26th October 2023

Our Ref: SWLC.LPC4684

Development Services – Central
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 0RD

Dear Sir/Madam

Town and Country Planning Act 1990
Bellcroft, 61 Frome Road, Wingfield, Trowbridge, BA14 9LL

As your records will show Prior Approval under Part 3, Class Q to the GDPO for the conversion of two former agricultural buildings to create 2No new dwellings was recently granted by application PL/2023/04597.

Details of the plans approved are inserted below.



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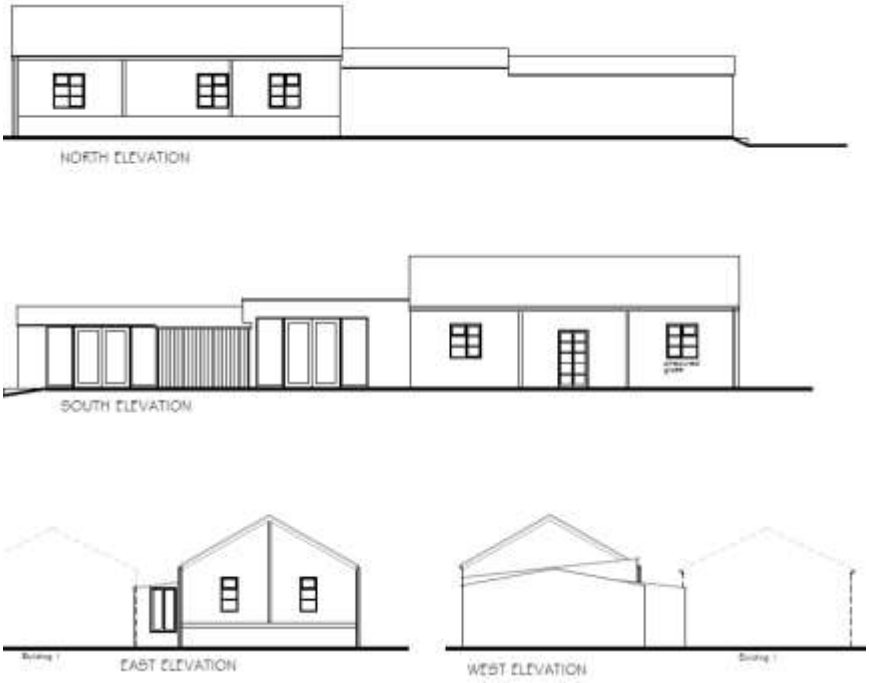
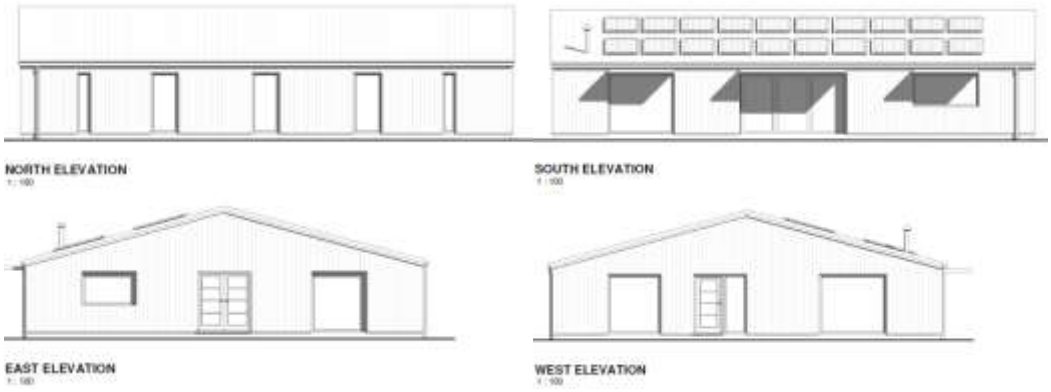
DIRECTOR: SWL CHAMBERS BSc (HONS) MA MRTPI. REGISTERED IN ENGLAND AND WALES No. 03259960, REGISTERED OFFICE: TRULL, TETBURY, GLOS, GL8 8SQ.



However, whilst it would be open to my client to complete the development, and as he wishes to create his own family home, subsequently seek permission for a modest extension to link the two as a new single dwelling, it is the purpose of the enclosed application to obtain permission for a new build, single dwelling, in lieu of the two approved, and avoid such a convoluted approach to his plans.

As you will see from the proposed plan extracts inserted below the new dwelling proposed has been fully informed by the established fallback position and is carefully intended to be no more impactful in terms of the scale of the alternative building, but also employs a design approach and constructional finish that is very typical of many new rural dwellings resulting from the exercise of the Class Q permitted rights. The conversion from two to one will of course also lessen the residential intensity of use by comparison with the established fallback position, and is a change that in and of itself doesn't usually require planning permission.



The new dwelling proposed will be constructed from a vertical unstained timber clad board finish below a profiled zinc sheeted roof. An array of solar panels will be added to the southern elevation. It has a single span low pitched roof and the fenestration

will be framed with grey powder coated metal detailing, to complement the roof and other details. The exemplar image inserted below helps to articulate the revised and enhanced design treatment envisaged.



