



Appeal Decision

Site visit made on 31 August 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2022

Appeal Ref: APP/D0121/W/22/3294760

The Elms Farm, East Hewish Lane, Hewish, Somerset BS24 6RZ

- 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 Jones against the decision of North Somerset Council.
 - The application Ref 21/P/2949/FUL, dated 20 October 2021, was refused by notice dated 31 December 2021.
 - The development proposed is described on the application form as, "Extension & Additional Storey to open market permission 21/P/1800/FUL".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Differing to the description of development in the banner header above, the Council's decision notice accurately describes the development as shown on the supporting plans as, "Conversion and extension, with additional floor, of the existing barn to a new two storey dwelling". I have used this description in my consideration of the appeal since it best describes the proposed development in precise and concise terms.
3. An additional plan was submitted at the appeal stage¹, which relates to site levels. Amended plans were also submitted at the appeal stage², demonstrating that no lateral extension to the existing barn is proposed (apart from a porch). The Proposed Floor Plans³ was amended further at the appeal stage to clarify the finished floor levels. These plans do not substantially alter the nature of the proposal, and I am satisfied that the parties' interests, including that of local residents, would not be prejudiced by the plans being considered in this appeal. Therefore, I have considered these plans as part of this appeal.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the host building and the surrounding area; and
 - whether or not the appeal site is an acceptable location for the proposal, with respect to its vulnerability to flooding.

¹ Drawing no: 2021-04-ED-B1-XX-DR-A-PL-1003A

² Drawing nos: 2021-04-ED-B0-XX-XX-DR-A-1002A; 2021-04-I-ED-B1-XX-DR-A-PL-2002B; 2021-04--ED-B1-XX-DR-A-PL-2003B; 2021-04--ED-B1-XX-DR-A-PL-3002B; 2021-04--ED-B1-XX-DR-A-PL-4002B; 2021-04--ED-B1-XX-DR-A-PL-5001B

³ Drawing no: 2021-04-I-ED-B1-XX-DR-A-PL-2002C

Reasons

Character and appearance

5. The existing barn, the subject of this appeal, is situated amongst a set of other agricultural buildings, including 2 particularly large 2-storey buildings sited close to the barn.
6. The second criterion of Policy DM45 of the Development Management Policies: Sites and Policies Plan Part 1 (adopted 2016) (DMP) provides that the conversion or re-use of rural buildings for residential use will be permitted provided that any extension as part of the conversion or subsequently should not be disproportionate to the original building and respect the scale and character of the building and its setting.
7. The proposal seeks to add an additional floor to the barn. According to figures provided by the appellant, which have not been disputed by the Council, the volume of the barn is approximately 270.4m³, and the proposal would add approximately 250.9m³ over-and-above this, with the existing ridge tile level from finished floor level being approximately 4.170m, and approximately 7.120m under the proposal.
8. Therefore, the increase in size over-and-above the original building would be considerable, and in my view, it would be disproportionate to it. As the extended area would span the full width and length of the barn, with a substantial increase in height and a large amount of glazing, the proposal would result in a building of a markedly different scale and character to that which exists. For these reasons, the proposal would conflict with the second criterion of Policy DM45, referred to above.
9. Reference has been made to Class AA of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), which relates to the enlargement of a dwellinghouse by the construction of additional storeys. However, as the appellant has mentioned, this permitted development right is not currently exercisable in relation to the existing barn on site. Moreover, whilst reference has been made to the massing and scale of the proposal in the context of the requirements of Class AA, Class AA does not contain a specific requirement that any extension should not be disproportionate to the original building, which is a key consideration in this appeal. Therefore, this matter does not change my findings.
10. The extended barn would have a rather domestic appearance, due to its scale, the amount of glazing proposed, and the addition of a porch. However, as it would be situated close to a number of 2-storey buildings, including residential properties, and views of the extended barn would be partially obscured from public viewpoints due to the surrounding buildings and soft landscaping, no conflict would arise in relation to the 'setting' of the building, referred to in the second criterion of Policy DM45. Hence, the positive aspects of the character and appearance of the surrounding area would be maintained. Nevertheless, as that is a separate consideration to the requirements that any extension as part of a conversion should not be disproportionate to the original building and should respect its scale and character, the conflict with those particular requirements of Policy DM45 remains.

