



Appeal Decision

Site visit made on 2 October 2024

by L Reid BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2024

Appeal Ref: APP/J1915/W/24/3340054

Monks Green Farm, Ash Tree Barn 1, Mangrove Lane, Brickendon, Hertfordshire SG13 8QL

- 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 William Ashley, Monks Green Farm LTD against the decision of East Hertfordshire District Council.
 - The application Ref is 3/23/1233/FUL.
 - The development is change of use of 1-6 Ash Tree Barn from Class E (formerly B1) to C3 residential dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from Class E (formerly B1) to C3 residential dwellings at Ash Tree Barn 1-6, Monks Green Farm, Mangrove Lane, Brickendon, Hertfordshire SG13 8QL in accordance with the terms of the application, Ref 3/23/1233/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The address in the banner heading above is taken from the planning application form. I have used the address from the Council's decision notice in my formal decision as it is more accurate. I have removed the terms "retrospective" and "resubmission" from the development description as these are not acts of development. I have also removed the reference to 1-6 Ash Tree Barn in the description as this is included in the address.
3. The appeal site is part of a larger building which forms Ash Tree Barn. Planning permission was previously granted to convert, extend and alter Ash Tree Barn to provide six live/work units¹. There is a dispute between the parties as to whether this permission has been implemented. However, this and the enforcement of condition 11 of that consent is a matter between the parties. I have determined the appeal in accordance with the description of development set out on the application form and in the formal decision of the Council and in respect of that part of Ash Tree Barn which is identified on the submitted plans.
4. It was apparent from my site visit that the change of use has occurred. For clarity, I have based my decision on the submitted plans.

¹ Council Ref: 3/11/1808/FP

5. Following the submission of final comments, the appellant submitted an appeal decision² which concluded that the Council could not demonstrate a five-year housing land supply. The appeal decision is dated 22 August 2024. Consequently, it could not have been submitted in accordance with the appeal timetable. In the interests of natural justice, both main parties have had the opportunity to make representations on this evidence. I have taken this evidence and the comments received in response into account.
6. The appeal site is within the Metropolitan Green Belt. The main parties have agreed that the development would not represent inappropriate development in the Green Belt as defined in Policy GBR1 of the East Herts District Plan 2018 (the District Plan) and the National Planning Policy Framework (the Framework). Based on the evidence before me, I have no reason to reach a contrary view.

Main Issues

7. The main issues are:
 - the effect of the development on employment land supply and the rural economy; and,
 - whether the development provides acceptable living conditions for the occupiers of units 2-5, with regard to the provision of private amenity space.

Reasons

Employment uses

8. Policy ED1 of the District Plan seeks to protect employment uses and sets out the criteria where the loss of an existing site/premises which is currently, or was last, in employment use (Classes B1, B2, B8 or related Sui Generis), will be permitted. This includes where the retention of the site or premises for Use Classes B1, B2 and B8 has been fully explored without success. This should also consider whether improvements to the existing site/premises would make it more attractive to alternative B1, B2 or B8 uses and evidence of a period of marketing of at least 12 months must be provided.
9. Policy ED1 is supported by Policy ED2 of the District Plan. Policy ED2 sets out the evidence which will be required where the proposal results in the loss of an employment use in a rural area or a change of use to a non-employment generating use. Amongst other things, the evidence is required to demonstrate that the current employment use is no longer needed or viable, that improvements to the site/premises would not make alternative employment generating uses viable and the retention of the employment generating use is unable to be facilitated by the partial conversion to a non-employment generating use.
10. The appellant asserts that marketing was undertaken and began in 2012. Several estate agents were engaged, however, limited details regarding the times and durations of this marketing exercise in which these estate agents marketed the development have been provided.

² Appeal Ref: APP/J1915/W/24/3340497

11. Marketing evidence submitted with the application includes copies of a generic marketing brochure which advertises Ash Tree Barn as a commercial (B1 Use). The appellant states that this advertisement example covers various months and years, but these marketing brochures are not dated. Another marketing brochure advertising live-work opportunities at the site includes the first release date of October 2012 but does not include the dates on which this brochure was used for marketing.
12. A letter from the company that marketed the development explains that marketing in the form of local press, the internet and distribution via a mailing list was carried out. However, no specific evidence of this marketing has been provided and the length of time the marketing was carried out is unclear.
13. Email exchanges between the applicant and The Live Work Network demonstrate that an advert was placed to market the development for an intended period of 12 months. A copy of this newsletter advertising the development has been provided but it is dated November 2012 and no further copies of this newsletter have been provided to show that the marketing did cover 12 months or the results.
14. Reference is made to the attempts to improve the units to make them more attractive which included various financial incentives and that the site could not be improved to address the feedback received from prospective tenants which included the need for more internal space and parking. Whilst I recognise the constraints of the appeal site, no substantive evidence of interest from prospective tenants and these discussions have been provided to support these assertions.
15. Comments are made in another letter from the company who marketed the development regarding the current market and whether the concept of live/work units still exist but there is little information to demonstrate that the employment use is no longer needed or viable. As it is not clear what the financial implications would have been for pop-up businesses and short-term contracts to be discounted, this does not robustly show that alternative employment uses were not viable.
16. Whilst some marketing evidence has been submitted, it is unclear whether this covered a period of at least 12 months. It has also not been sufficiently demonstrated that improvements to the appeal site could not be carried out to make an alternative employment generating use operating from the appeal site viable. The loss of an employment use has therefore not been fully justified.
17. For these reasons, I conclude that it has not been demonstrated that the loss of the employment use is not harmful to employment land supply and the rural economy. The development therefore conflicts with Policies ED1 and ED2 of the District Plan.