The new dwelling provides a three bedroomed family house set over the site of the existing farm buildings. It will maintain a comparable new garden area in width to sit behind No 61, albeit it slightly larger than that previously sanctioned, and seeks to utilise the same vehicular access from the west, separate from No 61, which fronts onto Frome Road.

Section 70[2] to the Town and Country Planning Act 1990 and Section 38[6] to the Planning and Compulsory Purchase Act 2004 require that all planning decisions are made in accordance with the Development Plan unless other material considerations indicate otherwise.

The relevant Development Plan policies frameworks in this case is provided by the adopted Wiltshire Core Strategy.

Those policies most relevant to the application development area believed to be as follows.

Policy CP1 – Settlement Strategy
Policy CP2 – Delivery Strategy
Policy CP7 – Bradford on Avon Community Area Strategy
Policy CP51 – Landscape
Policy CP57 – Ensuring High Quality Design and Place Shaping
Policy CP60 – Sustainable Transport
Policy CP61 – Transport and New Development
Policy CP64 – Demand Management
Policy CP67 – Flood Risk

The 'saved' policies from the West Wiltshire District Local Plan (1st Alteration) are also material, including;

Policy U1a – Foul Water Disposal
Policy CB1 – Green Belt

The National Planning Policy Framework (NPPF) provides the Government's planning policies for England and explains how they should be applied. It is a material planning consideration.

Planning Assessment

As indicated Prior Approval has been granted for the creation of 2No new dwellings. The site is located outside any settlement limits and is in the open countryside. It is in an area therefore where planning policy does not support the erection of new dwellings unless one of the exception criteria listed under paragraph 4.25 of the Core Strategy applies or there are any relevant exceptions in national planning policy.

The development is not though unacceptable in this case the fallback position carried substantial weight.

As explained my client is fully committed to the self-build project to create his new family home, and I trust you would agree there would be no logical reason why linking the two converted barns sanctioned as one unit, would raise any planning concerns going forward.

It is evident from the Prior Approval decision notice that there is no dispute that the principle of residential development complies with matters relating to access/highway impact, flood risk, preserving the amenities and planning of neighbouring uses, car parking, biodiversity, infrastructure and impact on trees and hedges. These parameters are unchanged by the remodelled single dwelling proposed.

The fallback position is of course not a novel idea and has been relied on for several new schemes. In that regard, and obviously not an exhaustive background, but I have attached two appeal decisions in Wiltshire which have demonstrated the acceptability in principle of the application development where the fallback has been relied on (see APP/Y3940/W/18/3200095 and APP/Y3940/W/20/3262812 attached). With regard to the second appeal at Hamsbrook Farm, Thornhill I note from the public record that the appellant's exhibited a legal opinion, which is directly relevant to my client's proposal in respect of the application of this case law. Clearly this opinion was commissioned by Mr and Mrs Williams, however, as said, it is part of the public record and for completeness I have also appended it to this overarching correspondence, with both appeal decisions.

There is a very real prospect of the fallback position being developed, and requires not further recourse to your Council. The reasoning to seek an alternative is simple, based on the applicant's desire to build his own single family home.

The relevant question is whether the alternative is more impactful, or harmful than the approved scheme, and it is not.

Overall, the effects of the development would be almost identical to the approved scheme. As there is a real prospect of that being implements, the fallback position attracts significant weight which outweighs that attributed to the potential/in principle policy conflict that could be attributed in the first case.

For the reasons given above it is considered the principle of development for the erection of a dwelling on site has been established. However, the development has to be assessed against other policies of the plan and in particular those relating to development in the Green Belt.

Impact on the openness of the Green Belt

There are no relevant WCS development plan policies relating to the Green Belt, therefore the NPPF provides the national and up to date policy direction. This sets out within paragraph 137 that "The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence". Openness is the absence of development notwithstanding the degree of visibility of the land in question from the public realm and has both spatial and visual aspects.

Paragraph 138 to the NPPF sets out five key purposes of the Green Belt with one being to safeguard the open countryside from encroachment while paragraph 149 sets out the categories of development which may be regarded as being 'appropriate' in the Green Belt. However, the erection of a residential dwelling in the open countryside does not fall within any one of these categories. The development is therefore considered inappropriate in the Green Belt which would by definition be harmful to the Green Belt.

Paragraph 147 of the NPPF states inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The two key characteristics of the Green Belt are its openness and its permanence. The land comprises a developed yard area and 2No buildings with boundaries to the fields to the north and south.

Paragraph 149 of the Framework states local planning authorities should regard the construction of new buildings as inappropriate in the Green Belt. It goes on to list a number of exceptions to this including subsection d) – 'the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces'. The proposed building would not be marginally larger in terms of its footprint, than the building's approved under prior approval application PL/2023/04597. The overall length, width and height of the proposed dwelling would be very similar as a combination to that approved too. As such it is considered the development would not be materially larger than the one it replaces. In addition, the impact of the development on urban sprawl including the introduction of amenity space, parking area and the new driveway would be little different to that already approved. It is therefore considered the development would not have a greater impact on either openness or permanence that the already approved scheme.