11. I have had regard to the submitted structural report and the letter referring to previous roof repairs at the barn. Neither of these documents provides specific details of what operational development or engineering works might be involved to implement the conversion and extension of the barn as proposed. As such, it has not been adequately demonstrated that the barn is capable of conversion without major or complete reconstruction. Accordingly, the proposal conflicts with the first criterion of Policy DM45 which provides that, amongst other things, the conversion or re-use of rural buildings for residential use will be permitted provided that they are capable of conversion without major or complete reconstruction.
12. Taking all of the above into account, I therefore find that the proposal would have an unacceptable and harmful effect on the character and appearance of the host building. The proposal would conflict with parts of both the first and second criteria found in Policy DM45 of the DMP, which are summarised above.

Flood risk

13. The Environment Agency have confirmed that the site is located within Tidal Flood Zone 3a, which is land defined in the Planning Practice Guidance (PPG) as having a high probability of flooding⁴, and that the land currently benefits from tidal flood defences. I am conscious of paragraph 159 of the National Planning Policy Framework (the Framework) which provides that, amongst other things, inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future).
14. Policy CS3 of the North Somerset Core Strategy (Core Strategy) (adopted 2017) provides that, amongst other things, development in Flood Zone 3 will only be permitted where it is demonstrated that it complies with the sequential test set out in the Framework and associated technical guidance, unless certain criteria apply. In a similar vein to Policy CS3, the Development and flood risk issues: Development Management Advice Note (2019) (Advice Note) provides that, amongst other things, development proposals within Flood Zone 3 must have gone through a sequential testing process unless certain circumstances apply.
15. I have had regard to the revised Flood Risk Assessment⁵ (FRA), which questions whether the sequential test is applicable. In support of this contention, the FRA refers to the PPG, which currently states that minor developments are unlikely to raise significant flood risk issues⁶. However, as the proposal does not relate to a non-residential extension, or an alteration, and is not householder development, it does not fall within the ambit of minor development as defined by the PPG⁷.
16. Reference is made within the revised FRA to an extant consent for conversion of the barn to a dwelling⁸, and in this regard I note that the sequential test was passed under that consent. However, that consent did not involve the creation of an additional floor, and so it is a materially different scheme to that

⁴ Paragraph 7-078-20220825

⁵ Flood Risk Assessment for Proposed Development: Elms Farm, East Hewish Lane, Hewish, North Somerset BS24 6RZ: Grid Ref: 339946/164775 (March 2022) (WA Consultancy Ltd)

⁶ Paragraph 7-051-20220825

⁷ Paragraph 7-051-20220825

⁸ 21/P/1800/FUL

proposed in this appeal. Furthermore, that permission has not yet been implemented, whereas my assessment of the appeal proposal is based on the currently prevailing circumstances, meaning that criterion 5 specified within the Advice Note is not applicable. Criterion 7 specified within the Advice Note relates to a replacement dwelling, which is not proposed in this appeal.

17. Although the Environment Agency initially objected to the proposal, following the submission of the revised FRA, they withdrew their objection. The Environment Agency found that whilst the site is at risk from a 200-year undefended tidal flood event, breach modelling shows that the site is at very low flood risk and the ground floor finished floor level would be set above the flood depths in a tidal breach. In their letter of 28 July 2022, the Environment Agency suggested various flood resistance and resilience measures, which are primarily a matter for assessment by the Council's building control department.
18. However, the Environment Agency were primarily commenting on the revised FRA, the flood resistance and resilience measures put forward, and whether the proposed development would be at risk of flooding, rather than whether the sequential test is applicable or not. As such, their site-specific observations do not remove the requirement for the sequential test to be passed, as required by planning policy.
19. It follows that, with respect to the criteria found in Policy CS3 relating to the sequential test, the proposed development is not of a category for which the Framework and associated technical guidance makes specific alternative provision, and it is not development of the same or a similar character and scale as that for which the site is allocated, meaning that under the provisions of Policy CS3 the sequential test is applicable to the proposal.
20. In this respect, whilst reference has been made to the extant consent referred to above, no evidence has been submitted to demonstrate that there are no reasonably available alternative sites within an area of lower flood risk which can accommodate the proposal, which the Advice Note requires as evidence to inform the application of the sequential test. The Advice Note mentions that if no such evidence is submitted then permission will normally be refused.
21. I concur with the statement made in appeal decision Ref APP/D0121/W/21/3279097 that sequentially preferable sites may include those granted planning permission and that the pragmatic approach advocated in the PPG⁹ to the sequential approach would not extend to assessing only land within a particular individual's control.
22. However, as the extant consent does not relate to an alternative site, and as it is in the same Flood Zone as the proposal, it does not compensate for the lack of evidence showing that there are no reasonably available alternative sites within an area of lower flood risk which can accommodate the proposal, as required by the Advice Note. The requirement to demonstrate that a proposed development will not increase flood risk elsewhere is more properly considered as part of the exception test, as per paragraph 164 b) of the Framework.
23. Considering the lack of evidence to demonstrate that the sequential test has been passed, it follows that, based on the requirements of planning policy and the Advice Note referred to above, the proposal fails the sequential test. I

⁹ Now found at paragraph 7-027-20220825 of the PPG

therefore find that it has not been demonstrated that the appeal site is an acceptable location for the proposal, with respect to its vulnerability to flooding.

