



Appeal Decision

Site visit made on 3 January 2025

by **S Rawle BA (Hons) Dip TP Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 6 February 2025

Appeal Ref: APP/K0425/W/24/3346978

Barns Grymsdyke Farm, Main Road, Lacey Green, Buckinghamshire, HP27 0RB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
 - The appeal is made by Kebbell Development Ltd against the decision of Buckinghamshire Council - West Area (Wycombe).
 - The application Ref is 24/05331/PIP.
 - The development proposed is the demolition of existing buildings and erection of 5 No. dwellings with associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have had regard to the updated National Planning Policy Framework (the Framework) which has been recently published. I note that national policies relating to housing land supply have changed and consequently it has been necessary to consult the parties on these changes and I have taken account of their comments on the updated Framework in the determination of the appeal.
3. The proposal is for permission in principle (PIP). The Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The PIP consent route has two stages. The first stage establishes whether a site is suitable in-principle (the PIP stage) and the second, Technical Details Consent (TDC) stage is when the detailed development proposal is assessed. This appeal relates to the first of these two stages.
4. The scope of the consideration for a PIP is limited to location, land use and the amount of development permitted. All other matters are considered as part of a subsequent TDC application if the PIP is granted. I have determined the appeal on that basis.

Costs Application

5. A cost application has been made by the appellant against the Council. This is subject of a separate decision.

Main Issue

6. The main issue is whether or not residential use on the appeal site would represent an appropriate land use having regard to its existing status as a Scattered Business Site.

Reasons

7. The appeal site comprises a number of existing buildings that are in very poor condition that extend across the site. Although on the edge of the village, the appeal site was originally part of a farm and not only have the buildings been allowed to fall into disrepair, the appeal site is also overgrown. I observed at the site visit that although possible it is not easy to walk around the site due to overgrown vegetation.
8. The previous use of the buildings was for car valeting and car storage. The proposal as shown on the indicative plans would involve the demolition of the existing buildings and the redevelopment of the site for residential use comprising five dwellings with associated landscaping and parking.
9. The appeal site meets the definition of a Scattered Business Site (SBS). Policy DM5 of the Adopted Delivery and Site Allocations Plan, July 2013 (DSAP) sets out that planning permission for residential uses will only be granted on such a site if it has been clearly demonstrated that the re-use of the site for B1, B2 and B8 use classes of the Use Class Order or employment generating sui generis uses is no longer practicable. The policy also sets out how it can be demonstrated that a site is no longer practicable for employment generating uses. This requires marketing the site for a sufficient period, at a reasonable price and the site should be unencumbered from certain restrictions.
10. I note that the policy was adopted some considerable time ago. However, I am satisfied that it was retained as part of the development plan when the Wycombe District Local Plan (WDLP) was adopted in August 2019. Consequently, I am satisfied that the policy is relevant to the determination of the appeal.
11. The Council confirm that they do not object on Green Belt terms as the appeal site is previously developed and they consider that it would be possible to demonstrate at the TDC stage that five dwellings could be accommodated on the site without having a greater impact on openness than the existing development. I agree with that analysis and also consider that the appeal site would meet the definition of Grey Belt land. Consequently, I do not have any concerns about the proposal in terms of harm to the Green Belt.
12. I accept that the appellant has undertaken a marketing campaign. However, that has been limited to marketing for rent and not for sale. The Council consider that given the condition of the buildings the potential for letting the buildings for an alternative business use is extremely low and consider that the appeal site should have also been marketed for sale. I agree. I would query whether anyone would be willing to rent the existing buildings in their current state and consequently taking a common-sense approach attempting to market them for rent would appear to be a fruitless exercise.
13. That view would appear to be supported by the appellant's marketing agent who confirmed in a marketing report and appraisal dated 17 January 2024, that overall, no private individual, Company or other persons, whether represented or otherwise, would countenance leasing the buildings "as is" for an assortment of reasons, including the current condition of the buildings.
14. Further, the schedule of enquiries submitted with the original application indicated that a number of those who contacted the agent were put off due to the condition

of the buildings, because the units were open or not a suitable use due to the units' structure. Without any significant or detailed information it is difficult to speculate about whether a marketing campaign involving the potential sale of the appeal site would have been successful. However, I note that a party who did contact the agent about the property were recorded as not a suitable enquiry as not for sale. Also, another who queried whether the land was suitable to be built upon was also recorded as not a suitable enquiry. Although with the latter there is not enough information to ascertain whether the query related to an employment use, or they too were interested in developing the appeal site for residential use.