In this case there is an approved fallback position that allows the conversion of the agricultural buildings on site to residential uses. It is considered there is a realistic prospect of the fall-back position being implemented and case law advises that this fallback position is a material consideration. The ability to implement this fallback position is therefore considered to be 'very special circumstances' in this case and the consequential loss of openness would be no greater than the realistic fallback position. The alternative redevelopment is therefore no more impactful on the qualities of the Green Belt. It is of course anticipated that all permitted development rights will be removed to control the acceptable impact of the change.

Wiltshire council's five-year housing land supply

The Council's published Housing Land Supply Statement for the Wiltshire unitary authority area concludes the Council cannot currently demonstrate a 5-year supply of deliverable housing land.

With this recognition, the tilted balance flowing from paragraph 11d) ii of the National Planning Policy Framework (The Framework) is engaged. As such the local plan policies which would restrict new housing provision must be treated as being out of date, but this does not mean that they carry no weight, since the development plan remains the starting point for decision making. When the tilted balance is engaged, the NPPF indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole. It should be noted that although the development lies within the Green Belt paragraph d) i is not engaged because policies that protect the Green Belt in this case do not provide a clear reason to refuse the development.

When LPA's have a housing supply deficit, paragraph 11 of the NPPF sets a presumption in favour of housing delivery unless protected areas or assets of particular importance would be demonstrably harmed by the development proposal and would provide a robust and clear reason for refusing the application. WCS strategic policies CP1 and CP2 cannot be given 'full weight' whilst NPPF para 11 is engaged, but these policies can still be given due weight in the planning balance as the strategic policies remain of critical importance in terms of directing appropriate, sustainable development to the right locations in accordance with the Framework.

However, the weight to be attributed to such policies is a matter of judgment for the decisionmaker. Consideration of the weight which can be provided to the above policies is considered in the section 'Conclusion (Planning Balance)' at the end of this correspondence, and is of course greatly diminished by the fallback position already outlined.

Impact on the character of the area

Core Policy 51 of the Wiltshire Core Strategy states development should protect, conserve and where possible enhance landscape character. Core Policy 57 requires a high standard of design in all new developments and that development respond positively to the existing landscape.

The existing agricultural buildings are utilitarian, largely blockwork structures. The current proposal is for a three-bed dwelling designed as a single storey new barn like property with external materials consisting of timber boarded elevations and standing seamed zinc sheet roof. The site is set back from the highway by approx. 43 metres and due to the tree lined hedgerow and No 61 itself, views of the site from the highway are restricted to mainly field openings. Existing hedgerows and farm buildings on the western boundary of the site also provide screening from that direction.

The design of the scheme is intended to be an improvement over the existing approval. The plot is accommodating, and the scale of the proposal is more than capable of being accommodated within the site without giving rise to overdevelopment. The overall form, appearance and materials are in keeping with the surrounding area. The modest scale of the development and changes in fenestration details would not have a materially harmful impact on landscape character. As such it is considered the development would have a similar impact on the character of the area as the approved scheme, and would not cause greater harm to landscape character.

The private garden will continue to be fenced off from the fields to the north and south with a 1.4m timber post and rail fence. The eastern boundary already abuts the residence and will be similarly fenced, as will the western boundary with the rest of the yard.

Impact on the living conditions of neighbouring residents/future occupiers

Core Policy 57 of the WCS requires development to have regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensuring that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy, overshadowing and noise.

Due to the modest height of the proposal and significant separation distance between it and the nearest residential neighbour, which is a chalet bungalow the scheme is not considered to cause any adverse harm to the living conditions of adjoining occupants by reason of loss of light, loss of privacy or overbearing impacts. If there were any concerns about the separation distance to the east then it would be possible to insist on a 2m high solid timber fence. That would be permitted development for the occupants of No 61 in any event.

Highways issues

The Framework requires that safe and suitable access to a site be achieved for all people. The application respects the access arrangement sanctioned for 2 dwellings, including parking and turning areas and visibility splays at the access which are conditionally controlled and there are no reasons why the same conditions should not be repeated (Nos 4, 5, 6, 7 and 8). The off-road parking spaces are proposed in accordance with the adopted parking standards and include additional space for visitors within the turning space envisaged around the dwellings north

western corner. The Council's highways officer has reviewed the site and its access etc previously and had no objection to the access, parking and turning arrangements and it follows that with the addition of conditions on any approval, the same details should be acceptable.

Conclusion (Planning Balance)

Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The application is seeking planning permission the erection of one dwelling on site.

