



Appeal Decision

Site visit made on 15 February 2023

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2023

Appeal Ref: APP/J0405/W/22/3304555

**Seven Acre Farm, Aylesbury Road, Aston Clinton, Aylesbury,
Buckinghamshire, HP22 5AH**

- 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 G Coppola (SVG Holdings UK Ltd.) against the decision of Buckinghamshire Council.
 - The application Ref 22/00902/APP dated 11 March 2022, was refused by notice dated 5 May 2022.
 - The development proposed is described on the application form as "Extension to a commercial building at Seven Acre Farm Business Centre".
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr G Coppola (SVG Holdings UK Ltd.) against Buckinghamshire Council. This application is the subject of a separate decision.

Procedural matter

3. In response to the Council's 3rd reason for refusal, the appellant submitted a tree survey report with the appeal that was not considered at the application stage. Whilst I agree with the Council that this information should have been provided in the original application submission, I am nonetheless satisfied that it had adequate time within the current appeal to determine whether this particular document addresses its technical concerns. As a consequence, it is my view that the Council would not be prejudiced by my consideration of this additional information and I have determined the appeal on this basis.

Main issues

4. The main issues are:
 - the effect of the development on the character and appearance of the area;
 - whether the development is in an appropriate location.

Reasons

5. The appeal site is broadly square in shape (not including the access road) and primarily consists of tarmac surfacing and rough grassland. It lies directly

adjacent to an existing employment site to the south which contains a range of buildings that were converted from agricultural use. It also abuts an open area of grassland to the north which fronts onto Aylesbury Road. All of this land falls under the control of the appellant and is enclosed by mature hedgerows to the south, north and western boundaries. At the time of my inspection, part of the appeal site was being used for the parking of heavy goods vehicles and small lorries.

6. There is a further employment site on the eastern side of the private access road that leads to the appeal site. However, this does not fall within the red and blue lines on the submitted location plan and therefore falls outside the control of the appellant.
7. The appeal site and existing employment areas to the south and east lie outside the settlement boundary for the village of Aston Clinton and within the open countryside for planning purposes. The main built up area of Aston Clinton lies a short distance away to the east and there is a small row of residential dwellings opposite the entrance to the site on Aylesbury Road.
8. The existing employment areas and row of residential dwellings identified above are surrounded by grass paddocks and agricultural fields. As a consequence, the area has an edge-of-settlement countryside character where built form starts to thin out.

The effect of the development on the character and appearance of the area

9. The proposed commercial building would be larger and taller than each individual unit on the existing employment site to the south and be positioned much closer to, and clearly visible from, Aylesbury Road. As a consequence, it would give the area a much more urban and industrialised appearance that is out of scale and keeping with the character of; (a) the open countryside that defines its context; and (b) the adjacent former agricultural buildings which are now used for employment purposes.
10. In view of the above, I conclude that the proposed development does not respect the local context of the area and would as a consequence be harmful to its character and appearance. The scheme would therefore conflict with Policies BE2 and NE4 of the Local Plan¹ and Policies B2, B3 and HQD1 of the Neighbourhood Plan², which collectively seek, amongst other things, to ensure that development respects and complements; - (a) the physical characteristics of the site and its surroundings; and (b) the natural qualities and features that contribute to the area's local landscape character.
11. I also find that the scheme conflicts with Paragraphs 126 and 130 of the Framework³, which seek, amongst other things: (a) the creation of high quality places; and (b) development that is sympathetic to local character.

Whether the development is in an appropriate location

12. The Council and appellant both agree that the appeal site falls outside the settlement boundary for the village and technically within the open countryside.

¹ Vale of Aylesbury Local Plan (VALP) 2013-2033, Adopted Plan, September 2021, Buckinghamshire Council.

² Aston Clinton Parish Neighbourhood Plan 2013-2033, Published by Aston Clinton Parish Council under the Neighbourhood Planning (General) Regulations 2012, and in accordance with EU Directive 2001/42. Referendum Version - May 2018. Made on 8 August 2018.

³ National Planning Policy Framework, Ministry of Housing, Communities and Local Government, 20 July 2021.

However, it nonetheless; - (a) lies within short walking distance of the centre of Aston Clinton; (b) is in close proximity to bus stops providing transport to bigger urban centres nearby; and (c) is only a short distance away from Aylesbury and Tring which both have train stations. As a consequence, future occupants and their visitors would have reasonable opportunities to access the proposed commercial building and connect with other local services & facilities by walking, cycling and public transport. In light of this, I am satisfied that the appeal site is located in a relatively sustainable location.

