



Appeal Decision

Site visit made on 14 November 2017

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: **1st December 2017**

Appeal Ref: APP/V2255/W/17/3177416

Brook Hall House, Waterham Road, Hernhill ME13 9JH

- 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 Martin Parsons against the decision of Swale Borough Council.
 - The application Ref, 16/507606/FULL dated 7 October 2016, was refused by notice dated 21 December 2016.
 - The development proposed is conversion of existing outbuilding into 1No dwelling house.
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Decision

1. I dismiss the appeal.

Procedural Matters

2. The judgment in the High Court case of *Braintree District Council v Secretary of State for Communities and Local Government, Greyread Limited & Granville Developments Limited* [2017] EWHC 2743 (Admin) was issued after the site inspection but before the Decision was written. The judgment concerned the definition of 'isolated homes in the countryside' as referred to in paragraph 55 of the National Planning Policy Framework. Since the exceptions set out in the bullet points to that paragraph had been referred to by both of the parties in submissions to this appeal, opportunity was given for further submissions in light of the judgment.
3. A listed building consent application had been made for the works, on the basis that the building is curtilage listed along with the main house and this was also refused (Ref: 16/507607/LBC) but no appeal has been made on that refusal. Whilst the Council's Questionnaire to this planning appeal states at 13.a. that the development does not involve the demolition, alteration or extension of a listed building, this is plainly not the case. On the evidence, the building should be regarded as a curtilage listed building and hence a designated heritage asset.

Main Issues

4. With the above in mind, the main issues are;
 - The effect of the proposal on the aims of policy on development in the countryside.
 - The effect of the proposal on the significance of listed buildings.

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Reasons

Policy

5. Although referred to in the reasons for refusal as an emerging Plan, the Swale Borough Local Plan 'Bearing Fruits 2031' was adopted on 26 July 2017 and is therefore now part of the Development Plan. Policy ST1 seeks to deliver sustainable development that supports a prosperous rural economy, especially for sustainable farming and tourism and which accords with the Local Plan Settlement Strategy, which is set out in Policy ST3. That Strategy states that in the open countryside development will not be permitted unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. The supporting text provides for some minor development for the social, economic or environmental health of a community, but this is not necessary to meet the Local Plan housing target.
6. The rural economy is the subject of Policy DM3 which states that planning permission for residential development will not be permitted where this would reduce the potential for rural employment and/or community facilities unless the site/building is demonstrated as having no demand for such purposes or its use would be undesirable or unsuitable. The wording continues that proposals should firstly consider the appropriate re-use of existing buildings, and result in no significant harm to the historical, architectural, biodiversity, landscape or rural character of the area, among other matters. Valued landscapes are to be conserved and enhanced under Policy DM24, and Policy DM32 concerns the preservation of listed buildings.
7. Policy CP2 promotes sustainable development, with new development being located in accordance with Policies ST1 to ST7 which minimises the need to travel for employment and services and facilitates sustainable transport. Policy CP3 on delivering a wide choice of high quality homes makes clear that development proposals will, as appropriate, be steered to locations in accordance with Policy ST3.
8. The Council has published Planning and Development Guideline 3 'The Conservation of Traditional Farm Buildings' stated to have been adopted for development control purposes in December 1992. The council draw attention to the possible uses that such buildings could be put to; 'a community building, agricultural or other use, craft work shop/studio, farm shop, light business use, professional practice, recreation building, restaurant or tourist accommodation'. The Guidelines do acknowledge however that the most attractive alternative to agricultural use, from a purely commercial point of view, might be a residential use, but continues that this is seldom the best way to conserve the building in anything like its original form.
9. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.
10. The Framework sets out the core planning principles that include recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it, as well as the conservation of heritage assets.

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Paragraph 55 makes clear that new isolated homes in the countryside should be avoided unless there are special circumstances. Paragraph 132 of the same document states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