Private amenity space

18. The amenity space for units 2 – 5 consists of open grassed areas to the front of the building that are adjacent to the car park and intersected by the path to each unit. The units are located along a cul-de-sac which only leads to the appeal site. The paths also provide a degree of segregation between the areas. Bearing in mind the limited space around the appeal building and that the

development is for one-bedroom units which have a sizeable internal living environment, the grassed areas do provide occupants with some outdoor space that is conducive to use as amenity space, despite the lack of enclosure.

19. Although the amenity spaces are not strictly private, outdoor space that is screened from view is not an express requirement of Policy DES4 of the District Plan which is identified in the reason for refusal. I am therefore unable to identify any conflict with this policy.
20. I therefore conclude that the development provides acceptable living conditions for the occupiers of units 2-5, with regard to the provision of private amenity space. The development complies with the Framework, which amongst other things, states that decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Other Matters

21. Both main parties refer to an appeal decision at land off Old Turnpike Road³ which is within a different local authority. The main issue in this case related to the definition of a live/work unit as defined by the development plan and the location of the appeal site. Reference is also made to a Court case⁴ which also relates to the definition of live/work and breach of covenant. This appeal decision and judgement neither weigh in support or against the appeal scheme given the main issues that are in dispute.

Other Considerations

22. Set against the harm, the development provides six homes, each of which has a good standard of accommodation, and would re-use a brownfield site. Occupants of the development are also likely to bring some trade to nearby shops and services which would support the rural economy. Given the quantum of development under consideration, I give these benefits moderate weight.
23. It is proposed to install electric charging points, air source heat pumps and rainwater harvesting systems. I give these environmental benefits limited weight on account of the scale of the development.
24. The appellant advises that the units are insulated, have double glazing, energy saving appliances and recycling facilities are available. However, this would be expected in order to provide suitable living accommodation.
25. The Council confirm that a lawful development certificate for operational development has previously been granted which relates solely to building operations at the appeal building⁵. The appellant highlights a fallback position where an application for a lawful development certificate for the existing use of the units as residential could be submitted. However, it is not for me within the context of this appeal to determine lawfulness.
26. The payment of Council Tax would be required anyway under the relevant legislation and requirements. The Highway Authority raised no objection to the development, and the appellant asserts that no accidents have been recorded. However, compliance with relevant national and local planning policies on

³ Appeal Ref: APP/H1840/W/19/3230487

⁴ AHGR Limited v Kane-Laverack (2023) EWCA Civ 428

⁵ Council Ref: 3/23/1950/CLEO

transport grounds would be required in any case. These are therefore neutral matters and neither weigh in favour nor against the development.

Planning Balance

27. It has not been demonstrated that the loss of the employment use is not harmful to employment land supply and the rural economy. The development conflicts with Policies ED1 and ED2 of the District Plan. This conflict means that the development conflicts with the development plan as a whole.
28. The Council has confirmed that they are currently unable to demonstrate a five-year supply of deliverable housing sites. With a supply of around 4.5 years, the shortfall is judged to be moderate in this instance. Consequently, because of the provisions of footnote 8, paragraph 11 d) (ii) of the Framework should be applied. The policies which are most important for determining the application are deemed out-of-date and 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.
29. Policies ED1 and ED2 are consistent with the Framework in supporting economic growth and a prosperous rural economy. Therefore, the level of conflict between the development and Policies ED1 and ED2 should be given significant weight in this appeal.
30. The Framework states that significant weight should be placed on the need to support economic growth and decisions should enable the sustainable growth of all types of businesses in rural areas and the development and diversification of other land-based rural businesses. However, it also refers to how small and medium sized sites can make an important contribution to meeting the housing requirements of an area, advises support should be given to the development of windfall sites and a positive approach should be adopted for alternative uses of developed land. This includes the use of employment land for homes in areas of high housing demand, provided that this would not undermine key economic sectors.
31. The development results in a loss of an employment use which harms the supply of employment land. I have concluded that the loss of the employment use in this case has not been fully justified. In that context, I attach moderate weight to this harm.
32. In respect of the impact on the rural economy, the current residential use would have a positive effect. Consequently, in the absence of any evidence to the contrary, I consider the current use and the previous employment use would have similar effects on the rural economy. Similarly, the site is brownfield land and either its use as employment land or a residential use would be beneficial. Consequently, these matters have a neutral effect in the planning balance.
33. The development provides additional homes which make a modest but not insignificant contribution to the supply of housing. This would be in accordance with the Government's objective of significantly boosting the supply of homes. Furthermore, the use of employment land for housing, where the demand is high accords with national policy. These considerations each attract moderate weight in favour of the appeal.

34. On balance, taking all of the above into account, the adverse impacts of the loss of an employment use would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does apply.

Conditions

35. The Council has supplied a list of conditions that it considers would be appropriate. I have considered these in light of the tests within the Framework and Planning Practice Guidance (PPG). Where appropriate, I have adjusted the wording of the conditions to improve relevance, precision and enforceability. The parties have been invited to comment on the conditions.
36. In the interests of clarity and precision it is necessary to impose a condition specifying the approved plans [1].
37. To protect the character and appearance of the area, it is necessary to require details of all boundary treatments and hard and soft landscaping to be submitted. In the same regard and to protect the living conditions of residents, it is necessary to require details of the refuse facilities.
38. Details of the measures to reduce the need for cooling in the summer, heating in the winter, carbon emissions and water consumption are necessary to comply with Policies CC1, CC2 and WAT4 of the District Plan.
39. To provide ecological and biodiversity enhancements to comply with Policy EN2 and NE3 of the District Plan, it is necessary to require bat and bird boxes to be installed and a landscape and ecological management plan to be secured and implemented. As Policy NE2 of the District Plan also requires proposals to achieve a net gain in biodiversity, it is necessary to require this to be demonstrated. The Council has suggested this includes a completed small site biodiversity net gain metric in accordance with Natural England guidance. However, this is not required by the policy and the submission of the application pre-dates the statutory biodiversity net gain requirements.
40. In the interests of air quality, details of electric vehicle charging provision and installation are necessary. To promote sustainable transport modes, it is necessary to require details of the cycle parking facilities.
41. The above listed details have been merged into one condition [2]. This condition is imposed to ensure that the required details of the scheme are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of these before the development takes place.
42. The condition will ensure that the development can be enforced against if the required details of the scheme are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

- 43. To protect against light pollution, it is necessary to impose a condition preventing external lighting from being installed without prior agreement from the Council [3].
- 44. The Council has suggested a condition removing various permitted development rights. As set out in the PPG and the Framework, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. I consider that removing permitted development rights under Class B would be reasonable, necessary and justified to protect the openness of the Green Belt [4].
- 45. To ensure adequate parking provision, it is necessary to impose a condition to require the parking areas to be used for this purpose only [5].
- 46. The limitations and conditions of permitted development restrict the area of ground covered, the size and position of development allowed and provide some restrictions to protect neighbour's amenity. The site circumstances do not justify the removal of the other permitted development rights as suggested by the Council. Removing these permitted development rights would therefore not be necessary or reasonable.

Conclusion

- 47. The development would conflict with the development plan but material considerations indicate that a decision should be made other than in accordance with it. Therefore, the appeal should be allowed.

L Reid

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with drawing nos:

Site Plan – Prepared by: W Ashley 01-09-2022,
Location Plan – Prepared by: W Ashley 01-09-2022,
PLANS AS EXISTING & PROPOSED: ASH TREE BARN – ATB01,
FIRST FLOOR LAYOUT UNITS R1 & R2 - 11/MGF/SC/15,
FIRST FLOOR LAYOUT UNITS R1 & R2 - 11/MGF/SC/16,
ELEVATIONS SHEET 2 – 11/MGF/SC/25,
GROUND FLOOR LAYOUT UNITS 3, 4, 5 & 6 – 11/MGF/SC/11 Rev C,
GROUND FLOOR LAYOUT UNITS 7, 8, 9 & 10 – 11/MGF/SC/12 Rev B.

- 2) The use hereby permitted shall cease and all structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 3 months of the date of this decision a Detailed Design Scheme shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The scheme shall include the following details of:
 - a) existing and proposed boundary walls, fences or other means of enclosure
 - b) bin storage facilities
 - c) measures to reduce the need for cooling in the summer, heating in the winter and to reduce carbon dioxide emissions and water consumption across the development
 - d) bat and bird boxes to be implemented
 - e) electric vehicle charging provision
 - f) cycle parking facilities
 - g) hard and soft landscaping, finished levels or contours, hard surfacing materials, retained landscape features, planting plans, schedules of plants, species, planting sizes, density of planting
 - h) a landscape and ecological management plan including demonstration of biodiversity net gain on the site with a non-mandatory target of providing a net gain in biodiversity of 10%
- ii) If within 11 months of the date of this decision the local planning authority refuse to approve the Detailed Design Scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted Detailed Design Scheme shall have been approved by the Secretary of State.

- iv) The approved Detailed Design Scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved Detailed Design Scheme specified in this condition, that scheme shall thereafter be retained. Any trees or plants that, within a period of five years after planting, are removed, die or become, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) No external lighting shall be installed unless a scheme for such lighting has been submitted to and approved in writing by the local planning authority.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Class B of Part 1 of Schedule 2 to the Order shall be undertaken.
- 5) The parking area shown on the Site Plan – Prepared by: W Ashley 01-09-2022 shall be kept available at all times for the parking of vehicles by the occupants of the development and their visitors and for no other purpose.

END OF SCHEDULE