The Planning Inspectorate

Appeal Decision

Site visit made on 4 September 2012

by Nicholas Taylor BA(Hons) MRTPI

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

Decision date: 3 October 2012

Appeal Ref: APP/H1033/A/12/2178398
Land adjacent to Nithen End Farm, Long Hill, Buxton, Derbyshire SK17 6SY

- 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 V Garlick against the decision of High Peak Borough Council.
- The application Ref HPK/2011/0624, dated 7 November 2011, was refused by notice dated 16 March 2012.
- The development proposed is two new open market dwellings.

Decision

1. The appeal is allowed and planning permission is granted for two new open market dwellings at land adjacent to Nithen End Farm, Long Hill, Buxton, Derbyshire SK17 6SY in accordance with the terms of the application, Ref HPK/2011/0624, dated 7 November 2011, subject to the 14 conditions set out in the Schedule to this decision.

Main Issue

2. The main issue in this case is the effect of the proposal on the character and appearance of the area; in particular, of the surrounding countryside.

Reasons

3. The appeal site is part of a group of buildings referred to as Nithen End Farm, occupying a steeply sloping site on the edge of Buxton and adjacent to Manchester Road, one of the main roads into and out of the town. The group comprises, beside the road, a former farmhouse (shippen) and a further house, neither of which is occupied in connection with the farm business, together with a tin-clad shed and a former dairy building higher up the hillside. Planning permission has previously been granted to convert the former dairy building into a holiday cottage and to provide a new, common access to the site from Manchester Road.

4. The proposed dwellings, a pair of small, two storey, semi-detached cottages, would be on the site of the existing tin shed. Four open car parking spaces to serve the proposed cottages would be sited further up the hillside, reached via a track or driveway from the common access. The parties agree that the Built-up Area Boundary of Buxton, as defined on the Proposals Map of the *High Peak*

Local Plan (LP), adopted in 2005, passes through the middle of the group of buildings. The site of the proposed cottages, together with the two existing houses, is agreed to be within the Built-up Area, although it is right on the boundary and, therefore, potentially affects the character and appearance of the countryside. The site of the car parking spaces, together with the former dairy and the common access, is physically within the designated Countryside which, here, is designated as a Special Landscape Area – within the Moorland Fringe Landscape Character Area. However, the nearby countryside is not typical of that described in the Council's *Moorland Fringe Landscape Character Supplementary Planning Document* (SPD), adopted in 2006, in that it is less rugged and has heavier tree cover, reflecting the transition from rural to urban.

5. The Council states, in its officer report, that the general principle of development of the appeal site is acceptable. The explanation to saved LP policy GD2 states that, within the Built-up Area Boundary, planning permission can be expected to be granted, provided that it complies with other policies and proposals of the Local Plan.

6. In terms of public views, the proposed dwellings would not be prominent from the east, due to the topography and existing trees. Whilst they would be visible between the two existing dwellings on Manchester Road, the main view of them would be from the north west, on the approach into Buxton. This view is characterised by the change from open countryside to the built up area, of which the Nithen End Farm group of buildings marks the furthest extent. Although the proposed dwellings would not have a road frontage, as is the case with nearby existing dwellings, they would, nevertheless, appear as within this group, rather than as an encroachment into the countryside.

7. The varied levels and, consequently, rooflines, of the existing buildings on both sides of Manchester Road, together with the irregular juxtaposition of the Nithen End Farm group in relation to the hillside, also contribute to the character of the countryside / built-up area boundary. The proposed dwellings would contribute to this varied built form. They would be visible just in front of a belt of trees on the skyline and would be less prominent than the existing, recently constructed dwelling on the road frontage. Proposed materials to match the local vernacular would also help them to blend with the existing built form. I consider, therefore, that the dwellings themselves would not harm the character and appearance of the area, either in relation to the Built-up Area or the countryside, including with regard to its impact on the Special Landscape Area.

8. In themselves, despite their elevated position, the proposed four parking spaces, situated outside of the Built-up Area boundary, would not be particularly prominent. Even when occupied by vehicles, they would appear as a relatively minor extension to the upper part of the approved parking / turning area and access track, reasonably close to the former barn, and would not constitute an undue urbanising effect. Moreover, landscaping, which the appellant has suggested could be subject to a condition, could assist in reducing the visual impact of the parking spaces. Therefore, I consider that they would not be harmful to the character and appearance of the countryside or Special Landscape Area.

9. The Council is concerned that the private amenity space allocated to each of the proposed dwellings is so limited that domestic paraphernalia would encroach into the countryside. However, the dwellings would be very small and, therefore, most likely to be suited to one or two person households who could reasonably be expected to have limited requirements for domestic paraphernalia.

10. Therefore, I conclude that the proposed dwellings, together with the associated parking area, would not harm the character and appearance of the area, with particular regard to the character and distinctiveness of the countryside. Consequently, there would be no conflict with saved LP policies GD4 or OC1. Nor would there be conflict with the core planning principles set out in the *National Planning Policy Framework* (the Framework), to secure high quality design, recognise the intrinsic beauty of the countryside and conserve and enhance the natural environment. The objectives of saved LP policy OC3, the SPD and paragraph 109 of the Framework, with respect to protection of the Special Landscape Area, would also not be harmed.

Other matters

11. The Council maintains that the site of the proposed dwellings does not meet the definition, in the Framework, of previously developed land. Saved LP policy H1 seeks to give priority to new housing development on previously developed sites and to conversion and sub-divisions within the Built-up Areas. As the tin shed is, or was last, an agricultural building, it does not meet the definition of previously developed land. Consequently, the priority given, in paragraph 17 of the Framework as well as LP policy H1, to the re-use of previously developed land, does not apply in this case. Nevertheless, the Council has not advanced any evidence as to why the development of the proposed dwellings would be harmful in principle, in relation to policy H1. In the light of paragraph 49 of the Framework, which states that housing applications should be considered in the context of the presumption in favour of sustainable development, and in the absence of any other harm, I consider that there would be no conflict with policy H1.

12. The Council also points out that the appeal site has no road frontage. However, I note that the Highway Authority has raised no objections and I am satisfied that the proposed development could be satisfactorily accessed via the previously approved access track from Manchester Road.

Conditions

13. Both main parties have suggested conditions, in the event that the appeal is allowed. I have considered these in the light of the advice in Circular 11/95: *Use of Conditions in Planning Permission*. Where appropriate, I have amended the suggested wording to better reflect the advice in the circular. In addition to the usual time condition, I have attached a condition requiring development to be carried out in accordance with the submitted plans, for the avoidance of doubt and in the interests of proper planning.

14. In the interests of the character and appearance of the area, I have imposed conditions requiring samples of materials to be used in the construction of the proposed development to be submitted to the Council, specifying timber window frames and requiring details of boundary treatments and levels to be submitted.

For the same reason, I have also imposed a condition requiring a landscaping scheme to be submitted, as suggested by the appellant.

15. The Council has suggested that a condition should be imposed removing certain permitted development rights. However, the Circular states that such conditions should only be used in exceptional circumstances. Given the limited space around the proposed dwellings and their relationship with surrounding buildings, I am not persuaded that such exceptional circumstances apply in this case. Therefore, I have not imposed such a condition.

16. In the interests of highway safety, it is necessary to impose a condition requiring details of storage of construction materials and of manoeuvring and parking of site operatives and visitors vehicles during demolition and construction of the proposed development. Similarly, a condition is required to ensure that parking provision is made before the dwellings are occupied. A condition restricting the hours during which demolition and construction works take place is also required in the interests of the amenity of nearby residents.

17. The Council's Environmental Health officer has identified a potential risk of contamination of the site due to its current agricultural use and historical use of adjacent land for quarrying. In the light of this, I consider that it would be prudent to impose conditions requiring the risk of contamination to be investigated and for any remediation works, which may be required or may subsequently found to be required, to be identified, submitted to the Council and carried out.

Conclusion

18. For the reasons set out above, the appeal is allowed.

Nicholas Taylor

INSPECTOR

Schedule of Conditions

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

2. The development hereby permitted shall be carried out in accordance with the following approved plan: Drawing No. 100 Plans as Existing and Proposed.

3. No development shall take place until written details and samples of the materials to be used in the construction of the external surfaces of the development hereby permitted 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. As specified on Drawing No. 100, timber window and door frames shall be installed. The frames shall be recessed not less than 100mm from the external face of the building into which they are set.

5. No development shall take place until details of the position, materials, design and type of boundary treatments have been submitted to and approved in writing by the local planning authority. The boundary treatments so approved shall be completed before first occupation of the dwellings.

6. No development shall take place until details of existing and final ground and finished floor levels have been submitted to and approved in writing by the local planning authority. Details shall comprise a measured survey of the site and a plan at a scale of not less than 1:500, with levels indicated from a specified benchmark. Development shall be carried out in accordance with the approved details.

7. No development shall take place until a scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved within 12 months from the date of first occupation of the dwelling hereby permitted or in accordance with a programme agreed with the local planning authority.

8. No development shall take place, including any works of demolition, until details of arrangements for areas for the loading / unloading and storage of materials, plant and machinery and the parking and manoeuvring within the site for operatives and visitors, have been submitted to and approved in writing by the local planning authority. Such arrangements shall be provided in accordance with the approved details before the commencement of works and retained until their completion.

9. Demolition or construction works shall not take place outside 0700 hours to 1900 hours Mondays to Fridays and 0800 hours to 1300 hours on Saturdays, nor at any time on Sundays and Bank Holidays.

10. The dwellings hereby permitted shall not be occupied until the car parking spaces shown on Drawing No. 100 have been laid out and surfaced. The car parking spaces shall be maintained and kept available for that purpose thereafter.

11. An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

    (i) a survey of the extent, scale and nature of contamination;

    (ii) an assessment of the potential risks to:

        • human health,

- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

12. A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

13. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

    Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

14. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 11, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 12, which is subject to the approval in writing of the Local Planning Authority.

    Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 13.