Development in the Countryside

11. The Local Plan has only recently been found sound and been adopted and although the housing figures may have only a short life before being re-assessed as asserted by the appellant, the conclusion now is that the Council are able to demonstrate a 5 year supply of housing land as required by the Framework. The proposal is, as a result, not able to rely on paragraphs 49 and 14 of that document, although windfalls would be required, subject to compliance with the Development Plan.
12. The appellant has made a case in favour of permission by way on an exception in paragraph 55 of the Framework. The recent court case referred to under 'Procedural Matters' concerned a site that was within a village that did not have an adopted village envelope, and hence the site was within the countryside. The judgement was that the proposal in that case was not for a new isolated home in the countryside and the avoidance of such development in principle, together with the exceptions, did not apply.
13. The present appeal case concerns a building that is isolated from any settlement or significant cluster of built form, albeit associated with an existing home. There are a very limited number of other buildings nearby and the character of the surroundings, whilst heavily influenced by the main road, is of a remote rural area. The proposal should, as a matter of fact and degree, be considered as being for a new isolated home in the countryside, and consequently, the applicability of the exceptions should also be considered.
14. In fact only 2 of the exceptions at paragraph 55 could possibly apply to this case and that concerning redundant or disused buildings does not apply as the building is in a beneficial use as domestic storage. The other is where such development would represent the optimal viable use of a heritage asset.
15. The Council is critical of the location of the proposal for residential use, and its access to services, employment and the like. The location is adjacent to a busy main road, but the access onto and off it from Waterham Road is with the eastbound carriageway only and this fast dual carriageway road is not at all conducive to pedestrian use.
16. The appellant refers to a 'Spar' shop at the services to the east and it was noted that this is on the same side of the main road as the site. Access by car could be made by way of the poor turning onto the main road, but more safely by way of the longer Highstreet Road route, and the latter would be the best walking route. That shop would provide a range of day-to-day essentials, but with little choice and many weekly needs would be a car journey away. The site is not well-located and does not have ready access to a range of services other than with the likely use of a private vehicle. As a result, due to the location of the site the proposal does not accord with Policy CP2/6 on sustainable forms of transport, as the occupiers would be significantly reliant on a private vehicle for most journeys.

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17. The Council's clear preference is a tourism use and that would be in line with Policy ST1 and the traditional farm building Guidelines. Having mind to the proximity of the principal listed building and the nature of the surrounding area, that appears a more appropriate use than an employment one, which could involve more parking and activity that could undermine the tranquillity and rural isolation that is a significant aspect of the setting of the listed house particularly that part further from the main road. In the event, it is only a tourism use that has been addressed to any level of detail by the appellant with regard to viability.
18. Turning then to the viability appraisal for a tourism use, the capital costs may well be correct, as at least the total figure is broken down, whilst the revenue relies on 100% occupancy of each of the supposed 3 units. Such a high occupancy rate in this location does appear unrealistic, and although the building and its immediate setting is undoubtedly attractive, the surroundings militate against a premium rate being charged. However, there is little to compare the rate assumed with other premises on offer in the likely catchment area. The outgoings appear unusually high and are not justified.
19. No further information has been provided on which to judge the visual effect of such a tourism use, other than the appellant's assertion that it would be more harmful. The effect on the landscape quality, and the character and appearance of the area would likely differ between a tourism use and a residential one, particularly as it is clear from the appellant's submissions that a realistic occupancy rate for tourism would be less than as a full-time dwelling. The use of the curtilage and any items such as domestic paraphernalia could be more harmful with a residential use, but it is possible that there would be less parking and less vehicular movements. On balance the effect on the character and appearance of the area from the building becoming a full-time home as opposed to a tourism use would be only marginally more harmful, and weight applies to the present use and the activity that this must cause.
20. Taking all of the foregoing into consideration, it is not possible to conclude that the residential use as a new isolated home in the countryside would represent the optimal viable use of the heritage asset, as required by paragraph 55. Whilst it may well be the most advantageous financially, there are real doubts over the figures that purport to show the unviability of the tourism use, particularly the seemingly high running costs, and there is no evidence of market testing or compelling proof that the location is unsuited to such a use.
21. As a result, the exception in paragraph 55 has not been proved and the policies that seek to avoid the development of new homes in the countryside and which are in favour of sustainable locations should prevail. The proposal is contrary to the aims of Policies ST1, ST3, CP2 and CP3, as well as Paragraph 55 of the Framework.

Listed Building

22. The proposed residential use has been sufficiently detailed for this planning appeal, and the development would have little if any adverse effect on the external features of the curtilage listed building. The tightly drawn red-line site area with a post and rail fence and hedging delineating the proposed new curtilage would appear as an acceptable feature within the setting of the principal listed building and could be secured by condition.

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23. It is not possible to conclude whether or not the Council's preference for a tourism use would be more or less intrusive to the listed buildings due to there being no drawings of the works necessary, but subject to the grant of listed building consent, for which full internal details would be expected, the effect on designated heritage assets of the proposed residential use would be acceptable. The provisions of the test in the 1990 Act as well as the Framework are met and the proposal would accord with Policy DM32 and the guidance on traditional farm buildings.

Planning Balance and Conclusions

24. Those matters counting against the proposal are the countryside location and the poor accessibility with a likely reliance of vehicular journeys contrary to the Development Plan policies previously cited. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
25. Whilst an employment use appears unsuitable having regard to Policy DM3 and the heritage considerations, the viability evidence submitted against the policy-compliant tourism use is lacking in detail. The material consideration of the paragraph 55 exception, indicating a residential use contrary to the recently adopted Development Plan, should not prevail on that evidence. It is not possible to conclude that residential use is the optimal viable use of a heritage asset, as that phrase should not be taken to mean the most attractive alternative from a purely commercial point of view.
26. On the evidence presented, the case for residential use in the countryside as an exception to Development Plan and national policies of restraint, has not been made and for the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR