grey Poplar.
17. I saw at my site visit that the tree is a large specimen which is located prominently on higher ground near the access to the site. It is highly visible

in views towards the appeal site from vantage points along the A429 and across the site from the north. I have no substantiated evidence before me to demonstrate that the tree would be unlikely to survive on site for many years. It is an attractive feature of the area which contributes to the character and appearance of the MCA.

18. Whilst the trees are not shown on the submitted drawings, it is clear that the proposed building would be very near to T4. In order to construct the building, earthworks would be likely to be required in relatively close proximity to this tree. There is no substantiated evidence before me that such works would not result in damage to the roots of the tree or threaten its longevity.
19. Consequently, I find that the proposal would be likely to result in a harmful effect on the protected tree and as a result would result in harm to the character and appearance of the area and the local landscape character.

Conclusion on character and appearance

20. I have not found that the proposal would have a harmful effect on the setting of the Grade II LBs. However overall, I conclude that the proposed development would have a harmful effect on the character and appearance of the area with particular regard to the MCA and protected trees.
21. The proposal would therefore be in conflict with Policies 51, 57 and 58 of the Wiltshire Core Strategy (Adopted January 2015) (WCS). Collectively these seek to ensure that development does not have a harmful impact upon landscape character, achieves a high standard of design, draws on the local context, is complimentary to the locality and protects and conserves the historic environment.
22. As required by paragraph 205 of the National Planning Policy Framework (the Framework), great weight should be given to the conservation of a designated heritage asset, irrespective of the amount of harm identified. In this case the proposal would not preserve or enhance the character or appearance of the CA. Consequently, the proposal would result in less than substantial harm to the significance of this heritage asset. In such circumstances, paragraph 208 of the Framework states that the harm should be weighed against the public benefits of the proposal. I return to this matter below.

Highway safety

23. The proposed building would be accessed via an existing access point off the A429. The access road would be extended and would curve round to meet the north elevation of the building, where access to the building would be provided. The barn would be capable of accommodating agricultural machinery for the maintenance of the field, which would limit the requirement for this to be brought to the site from elsewhere. However, it is intended that the barn would be used in conjunction with some of the appellant's other agricultural holdings in the Wiltshire area and therefore it is likely that there would be some vehicular movements associated with the moving of animals between sites.

24. No indication has been provided of existing and anticipated vehicular movements. Consequently, it has not been adequately demonstrated that the proposal would not result in an increase in the intensification of use of the access. The site benefits from an existing access although the adjacent highway verges are outside of the appeal site. I cannot be certain that adequate visibility can be achieved from this access, to ensure it is safe for the anticipated level of vehicular movements.
25. The proposed layout of the site would require vehicles to access the building via a relatively tight turn within the site. Whilst the access would widen adjacent to the building, I am not convinced that there would be sufficient room for large vehicles to turn in order to egress the site in a forward gear. Vehicles attempting to reverse out of the site would come into conflict with traffic on the A429, resulting in disruption to the flow of traffic and an unacceptable risk to highway safety.
26. I conclude that the proposal would have a harmful effect on highway safety. It would therefore conflict with the Framework which seeks to ensure safe and suitable access is provided.

Other Matters

27. The field provides a location where newly purchased livestock can be kept separate from existing stock at other holdings until it can be determined that they are free of disease. The animals would be housed in the proposed building in poor weather conditions or in case of emergency. The building would also store agricultural equipment. The Council considers that the size of the building proposed is not justified and is disproportionate to the size of the field. Nevertheless, I accept that the proposed building would be useful to the appellant's business.
28. Policy 34 of the WCS seeks to support development required to adapt to modern agricultural practices subject to a number of criteria and the Framework seeks to support a prosperous rural economy. However, the Framework at paras 88 and 89 seeks to ensure expansion of businesses through well-designed, beautiful new buildings and that development is sensitive to its surroundings. Furthermore, Policy 34 seeks to ensure proposals are consistent in scale with their surroundings. Consequently, as I have found that the proposal would be harmful to the character and appearance of the area the proposal would conflict with these aims.

Planning Balance

29. The proposed building would be useful to the appellant's business, however this would largely be a private benefit and I am not convinced that these benefits could not accrue in a manner which would be less harmful to the character and appearance of the area. Therefore, I give only limited weight to the benefits of the proposal. However, I attach considerable importance and weight to the harm to heritage assets. As such I conclude that the public benefits of the proposal do not outweigh the less than substantial harm to heritage assets and the other harms I have identified above in respect of trees and highway safety.

Conclusion

30. The proposal conflicts with the development plan as a whole and the material considerations including the Framework do not indicate that the appeal should be decided other than in accordance with it. Accordingly, the appeal is dismissed, and planning permission is refused.

E Pickernell

INSPECTOR