The proposal is located outside any settlement boundary and within the open countryside, as part of the Green Belt. The development does not accord with the spatial strategy within the development plan. However, the Council cannot demonstrate a 5-year housing land supply. The deficit is a material planning consideration. Whilst there is a housing supply deficit, with NPPF paragraph 11 is engaged, adopted WCS core policies CP2 and CP7 in this case cannot be afforded full weight in the planning balance, however it can be argued that these policies should be given at least some, say slight weight.

The site is located in the Green Belt and paragraph 149 of the Framework sets out the categories of development which may be regarded as being 'appropriate' in the Green Belt. The erection of a residential dwelling in the open countryside does not fall within any one of these listed categories. As such the development is considered inappropriate in the Green Belt and which would be harmful to the Green Belt.

Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In this case it is argued that due to the fallback position of an approval on site for two dwellings and substantial weight given to this fallback position as a material consideration in any decision, it is considered this fallback position amounts to very special circumstances.

In this case the proposed development would provide one market dwelling, which in housing supply terms would make a nominal contribution towards addressing the housing shortfall, but it would nevertheless make a contribution. In addition, there would be some short-term benefits afforded to the construction phase of the development through direct and indirect job creation and the future householders of the property would pay council tax. In addition, the development could potentially contribute towards CIL infrastructure funding in the area. These benefits can cumulatively be given moderate weight in the planning balance.

In terms of neutral impacts, that the proposed development would not harm the neighbouring residential property or the amenities of the occupiers, and the visual impacts of the proposed dwelling at this site are not materially different from that already approved, and can be mitigated if necessary do not weigh against the grant of permission. Sufficient off-road parking can be provided on site and the development would be served by a safe access to the road network. In addition, the

proposed development would have no adverse impact on local biodiversity, protected species or protected habitats, which is again a benchmarked position.

Due to the council being unable to demonstrate a 5-year housing land supply the tilted balance flowing from paragraph 11d) ii of the Framework is engaged. When the tilted balance is engaged, the NPPF indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole. In this case the development has been assessed against policies of the Council's local plan and the Framework and it is considered the adverse impacts of the development do not significantly and demonstrably outweigh the benefits in this case. On balance therefore I hope you will agree that planning permission should be granted, and reimpose those conditional matters previously addressed in respect of the Prior Approval as relevant. However, if you have any further queries to ensure your support, please do not hesitate to contact me.

Yours faithfully

Simon Chambers
Director

Enc.

Cc: Mr O Nemeth

The Planning Inspectorate

Appeal Decision

Site visit made on 18 July 2018

by H Butcher BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 August 2018

Appeal Ref: APP/Y3940/W/18/3200095
6 Halfway Firs, Bath Road, Corsham, SN13 0PJ

- 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 Williamson against the decision of Wiltshire Council.
- The application Ref 18/00691/FUL, dated 10 September 2017, was refused by notice dated 12 March 2018.
- The development proposed is the demolition of an existing barn and erection of a family dwelling and associated works.

Decision

1. The appeal is allowed and planning permission is granted for the demolition of an existing barn and erection of a family dwelling and associated works at 6 Halfway Firs, Bath Road, Corsham, SN13 0PJ in accordance with the terms of the application, Ref 18/00691/FUL, dated 10 September 2017, subject to the conditions in the attached schedule.

Preliminary Matter

2. The revised National Planning Policy Framework was published during the appeal. Both parties were given the opportunity to comment on the relevance of this to their cases.

Main Issue

3. The main issue is whether the site is a suitable location for a new dwelling having regard to local planning policy, accessibility, and the character and appearance of the surrounding area.

Reasons

4. The appeal site comprises a barn in a grassed area which sits to rear of residential properties fronting onto the A4. In terms of the development plan the site falls outside of the defined limits of development. Core Policies 1 and 2 of the Wiltshire Core Strategy (2015) (CS) specifically seek to direct new development to within the defined limits of development. Outside of these limits new development will be restricted, other than in certain circumstances, none of which apply in this case (Policy H4 of the North Wiltshire Plan refers).

5. Planning law requires that applications for planning permission should be determined in accordance with the development plan unless material considerations indicate otherwise. Clearly the proposed demolition of the barn and erection of a family dwelling at the appeal site would conflict with the

development plan. However, prior approval was recently granted for the conversion of the barn into a residential dwelling (16/10905/PNCOU refers which was later renewed with minor alterations to the access under 18/01181/PNCOU).

6. This provides a 'fallback position' at the appeal site which is a material consideration. Any harm, therefore, in terms of a policy conflict with Core Policies 1 and 2 of the CS would be reduced by the fact that permission for a dwelling on the site of the barn already exists. I note that Core Policy 60 of the CS seeks to reduce the need to travel and that the site is not particularly accessible by alternative modes of transport to the private car as it is located in-between Corsham and Rudloe. However, again the proposed dwelling would be in the same location as the 'fallback position' therefore any harm in this regard would also be diminished.