15. The explanatory text in support of DM5 of DSAP sets out that it is important that the relevant site has been marketed appropriately to demonstrate that there is no likelihood of the site being re-used for employment generating uses. To my mind it is common sense that marketing the buildings on the appeal site for rent, when the appellant's own agent confirms that no-one would countenance leasing them due to, among other things the current condition of the buildings does not meet the requirement to market the appeal site appropriately.
16. The appellant makes reference to the use of "or" in paragraph 6.34(a) of the explanatory text in support of Policy DM5 which says as a minimum a site will need to have been marketed for a period of time which is normally sufficient for the sale or letting of a property, having regard to the location and type of site.
17. However, in my view that does not mean that the appellant has the unconstrained choice of either trying to let or sell the property. Rather, it is just providing an explanation that once an appropriate marketing campaign has been chosen, the period of time of that campaign is sufficient to allow for the property to be let or sold, whichever route has been chosen.
18. The appellant has also made reference to a note that supports the implementation of Policy DM5 of the DSAP (the note). The note itself makes it clear that it is not a statutory document and does not form part of the development plan. However, I accept that like the explanatory text it is helpful in providing context to the relevant development plan policy. The note makes it clear that applicants will be expected to demonstrate that the form of the marketing has been appropriate and that despite their best endeavours no tenant (or purchaser) could be found.
19. To my mind, this reinforces the importance that the form of marketing is appropriate. Again, the use of the terms, tenant/purchaser and owner/leaseholders at various parts of the note does not indicate that the appellant is unconstrained in how they choose to market the site, especially in a situation as here where the marketing campaign is clearly not appropriate. Rather, in my view it just indicates that the appropriate form of marketing would necessarily involve an attempt to sell or lease the property and consequently the use of these terms are interchangeable depending on what form of marketing campaign had been chosen with the key being that it must be appropriate.
20. The appellant highlights that the note makes reference in paragraph 2.2, 2.4 and 2.6 to the site's permitted purpose (2.2 & 2.4) and the site's current use (2.8) and I note that the use of the site is currently restricted by condition.
21. However, these paragraphs cannot be read in isolation. Paragraph 2.1 which introduces the section on the marketing requirements, makes it clear that applicants will be expected to demonstrate that the form of the marketing is

appropriate and that despite their best endeavours, no tenant or purchaser interested in using the site or floorspace for a B Use Class operation or alternative employment generating 'sui generis uses' could be found. That is consistent with the policy DM5 of the DSAP, and it is within that context that the following paragraphs need to be read and so I consider it reasonable to read permitted purposes as including those type of uses set out in the policy and in paragraph 2.1.

22. Moreover, paragraph 2.8 relates specifically to the fact that the applicant should demonstrate that active steps have been taken to consider a refurbishment if this is likely to improve the prospects of a sale or letting for the current use. Again, that seems to be a common-sense approach that if, as is the case here, refurbishment would improve the chance of a sale or a letting for the existing use then the applicant should demonstrate that this option has been actively pursued.
23. I accept that the appellant's marketing agent did provide advice on refurbishment of the buildings, but because of their current state considered such an option would not be viable. While I have no reason to disagree with the evidence in terms of refurbishment of the use permitted by the planning permission, that does not diminish the need to undertake an appropriate form of marketing which to my mind the appellant has failed to do.
24. In terms of whether or not redevelopment of the wider site is a viable proposition, I note the appellant's view that there would be significant investment risk, and such an approach would not be viable. However, that view is based on a theoretical exercise based on a number of assumptions and this has not been adequately tested by an appropriate marketing exercise which should have included offering the appeal site for sale.
25. Further, I have considered whether the surrounding uses, including residential and a children's nursery as well as highway constraints could prevent redevelopment of the appeal site for an employment generating use due its impact on the living conditions of existing residents and highway safety concerns. However, based on the available evidence, it is not possible at this stage to categorically rule out all other possible uses that would accord with Policy DM5 of the DSAP and which would not be unacceptably harmful.
26. Overall, I have found that the appellant has not marketed the appeal site appropriately and as a result it has not been clearly demonstrated that the re-use of the site for B1, B2 and B8 use classes of the Use Class Order or employment generating sui generis uses is no longer practicable. Consequently, Policy DM5 of the DSAP does not support the proposed development.
27. Notwithstanding that the appeal site is currently not in active use, I am satisfied that the purpose of Policy DM5 of the DSAP is clear as the explanatory text sets out that SBS are a valuable part of the employment land portfolio in the district and the policy seeks to protect such sites which have an important role to play in accommodating small to medium size businesses. I agree that the appeal site is a valuable part of the employment land portfolio and the appellant has not provided adequate information to satisfy me that its loss is justified. Overall, I afford the loss of employment land on an existing SBS significant weight.
28. I therefore conclude that residential use on the appeal site would not represent an appropriate land use having regard to its existing status as a Scattered Business

Site. Consequently, the proposal would conflict with Policy DM5 of DSAP which seeks to protect SBS which are a valuable part of the employment land portfolio in the district. Further, the proposal would be at odds with the Framework which recognises the need to ensure there is sufficient provision for employment land.

Other Matters

29. In relation to housing supply, the Council has recently recalculated the housing land supply taking account of the updated Framework and the need to take account of the 'standard method'.
30. Based on these figures, the Council only have a housing land supply figure of 2.03 years which is significantly below Government's expectations. However, although the proposal would undoubtedly be valuable in boosting housing stock in circumstances where there is an existing significant shortfall, given that it would only result in the addition of five dwellings that tempers its weight.
31. I accept that the proposal would have a cumulative effect on the supply of housing and would have some economic, social and environmental benefits. For example, it would provide some jobs and create demand for materials during the construction phase, would broaden the availability of housing in the area and once occupied would support services and local facilities. I also accept that the proposal would make efficient use of the appeal site which is previously developed land in an edge of village location. Overall, taking account of its contribution in addressing the significant housing land supply shortfall and the other matters that weigh in favour of the proposal I afford the totality of the benefits moderate weight.
32. In reaching that view I have taken account of the previous appeal at Land North of Cooks Lane, Southbourne¹. However, the circumstances of this other case are materially different from the proposal before me as in that case the proposal was for 199 dwellings including affordable housing and consequently the contribution to housing supply was far more than the five dwellings proposed here. As result, the weight given to the benefits of that proposal relative to the harm were significantly different from the case before me and consequently I afford it limited weight in the determination of the appeal.
33. I have also taken account of the other schemes that have been brought to my attention where the appellant considers that the Council have adopted an inconsistent approach to the application of Policy DM5 of the DSAP. However, again these developments appear to be materially different.
34. In relation to the scheme at land surrounding Sawmill in Great Hampden², the Council took account of the restricted highway network. However, here, the Highways Authority confirm that visibility splays of 2.4m x 43m can be achieved from the proposed access point with a speed limit of 30 mph onto Main Road. Further, the appellant confirms that the Highways Authority have indicated that the existing access could accommodate up to 11 dwellings, significantly more than proposed in this application. This indicates to me that the highway network considerations are materially different.
35. Moreover, as outlined above, it is not possible at this stage to categorically rule out all other possible uses that would accord with Policy DM5 of the DSAP and which

¹ APP/L3815/W/19/3237921

² 17/07080/FUL

would not be unacceptably harmful, including on highway safety grounds. Consequently, although I have taken account of the fact that the Council appear to have taken a different approach in relation to this other scheme, that appears to be in part due to different highway constraints and consequently this other scheme has limited weight in the determination of the appeal.

36. Similarly, the case at London Road, High Wycombe³ is materially different as it involved an existing building with retail and office on the ground floor and a residential flat above. Among other things it involved a proposed change of use of the ground floor to create a 2-bed flat and the scale of the development and size of the respective sites are significantly different. In relation to the lack of marketing the property, the Council noted that although this conflicted with Policy DM5 of DSAP, due to changes to the Town and Country Planning General Permitted Development Order (England) Order 2015 which allowed a change of use from office to residential use following a prior notification procedure they did not feel able to resist the proposal on principle. Therefore, the circumstances are very different to this case and so again I afford this other example limited weight in the determination of the appeal.
37. I have taken account of the fact that the appellant did attempt to engage with the Council about the marketing campaign, albeit not through the follow-on service route suggested by the Council. I note that the Council did engage with the appellant to a limited extent about the need to undertake a proper marketing exercise of the site which they advised should include redevelopment for employment purposes and not just occupation of the existing buildings. However, the fact that only limited pre-application advice was provided about the marketing of the site does not alter my view that ultimately the appellant has failed to undertake an appropriate marketing exercise.

Planning Balance

38. I have afforded some matters weight as outlined above and overall, I afford the totality of the benefits moderate weight in the determination of the appeal. On the other hand, I afford the harm that would result from the loss of employment land on an existing SBS significant weight.
39. As set out above, the Council cannot demonstrate a five-year housing land supply. As a result, Paragraph 11(d) of the Framework is engaged. However, for the reasons set out above, the adverse impacts of granting permission for the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
40. In reaching that view I have taken account of the fact that the Framework has recently been updated and as a result I have had particular regard to key policies including that the Framework supports directing development to sustainable locations and making effective use of land. Although this appeal is in relation to a PIP, I am also satisfied that at the TDC stage any proposed development would be able to secure a well-designed place.
41. However, the updated Framework does not alter my findings. That is because although I acknowledge it supports the Government's objective of boosting the supply of housing, I have taken account of the contribution the proposal would

³ 22/08181/FUL

have towards that goal and also that it would make effective use of the appeal site in an edge of village location. However, I have nevertheless found that overall, the harm associated with the proposal would significantly and demonstrably outweigh the benefits.

42. Consequently, the scheme would not represent sustainable development within the meaning of paragraph 11(d) of the Framework and this weighs substantially against the scheme.

Conclusion

43. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Consequently, the appeal should be dismissed.

S Rawle

INSPECTOR