13. Policy D6 of the Local Plan states that employment development will generally be supported in sustainable locations subject to a number of caveats. These include the intensification or extension of existing premises. Although the Council accepts that the proposed commercial building would connect with one of the existing employment buildings, it states that this would only be for a short distance and that it therefore constitutes a new building.
14. However, the proposed commercial building would be utilised by two existing companies on the adjacent employment site and be physically attached to one of their buildings. It would not therefore be a detached or standalone building unrelated to the function and use of the existing employment site to the south. I am as a consequence satisfied that the scheme constitutes an intensification and extension of existing employment premises and accords with Policy D6.
15. The Council has referred to Policy B3 of the Neighbourhood Plan in their reason for refusal. However, this policy does not explicitly state that new employment buildings will not be permitted in the open countryside; - it merely states that new employment opportunities will be supported within the settlement boundary. In light of this, and despite my findings that the physical characteristics of the scheme conflict with Policy B3 insofar as it does not integrate with local character, I am nonetheless satisfied that there is no conflict with this policy in terms of the scheme's location.
16. Policy B2 of the Neighbourhood Plan states that small scale rural employment uses will be supported on the provision that they respect local character. Small scale rural employment uses are not defined in the Neighbourhood Plan and neither are they explicitly restricted to agriculture and forestry or other rural land based occupations. In light of this, and by reason of its geographical location in a rural area, I am satisfied that the proposed extension of the existing employment use would constitute a small scale rural employment use. However, this does not overcome my findings that the physical characteristics of the scheme conflict with Policy B2 insofar as it does not respect local character.
17. The Council has also referred to Policy H1 of the Neighbourhood Plan in its reason for refusal. However, this document clearly states that this is a policy developed for housing and as a consequence, I do not consider it relevant to the scheme before me.
18. In light of the above, I conclude that the principle of the scheme accords with Policies D6 and S1 of the Local Plan inasmuch as I consider it to be an appropriate location for small scale rural employment uses arising from an intensification or extension of existing premises.

Other matters

19. The tree survey report submitted by the appellant concludes that the scheme would not have any harmful impact on the two existing mature Oak trees and established hedgerow. In view of; - (a) the absence of new built form within their root protection areas; and (b) because this document was prepared by a suitably qualified arboriculturist, I see no reason to disagree with its findings that the trees and hedgerow will not be harmed by the development.

Planning balance

20. Policies S1, D6, BE2 and NE4 of the Local Plan and Policies H1, B2, B3 and HQD1 of the Neighbourhood Plan were adopted/made less than 5 years ago and are broadly consistent with the Framework insofar as they relate to the main issues of the case. In particular, I am satisfied that they offer suitable scope for businesses to invest, adapt and expand in rural areas in accordance with Paragraphs 81, 84 and 85 of the Framework.
21. The appellant states that the Framework emphasizes the need to support economic growth. Be that as it may, it does not state that this should be at the expense of other considerations, such as environmental objectives. I have also taken into consideration the appellant's unsuccessful search for alternative commercial units of an appropriate size and budget in the surrounding area. However, this does not justify the harm identified above.
22. I recognise that the scheme would result in economic benefits from; - (a) enabling two existing local employers to expand at their existing site; and (b) local employment during construction. However, whilst I consider these benefits to be of moderate value when taken cumulatively, it is my view that the adverse environmental impacts of the scheme would outweigh these when assessed against the policies in the development plan and other material considerations.
23. In view of the above, I conclude that the proposal does not accord with the development plan and that other material considerations do not indicate that the proposal should be determined other than in accordance with this.

Conclusion

24. Although I have concluded that there is no harm in respect of the main issue relating to whether the scheme is in an appropriate location, I am nonetheless satisfied that the harm identified in respect of the main issue relating to character and appearance is sufficient to still justify dismissal of the appeal.
25. All representations have been taken into account, but no matters, including the benefits of the development and the scope of possible planning conditions, have been found to outweigh the identified harm and policy conflict. For the reasons above, the appeal should be dismissed.

Robert Fallon

INSPECTOR



Costs Decision

Site visit made on 15 February 2023

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2023

**Costs application in relation to Appeal Ref: APP/J0405/W/22/3304555
Seven Acre Farm, Aylesbury Road, Aston Clinton, Aylesbury,
Buckinghamshire, HP22 5AH**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr G Coppola (SVG Holdings Ltd.) for a full award of costs against Buckinghamshire Council.
 - The appeal was against the refusal of planning permission for an extension to a commercial building at Seven Acre Farm Business Centre.
-

Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where:
 - a party has behaved unreasonably; and
 - the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG clarifies that unreasonable behaviour may either be procedural or substantive. Although an application for costs may relate to events before the appeal, the PPG states that costs unrelated to the appeal are not eligible for an award.
4. The application for costs by the appellant is based on substantive and procedural grounds in that it alleges the Council acted unreasonably in; - (1) preventing development that should clearly be permitted, based on an incorrect assessment of local and national planning policy relating to development outside of a settlement boundary; and (2) failing to work positively and proactively with the Agent to seek an approval, by not requesting a tree survey whilst the application was still live.
5. In accordance with section 38(6) of the 2004 Act¹ and section 70(2) of the 1990 Act², applications for planning permission must be determined in

¹ Planning and Compulsory Purchase Act 2004

² Town and Country Planning Act 1990 (as amended)

accordance with the development plan unless material considerations indicate otherwise. The starting point of decision-making is therefore plan-led.

Ground 1: Preventing development that should clearly be permitted, based on an incorrect assessment of local and national planning policy relating to development outside of a settlement boundary

6. It will be seen from the appeal decision that I disagree with one of the grounds upon which the Council refused the application, namely that relating to whether it was in an appropriate location. However, I am nonetheless satisfied that it was not unreasonable for it to have formed the conclusion it did based on an objective analysis of the scheme against development plan policy, save for that relating to Policy H1 of the Neighbourhood Plan. In the case of the latter, the Neighbourhood Plan clearly stated that this was a policy developed for housing, which was not relevant to this appeal.
7. In view of this, I consider it unreasonable of the Council to have introduced Policy H1 of the Neighbourhood Plan into its first reason for refusal. The application for costs on this substantive ground therefore partially succeeds.

Ground 2: Failing to work positively and proactively with the Agent to seek an approval, by not requesting a tree survey whilst the application was still live

8. The appellant states that the Council failed to work positively and proactively with them to seek an approval, in that they should have requested a tree survey whilst the application was still live. However, the appropriate time for the appellant to have sought to discuss the proposal with the Council was at the pre-application stage, as outlined by the Framework³ and PPG⁴. In this respect, I note that no pre-application enquiry was submitted by the appellant, despite this service being available to them. I am as a consequence satisfied that the appellant did have adequate opportunity to discuss the current scheme with the Council at the pre-application stage, which might have highlighted any potential areas of concern, but chose not to do so.
9. Furthermore, Section 70 of the 1990 Act states that where an application is made to a local planning authority, it may grant or refuse planning permission. This legislation does not impose a legal duty upon a local planning authority to enter into discussions with an applicant to resolve problems in a 'live' application that would otherwise result in a subsequent refusal of planning permission.
10. This is further reinforced by the PPG⁵ which states that while it is possible for both the applicant and local planning authority to suggest changes to a 'live' application before it has been determined, it is at the discretion of the latter as to whether to accept such changes or determine whether the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted. To my mind, this does not support the view that the Council is required to work proactively with applicants during a 'live' application. The local planning authority is not therefore under any obligation to accept additional application information that would materially change the content of the submission and necessitate a reassessment of the scheme.

³ Paragraphs 39 to 43, National Planning Policy Framework, Ministry of Housing, Communities and Local Government, 20 July 2021.

⁴ Paragraph: 001 Reference ID: 20-001-20190315, Revision date: 15 03 2019

⁵ Paragraph 061, Reference ID: 14-061-20140306, Revision date: 06 03 2014

11. Moreover, it seems to me that if local planning authorities were required to work proactively with applicants during a 'live' application to address all matters in dispute, this would then negate the need for any pre-application discussions to take place at all and enable applicants to avoid paying the appropriate fee where a charging regime is in place. It would also enable applicants to evolve schemes without paying an additional fee during the application process, at additional cost to the Council and taxpayer (the Council having received only one application fee to determine the submission). This is not what the Framework and PPG advocates.
12. To my mind, the duty imposed on local planning authorities⁶ to "work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area" does not therefore oblige them to engage in discussions during a 'live' planning application in all circumstances. This would especially be the case for applications where a problem has arisen for which: - (a) the local planning authority does not consider there to be a solution as it relates to an 'in-principle' matter; (b) the submission of additional or amended information would not address all of the reasons for refusal and hence it would not make any difference to the overall outcome; (c) it would necessitate the submission of a materially different scheme and/or additional information materially changing the content of the application to overcome the matters in dispute; (d) where there is insufficient time left within the statutory determination period; and (e) those cases where no pre-application enquiry was submitted which would have given the parties an early opportunity to attempt to resolve the issues concerned.
13. In the current appeal, I would have expected the requirement for a tree survey to have been raised within a pre-application enquiry. However, even if this did not occur, the submission of a tree survey at application stage would not have changed the overall decision as it did not address the other matters in dispute relating to character & appearance and whether the scheme was in an appropriate location. As a consequence, it would have been unreasonable for the Council to ask the appellant to submit a tree survey whilst the application was still live as this would not in any event have prevented the application from being refused.
14. The above duty is therefore discharged in most circumstances by local planning authorities working proactively with applicants at the outset, before a scheme has been finalised and during a collaborative pre-application process where an appropriate and proportionate level of engagement can take place with consultees and neighbours. However, in those circumstances where the Council has been unable to offer such a pre-application service, the current system does allow for it to be discharged through a collaborative process agreed to by both parties via an extension of time to a live planning application or within a Planning Performance Agreement.
15. In view of the above, I am satisfied that the Council did not behave unreasonably in not requesting the submission of a tree survey which resulted in the specified reason for refusal. The application for costs on this procedural ground therefore fails.

⁶ Paragraph 38 of the Framework

Conclusion

16. In view of the above, I find that unreasonable behaviour by the Council resulting in unnecessary and wasted expense has been demonstrated. I therefore conclude that a partial award of costs, to cover the expense incurred by the appellant in addressing Policy H1 of the Neighbourhood Plan in the first reason for refusal is justified.

Costs Order

17. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Buckinghamshire Council shall pay to Mr G Coppola (SVG Holdings Ltd.), the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in addressing Policy H1 of the Neighbourhood Plan in the first reason for refusal.
18. The applicant is now invited to submit to Buckinghamshire Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Robert Fallon

INSPECTOR