7. The barn in question is open on all sides comprising only a series of concrete posts with a sheet corrugated roof on top. It therefore has a very functional form and in no way has a domestic or residential appearance. I have not been provided with any detail as to the design of the dwelling granted under prior approval. However, it would be reasonable to assume that the conversion of the barn would dramatically change its appearance. In fact, it is likely that the existing structure would be unrecognisable as it would need to be largely enclosed with various windows and doors inserted.

8. The dwelling before me would similarly dramatically change the appearance of the site from that of an open barn structure to a residential dwelling. However, it would follow the same footprint and dimensions of the existing barn, with the exception of an additional rear wing which would be discreetly sited and largely screened from public view. Therefore it would, for the most part, appear as a dwelling of similar dimensions to the 'fallback position'. Furthermore, its overall proportions would be 'barn-like' and its use of large areas of glazing and ad hoc window placement would further add to this impression which would loosely reference the agricultural origins of the site.

9. I note that the curtilage associated with the 'fallback position' is smaller than that proposed. However, in both cases residential dwellings are to be created which will each come with domestic paraphernalia. Furthermore, items such as outdoor dining furniture and washing lines tend to be located within close proximity of a property and, in any event, are of a temporary nature. In respect of boundary treatments, these can be controlled by condition. I therefore find no harm to the character and appearance of the area as a result of the proposal and consequently no conflict with Core Policies 51 and 57 of the CS which require a high standard of design and the protection and conservation of landscape character.

Conclusion and conditions

10. I have found that the effect of the development would be similar to that of the 'fallback position'. There is also a greater than theoretical possibility that the 'fallback position' would be implemented as like the proposal before me it is for a detached dwelling, and I note the Council agree that there is a real prospect the prior approval scheme will be implemented. I therefore give this 'fallback position' significant weight and as such it outweighs the conflict I have found with the development plan in terms of the location and accessibility of the

proposed dwelling. Having regard to the 'fallback position' I also find no harm to the character or appearance of the surrounding area.

11. In addition to the standard time limit condition I have included a plans condition as this provides certainty. To ensure a satisfactory appearance I have included a condition relating to materials but it is not necessary for this to be pre-commencement. For the same reason I have included a condition in respect of boundary treatments. To ensure a satisfactory form of development I have also included conditions with respect to foul and surface water drainage and finally a condition with respect to potential site contamination. However, as there is an existing highway access to the site and more than sufficient space to park and turn it is not necessary to attach a condition requiring the implementation of the approved parking and turning areas prior to the occupation of the dwelling.

12. For the reasons given, and having had regard to all matters raised, including the two appeal decisions referred to by the Council, the appeal is allowed.

Hayley Butcher

INSPECTOR

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: P1, P2, P3, P4.

3) No above ground development shall commence on site until the exact details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

4) Prior to occupation of the dwelling hereby approved details of all boundary treatments shall have been submitted to and approved in writing by the Local Planning Authority and erected on site in accordance with the approved details.

5) Prior to the occupation of the dwelling hereby approved schemes for the discharge of foul water and surface water from the site shall have been submitted to and approved in writing by the Local Planning Authority and implemented in accordance with the approved schemes.

6) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the Local Planning Authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority.

The Planning Inspectorate

Appeal Decision

Site Visit made on 28 July 2021

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2021

Appeal Ref: APP/Y3940/W/20/3262812
Hambrook Farm, Thornhill, Royal Wootton Bassett SN4 7RZ

- 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 & Mrs Williams against the decision of Wiltshire Council.
- The application Ref 20/05588/FUL, dated 6 July 2020, was refused by notice dated 2 October 2020.
- The development proposed is demolition of existing barn and erection of a new dwelling with associated works.

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing barn and erection of a new dwelling with associated works at Hambrook Farm, Thornhill, Royal Wootton Bassett SN4 7RZ in accordance with the terms of the application, Ref 20/05588/FUL, dated 6 July 2020, subject to the following conditions:-

    1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

    2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1801 001, 1802 002, 101 revision 2, 102 revision 2 and 105 revision 2.

    3) 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 enlargement, improvement or other alteration to the dwelling hereby permitted shall be carried out, other than those expressly authorised by this permission.

    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 building or enclosure shall be erected or provided within the curtilage of the dwelling hereby permitted.

Applications for costs

2. An application for costs has been made by Mr & Mrs Williams against Wiltshire Council. This is the subject of a separate Decision.

Preliminary Matter

3. The National Planning Policy Framework (the Framework) was revised in July 2021. I have considered comments from the main parties on the Framework as part of my assessment.

Main Issues

4. The main issues are (i) whether the proposal would be in a suitable location having regard to the policies of the Wiltshire Core Strategy 2015 (CS), the North Wiltshire Local Plan 2006 (LP) and the Framework, and (ii) its effect on the character and appearance of the area.

Reasons

Suitability of location

5. The site lies outside any settlement as defined under the CS or the LP. Also, the new dwelling would be a significant distance from any settlement or services and so it would not be located where it would enhance or maintain the vitality of rural communities. The appellant makes no case that the proposal would comply with any of the CS or LP policies that allow new housing in the countryside. Moreover, the scheme would not accord with any of the situations when isolated homes may be acceptable as specified in the Framework.

6. As such, I conclude the development would not be in a suitable location in light of CS and LP policies and the Framework. In these regards, it would be contrary to CS Core Policies 1, 2 and 19 and LP policy H4. Amongst other things, these direct growth and new housing to defined settlements and resist new homes in the countryside except in certain circumstances.

Character and appearance

7. The barn forms part of a small complex of buildings, surrounded by flat open fields. A public footpath is in the adjacent field but away from the site.

8. The proposal would be in the same position as the barn and of similar form, although it would be slightly taller and wider. However, the increase in volume and floor area would be marginal and indiscernible, particularly when viewed at a distance such as from the footpath. As it would also be seen as part of the complex, the house would avoid any appreciable loss of openness and would cause no detriment to the intrinsic beauty of the countryside.

9. Therefore, I conclude the proposal would not harm the character and appearance of the area. In these regards, it would accord with CS policies 51 and 57 which, amongst other things, seeks to ensure development is sympathetic to and protects landscape character.

Fallback position and planning balance

10. The site benefits from an approval as required under permitted development rights that allow the barn to be converted to a dwelling house. Also, planning permission has been granted for various amendments to the approved conversion scheme.

11. The appellants' submissions highlight construction methodology issues with the approved developments. Nevertheless, contrary to the Council's claim, there is

no substantive evidence that demonstrates insurmountable economic or other problems exist that would prevent the approved works from taking place. Indeed, correspondence indicates that a new dwelling would be provided regardless as to the outcome of this appeal. As such, there is a greater than theoretical possibility that the conversion would be carried out even if I dismiss the appeal. Therefore, the approved schemes represent a fallback position.

12. The proposal would be very similar to the approvals in terms of its size and internal layout. As such, it would have almost identical impacts in terms of its usage, the need to travel and its effects on the visual qualities of the area.

13. The approved schemes involve various alterations to the barn, although elements would be retained. In contrast, the proposal would include complete demolition and the erection of a new building. However, I am unclear from the submissions as to the harm that would arise as a consequence of this difference. The particular circumstances in respect of this case are unusual and so I am satisfied allowing this appeal would not set a precedent that is bound to be followed in the determination of all future planning applications.

14. Overall, the effects of the development would be almost identical to the approved schemes. As there is a real prospect they would be implemented, the fallback position attracts significant weight which outweighs that attributed to the harm identified under the first main issue.

Conditions

15. I have considered the list of conditions suggested by the Council, having regard to the tests set out in the Framework. For reasons of clarity, a condition is imposed that requires the development to be carried out in accordance with the approved plans. There is no need for a separate external materials condition as details are indicated on the drawings. Also, I am unclear why a condition is necessary that requires boundary treatment to be a post and rail fence. The application form indicates a post and wire fence and this would be appropriate to the area. Therefore, the suggested condition is not imposed.

16. Conditions that remove permitted development rights for extensions or alterations and buildings on the site are justified as the dwelling provided under the conversion schemes would not have such rights. However, I have amended the wording of these conditions for reasons of precision and so they correspond with the relevant parts of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Conclusion

17. The proposal would be contrary to development plan policies in respect of the suitability of its location. However, the weight to be attributed to the fallback position is sufficient to justify granting planning permission contrary to the development plan. Therefore, I conclude the appeal should succeed.

Jonathan Edwards

INSPECTOR

IN THE MATTER OF CLASS Q, PART 3, SCHEDULE 2 OF THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015 ("CLASS Q") AND HAMBROOK FARM, THORNHILL, ROYAL WOOTTON BASSETT, WILTSHIRE, SN4 7RZ:

ADVICE

INTRODUCTION

1. I am instructed on behalf of Mr and Mrs Williams ("the applicants"), through their planning consultants, Willis & Co., to advise in respect of the refusal of a full planning application[1] for the demolition of an existing barn and erection of a new dwelling with associated works ("the proposal") at the above referenced land ("the site"). The barn lies within the administrative area of Wiltshire Council ("the Council"). In particular, this Advice will assess the Council's reasons for rejecting the applicants' fallback argument in light of the relevant case law.

SUMMARY OF ADVICE

2. The proposal has good prospects of succeeding at appeal, once the fallback position and *Halfway Firs* are properly considered by the decision-maker

BACKGROUND

3. The site already has the benefit of full planning permission for the conversion of a barn to a dwelling ("the fallback permission")[2], which made certain amendments to the

[1] Application Reference 20/05588/FUL
[2] Application Reference 19/08382/FUL

conversion which the Council had previously approved as permitted development under Class Q. The proposal differs from what it is permitted by the fallback permission in the following ways:

1) The proposal does not seek to convert the barn but to demolish it and erect a new dwelling in its place;
2) The ridge height of the proposed dwelling would be 7.3 metres instead of 6.7 metres;
3) The height of the eaves would increase from 5 metres to 5.3 metres;
4) The footprint would increase from 134.32 square metres to 152.72 square metres;
5) The colour of the finished dwelling would be different;
6) The dwelling would have more windows.

4. The applicants argued that permission should be granted because any conflict with development plan policies falls away in light of the fallback position. The applicants referred the Council to a recent appeal decision concerning a similar proposal in which the Inspector considered a similar fallback argument ("the *Halfway Firs* decision")[3]. The Inspector reasoned as follows:

> *"I have found that the effect of the development would be similar to that of the 'fallback position'. There is also a greater than theoretical possibility that the 'fallback position' would be implemented as like the proposal before me it is for a detached dwelling, and I note the Council agree that there is a real prospect the prior approval scheme will be implemented. I therefore give this 'fallback position' significant weight and as such it outweighs the conflict I have found with the development plan in terms of the location and accessibility of the proposed dwelling. Having regard to the 'fallback position' I also find no harm to the character or appearance of the surrounding area."* [10]

5. On 16th September 2020, the Council sent an email to Willis and Co. in which they expressed their view on the fallback argument:

> *"I have considered the information provided and it appears to me this proposal seeks to erect a new dwelling in the open countryside to replace and existing barn, which is contrary to the development plan. I note the fallback position in that you have planning permission for conversion of the existing building but I am not currently convinced that fall-back position is adequate justification for the erection of a new dwelling."*

[3] Appeal Reference APP/Y3940/W/18/3200095 - 6 Halfway Firs, Bath Road, Corsham, SN13 OPJ

6. On 2nd October 2020 the Council refused permission for the following reasons:

> 1) *The development is outside the defined limits of development as set out in the Wiltshire Core Strategy and is not development that would be considered an exception to spatial strategy allowing permission to be granted outside the settlement boundary. The proposal is not in accordance with Wiltshire Core Strategy, Core Policies 1 2 and 19 and does not consist of an exception to the spatial strategy as set out in paragraph 4.25. The proposed development would be new housing in the open countryside which would not accord with Save Policy H4 from the North Wiltshire Local Plan 2011. The proposal is not considered to be sustainable development as set out in the development plan and the harms arising would outweigh the benefits of the proposal contrary to paragraphs 11 and 79 of the NPPF.*
>
> 2) *The proposal would result in harm to the character and appearance of the area due to the increase height and footprint compared to the former building on site reducing the openness and rural character of this agricultural site and would be a form of development that would be harmful to the open rural character of the countryside contrary to Core Policies 51 and 57 of the Wiltshire Core Strategy and paragraph 170b of the NPPF."*

7. The decision of the Council to refuse permission was informed by a report from one of their case officers ("the OR"). The relevant excerpts of the OR begin as follows:

> "(The fallback permission*) was granted on the basis that the changes were fairly minor when compared to the approved scheme and the structural report demonstrated, to the satisfaction of the Local Planning Authority that the proposal remained a conversion of the existing building and although no fully compliant with Core Policy 48, was considered in conjunction with the prior approval consent. In additional only a minor change to the extent of the works proposed compared to the prior approval consent. On those particular circumstances, the development would considered to be acceptable and therefore approved.*
> ...
> *However, now the proposal seeks to demolish the existing structure and erect an entirely new barn, albeit in the same position as the previously converted building."*

8. The OR then turns to consider the *Halfway Firs* appeal decision:

> *"The appeal sited is materially different to consideration of the current proposal. As detailed in paragraph 7 of that appeal decision, that case related to a prior approval that had been granted for the conversion of an insubstantial structure where the prior approval development would have dramatically changed the appearance of the existing structure and that when the Inspector compared the dramatic change required by the prior approval application compared to the planning application subsequently considered the change was equally dramatic. The Inspector states at paragraph 7 "However, it would be reasonable to assume that the conversion of the barn would dramatically change its appearance. In fact, it is likely that the existing structure would*

be unrecognisable as it would need to be largely enclosed with various windows and doors inserted.""

The current proposal relates to a prior approval approved under 18/04428/PNCOU that sought minor changes to the existing building compared to the former barn in order to put it to its proposed use. Those works were within the tolerances of the Class Q permitted development. The Council permitted changes to the prior approval consent under reference 19/08382/FUL remained as conversion of the existing building which was contained within the same building envelope, albeit a change to the construction methodology. The consideration is materially different to the appeal case cited."

9. The OR then gives its verdict as to whether there is a real prospect of the fallback scheme coming forward:

"The quote from that appeal decision cited includes reference to the Council agreeing there was a real prospect of the prior approval scheme being implemented. However, in this instance the application contains information that confirm that the excessive cost to construct the prior approval scheme is prohibitive and this scheme is proposed instead. This is supported by the Applicants Design Statement which again states that the method of construction would be prohibitively complex and prohibitively expensive. In addition, the first-floor ceiling heights in the approved scheme were also restricted which again reduces the likelihood of its implementation or the conversion of the building in the manner previously proposed.

...

The proposed new dwelling would be materially larger in height and footprint, again having a greater impact upon the character and appearance of the surrounding area and additionally also outside the tolerances of their purported fall-back position. The information provided in terms of costs and construction methodology together with the poor internal head room would all significantly reducing the likelihood of its implementation and indicates there is no real prospect of implementation of the approved scheme as a fall-back position. In addition, the extent of the works proposed would go significantly beyond the works that would be permitted by Class Q, therefore this is not the same development as the currently proposal and would clearly fall outside the tolerances of a Class Q conversion and would have a materially greater impact than the Class Q conversion. ***Therefore the fall back relating to conversion of the existing building would be meaningless and carries no weight in favour of the proposed development currently being considered****."* (emphasis added)

10. The Design Statement referred to in the OR provided as follows:

"The reason for this statement and proposals stems from the overly complex way in which the existing steel frame and associated footings would be incorporated into the new fabric required to bring the building up to a habitable standard.

...

Whilst the conversion is achievable the complexities of the conversion bear a financial burden when assessing the overall benefits of retaining the existing steel frame as opposed to replacing it.

...

Thus, the alterations to the proposals presented in the latest design significantly simplify the build, whilst at the same time retaining the overall appearance of the

approved scheme and also without dramatically changing the proportions of the building or the inherent grid layout.

...

Fundamentally, the proposed rebuild will be more economical to build, provide for less restrictive ceiling heights at the first floor and greater simplification of the component parts."

LAW

11. A fallback development is a material consideration in a planning decision if there is a "real prospect" of it being implemented. In *Samuel Smith Old Brewery (Tadcaster) v SSCLG* [2009] EWCA Civ 333, Sullivan LJ succinctly stated the principle as follows[4]:

> *"It is important to note that in this context a real prospect is used as the antithesis of "a merely theoretical" prospect. In order for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice."* [20-21]

12. If a fall-back argument is not to prevail, reasons for rejecting it should be given (see *Coln Park LLP v Secretary of State for Communities and Local Government* [2011] EWHC 2282 (Admin)).

ANALYSIS

The Real Prospect Test

13. The bar for what constitutes a real prospect is relatively low. A real prospect does not have to be probable or likely. A possibility will suffice. There is clearly a real prospect of the fallback development being implemented in this case. The fallback permission has been granted. The reasoning of the OR is that there is no real prospect of the fallback development being implemented because, as apparently stated by the Design Statement for the proposal, its construction is prohibitively expensive. The fallback development therefore carries no weight. This reasoning is unsatisfactory for three main reasons:

[4] This principle was approved in *Mansell v. Tonbridge & Malling Borough Council* [2017] EWCA Civ 1314

1) The OR states that various factors reduce the *"likelihood"* of the fallback being implemented. The courts have established that a reduced likelihood can still be a real prospect. A possibility will suffice.

2) The OR infers that there is no real prospect of the fallback development being implemented on the basis that the Design Statement describes its construction as prohibitively expensive. This inference does not strike me as rational. A rational decision-maker would not take the view that the implementation of a development is impossible on the basis that one document laments the cost of its construction.

3) The OR appears to misrepresent the Design Statement, which does not describe the construction of the fallback development as prohibitively expensive. The thrust of the Design Statement is simply that the proposal would be more economical to build than the fallback development.

14. The OR finds that the fallback development carries no weight because there is no real prospect of its implementation. It is my opinion that this finding could be challenged successfully in the courts and that an Inspector would likely take a different view.

The Halfway Firs Decision

15. Previous appeal decisions are material considerations in planning decisions. The OR disputes the relevance of *Halfway Firs* in part because it was agreed in that appeal that there was a real prospect of the fallback development being implemented. The OR also appears to argue that *Halfway Firs* should be distinguished because in that case the Inspector found that both the proposal and the fallback development would produce a dramatic change from what was on the ground. In this case, the fallback development consists in a minor alteration to what was already approved under Class Q.

16. This argument appears to misunderstand the materiality of fallback development. The relevant question for a decision-maker to ask is simply whether the grant of a permission will be less harmful than a use or development which has previously been permitted. The question whether the fallback development in turn is less harmful than

a previously permitted development is beside the point. The OR appears to argue for the irrelevance of *Halfway Firs* by focusing wrongly on the fallback position to the fallback position.

17. *Halfway Firs* is a material example of a finding that the effect of a barn demolition and erection of a dwelling is similar to that of its fallback position. The Council have disregarded the decision for the wrong reasons.

CONCLUSION

18. It is my opinion that the proposal has good prospects of succeeding at appeal, once the fallback position and *Halfway Firs* are properly considered by the decision-maker. The conclusion of the OR that *"the fall back relating to conversion of the existing building would be meaningless and carries no weight in favour of the proposed development"* is unlikely to stand. The question whether the height and footprint of the proposal is acceptable in planning terms is a matter of planning judgment which is outside the scope of my expertise.

19. I will of course be happy to discuss the implications of this Advice in due course.

OLIVER LAWRENCE
NO5 CHAMBERS
28 OCTOBER 2020