24. The proposal would conflict with Policy CS3 of the Core Strategy, the relevant parts of which have been summarised above, and with Policy DM1 of the DMP which provides that, amongst other things, exceptions to national policy on flood risk (as elaborated in national technical guidance and in Policy CS3) will not be permitted.

Other Matters

25. For the avoidance of doubt, whilst I note that the appellant attempted to engage in constructive dialogue with the Council, the conduct of the Council during the processing of the planning application, including any concerns relating to how the planning application was dealt with, are not matters that I can assess in the context of a planning appeal.

Planning Balance

26. I have had regard to the fall-back position, relating to an extant consent for conversion of the barn to a dwelling¹⁰, in light of the case law referred to¹¹. The appellant has made clear their intention to implement this permission, in the event that this appeal is dismissed, and I have been given no reason to doubt that this would occur. As such, I consider that there is a real prospect that the development could take place.
27. The fall-back position does not include the creation of an additional floor, as proposed in this appeal. Subsequent to the fall-back position being implemented, the appellant has referred to the option of a planning application being submitted in order for the barn to be extended as proposed in this appeal.
28. Any subsequent proposal would be assessed with respect to the state of planning policy and the relevant law in force at that time, including in relation to flood risk and the definition of 'householder' development given in the PPG and the Advice Note. This is particularly so as the Advice Note mentions that its advice is not exhaustive and may be subject to regular update and amendment in light of relevant appeal decisions and the establishment of caselaw. Thus, in assessing this matter on a balance of probabilities, given that some uncertainty exists as to how a proposal subsequent to the fall-back position would be considered by a decision-maker in terms of flood risk, I have given this particular scenario with respect to the fall-back position no more than moderate weight in favour of the proposal.
29. I note the support for the proposal from local residents, including Puxton Parish Council, and in this regard it is clear that the proposal offers a number of benefits, including allowing the appellant to live independently, in close proximity to the farm, which would in turn assist with the farm contributing to the local community and the economy. The proposal would put a currently under-utilised barn, on an existing site, into active use, where there is little prospect of the barn being brought back into use for farming activities. The proposal would also provide a limited contribution to the housing stock in an area where there is an evident need.

¹⁰ 21/P/1800/FUL

¹¹ *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314

30. In these respects, the proposal would represent a betterment over-and-above the benefits that would arise under the fall-back position, including by way of providing a net gain of 3 bedrooms, in response to a local need with respect to an under-used barn which is part of a diversified farm. Additionally, the proposal would contribute towards housing choice and mix in the local area. It is also intended that passive design principles would be incorporated, with the aim to achieve up to at least a 20% reduction in carbon dioxide emissions from baseline Building Regulation requirements, and that renewable energy would be used. All these matters would be in compliance with a number of the Council's development plan policies and relevant paragraphs of the Framework.
31. As minimal details have been provided relating to the economic benefits to the farm that would arise under the proposal, and given that only one new dwelling would be created, when taken together all these benefits offer minimal support for the proposal, and collectively (including the betterment arising via the proposal over-and-above the fall-back position) I have given them limited weight.
32. The proposal would give rise to harms in that it would have an unacceptable and harmful effect on the character and appearance of the host building, and it has not been demonstrated that the appeal site is an acceptable location for the proposal with respect to its vulnerability to flooding, in the terms I have described above. The latter issue is a particularly important consideration in planning terms. As such, I ascribe significant weight to these harms, as a group.
33. Therefore, as a matter of planning judgement I find that the matters advanced in support of the proposal, do not, either individually or collectively, outweigh the harms identified, nor the conflict with the development plan identified.
34. The main parties are in agreement that the Council is currently unable to demonstrate the necessary forward supply of housing sites, as required by the Framework. This means that the policies which are most important for determining the appeal are out-of-date in accordance with paragraph 11 d) of the Framework.
35. However, part i. of paragraph 11 d) clarifies that permission should not be granted if the application of policies in the Framework that protect areas or assets of particular importance, including areas at risk of flooding, provide a clear reason for refusing the development. As I have explained above, it has not been demonstrated that the appeal site is an acceptable location for the proposal, with respect to its vulnerability to flooding. This provides a clear reason for refusing the proposed development. Therefore, the proposal would not benefit from the presumption in favour of sustainable development.

Conclusion

36. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR