

2. PLANNING AND OTHER APPEALS

(references beginning with a 9 is planning appeal and references beginning with an E is an enforcement appeal)

Reference	Place	Ward	Result - Cttee/delegated
9/2006/0230	Mickleover	Etwall	Allowed - Delegated
9/2005/0892	Linton	Linton	Dismissed - Cttee
9/2005/1394	Egginton	Etwall	Dismissed - Cttee



Appeal Decision

Site visit made on 4 December 2006

by Peter Eggleton BSc (Hons) MRTPI

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

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Date 29 December 2006

Appeal Ref: APP/F1040/A/06/2018675

Land at 37 and 39 Mallard Walk, Mickleover, Derby, DE3 0TF.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr and Mrs P K Sewell against the decision of South Derbyshire District Council.
- The application Ref. 9/2006/0203/O, dated 16 February 2006, was refused by notice dated 12 April 2006.
- The development proposed is the erection of a 4/5 bedroom detached two-storey house.

Decision

1. I allow the appeal and grant planning permission for the erection of a 4/5 bedroom detached two-storey house on land at 37 and 39 Mallard Walk, Mickleover, Derby in accordance with the terms of the application Ref. 9/2006/0203/O, dated 16 February 2006, and the plans submitted therewith, subject to the following conditions:
 - 1) Approval of the details of the siting, design and external appearance of the building, the means of access thereto and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained in writing from the local planning authority before any development begins.
 - 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
 - 3) The development hereby permitted shall begin either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
 - 4) The details of the landscaping of the site shall include a replacement for the protected tree. Details of the species, location and size of this tree together with a programme for its planting, protection and maintenance shall be agreed in writing by the local planning authority before any development begins and shall be implemented strictly in accordance with these details.

Reasons

2. The application for a dwelling is in outline with all matters reserved. The main issue raised by the Council is the loss of the protected tree. The original tree on the site was a substantial London Plane tree which offered significant benefit to the character and appearance of the area. The Tree Preservation Order served its purpose as it ensured the retention of the tree

until the end of its healthy life. The protection it was afforded prevented the development of this site.

3. The situation has now changed and without the tree the site appears as an uncharacteristic gap in the street frontage. Part of this gap now accommodates a single-storey side extension to the adjacent property. To the rear of this is an immature Ash tree which has been accepted by the Council as a replacement for the London Plane. This tree currently offers little public amenity value, due to its size and position beyond the new extension. Although its impact would increase as it matures, it would not benefit from the open setting enjoyed by the original tree. I consider that a replacement tree to the front of the site would be more beneficial, offering greater amenity in the medium to long term. I am satisfied that this approach would not conflict with Policy 9A of the Local Plan (LP) or Policy 16 of the Structure Plan (SP) which seek the protection of important trees. If adequately set-back from the road, the site could accommodate a replacement tree and a 4/5 bedroom dwelling, although the existing side extension would have to be removed. If of an appropriate size and design a new dwelling in this location would retain the predominant character of the estate without appearing cramped in the street scene.
4. There is dispute between the parties as to whether this site is a suitable location for new housing. It is a residential estate set beyond the main development areas, although it lies adjacent to Mickleover and has some facilities near-by including a bus route. The Council state that it is not an area that is identified for further development. Policy 8 of the LP sets out the criteria necessary for accepting new dwellings in the countryside and this proposal would fail to meet its specific requirements. Policy 3 of the SP requires that new development be well related to settlements and seeks the effective use of underused land whilst Policy 4 accepts development away from settlements if it can be shown to be appropriate in such a location. Although there is some policy support from the SP due to its close relationship with the adjacent settlement and its more efficient use of land, overall I consider that it would not meet the requirements of the countryside protection policies. However, given the particular and specific circumstances of the case, I do not consider that a dwelling in this location would compromise these policies or result in harm to the local or wider environment.
5. I therefore conclude that subject to the replacement of the protected tree to the front of the site, which I have required by condition, the principle of a new dwelling would be acceptable. I have not included conditions relating to finished floor levels; the disposal of surface and foul water; or those relating to a new access. These are matters that can be dealt with as part of a reserved matters application or by other legislation.

Peter Eggleton

INSPECTOR



Appeal Decision

Hearing held on 3 October 2006

Site visit made on 3 October 2006

by **Craig Woodburn** BSc(Hons) MSc DipWEM
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Date **08 DEC 2006**

Appeal Ref: APP/F1040/A/05/1191248

O.S. 9830 Occupation Lane, Coton Park, Linton, Swadlincote

- 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 Tunnicliffe against the decision of South Derbyshire District Council.
- The application Ref 9/2005/0892/U, dated 28 July 2005, was refused by notice dated 4 October 2005.
- The development proposed is the change of use of building from general recreational use to part 1 bedroomed dwelling, part B1 use (personal to occupier) and part recreational/domestic purposes.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. Both parties agreed the appeal concerns the building, brickwalled courtyard and the access driveway. It does not include either of the two paddocks.
2. It was confirmed by the appellant that the existing garage and kennels would remain in recreational use, the dwelling would comprise the existing domestic areas with the store also converted for domestic use and the work area would be the existing workshop.

Main Issues

3. I consider the main issues are whether the proposal would be an appropriate re-use of buildings in the countryside and the effect a full time residential use of part of the property would have on the character and appearance of the countryside.

Planning Policy

4. The development plan includes the South Derbyshire Local Plan adopted May 1998 (Local Plan) and the Derby and Derbyshire Joint Structure Plan adopted January 2001 (Structure Plan). Housing Policy 7 of the Local Plan covers residential conversion. Specifically part B considers the conversion of buildings outside settlements to residential accommodation provided the building is in keeping with the character of the surroundings, is suitable for conversion and is of a form and bulk in keeping with its surroundings. General Development Strategy Policy 4 of the Structure Plan follows similar principles although preference will be given to business rather than housing unless the circumstances dictate.
5. Employment Policy 4 of the Local Plan is aimed at promoting the Rural Economy. It states that proposals for diversification of the rural economy will be permitted if they do not conflict with other Local Plan policies. The reuse or adaptation of agricultural buildings must be in keeping with their surroundings and acceptable on environmental and traffic grounds. Structure Plan Housing Policy 6 is also relevant. It indicates housing will only be

permitted away from existing settlements if it can be shown to be necessary for the operation of a rural based activity and that its location outside a settlement is essential. Consideration amongst other things is given to the impact the conversion may have on the local economy.

6. In considering sustainable development, Policies 2 and 3 of the Regional Spatial Strategy for the East Midlands form part of the sequential approach taken to development form. They consider locational priorities and sustainability criteria to assess the suitability of land for development. Planning Policy Guidance Note 3: Housing (PPG3) aims to focus additional housing in existing towns. Paragraphs 8 and 9 of Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7) also supports this approach. Paragraphs 17 and 18 of PPS7 specifically focus on the re-use of buildings in the countryside and provide 5 criteria to be met to ensure any proposal meets sustainable development objectives.

Reasons

7. The appeal property is isolated from the main built up area of Coton Park which mainly takes the form of ribbon development along Coton Park Road and extends a little way along Occupation Lane. There is no dispute between the parties that the proposal site is within the countryside.
8. The current property was built in 1994 and externally resembles the stable structure it was initially used for. Since then it has been used by the appellants for recreational activities linked to their interests in training and breeding Border Collie dogs. Some of the former stables now contain kennels, others have been converted to a kitchen/dining area, a store room and bathroom. The general building and paddock facilities are utilised on a daily basis. There is also bedroom utilised by Mr Tunnicliffe approximately once per week.

Whether the proposal would be an appropriate use of a building in the countryside

9. PPS 7 supports the re-use of appropriately located and suitably constructed buildings in the countryside where this would meet sustainable development objectives. It states that re-use for economic development purposes will usually be preferable, but residential conversions may be more appropriate in some locations and for some types of building. In the current appeal the appellant proposes to convert part of the building for permanent residential accommodation, whilst undertaking the training, grooming and breeding of dogs as a business.
10. In the previous appeal concerning a single house conversion at the site the Inspector was concerned that no investigation had been undertaken into alternative uses of the site. Whilst a home business use is proposed in this instance I still have concerns that an adequate assessment of other suitable business uses has not been fully undertaken. The Council have indicated there is also demand for small commercial premises in the area, in its current form it could contribute to meeting such demand. The appellants say this has not been investigated because they want to undertake their own activities on the site and many other activities would not be compatible given the layout of the building and site. Little evidence was put before me to investigate the suitability of other rural based activities taking place on site. The site was originally built for stabling horses. While the appellants argue that the lack of grazing land makes a continuation of this use unviable, they have not demonstrated that some form of low key employment or recreational use, more in keeping with the spirit of PPS 7 and the countryside location could not be found.

11. Limited financial assessment had been undertaken by the appellant to demonstrate the viability of the proposed business venture. As the appellants submit that vehicle movements for the business would be approximately 4-6 per day similar to those currently experienced at the site, this would mean only 2 – 3 customers a day. I am concerned it would not be a viable business. The proposed business element would remain comparable to its current recreational use and would be of little or no benefit to the local economy. I note that Mr Tunnicliffe retired in 1995 on ill health grounds. In practical terms the business element of the proposal would be little more than a continuation of the appellants' hobby activities. While the plans show a substantial proportion of the building retained as kennels or work space, I consider it would be difficult to ensure by the attachment of conditions that this proportion would be retained, or for the Council to enforce against any further changes. The establishment of a permanent residential use on the site would therefore be subject to the same sustainability concerns as were identified in the previous appeal.
12. To my mind, the business element would not be sufficient to justify treating the proposal as a live/work unit. Accordingly, the proposal would not comply with the advice in PPS7 that there should be a preference for employment uses in considering the re-use of buildings in the countryside. It would also conflict with Housing Policy 6 of the Structure Plan as there has been no demonstration that a dwelling in this location is necessary for the operation of a rural based activity and that its location outside a settlement is essential.
13. National and local planning policies promote strict control over residential development in the open countryside, in part to promote a sustainable pattern of development. The property is in an isolated location away from the urban areas of Swadlincote and Burton on Trent. While I accept that the appellants visit the site on a daily basis in connection with the existing use, I consider that the pattern of travel movements generated by a permanent dwelling and associated business use would be more intensive, and its impact more long lasting. Both elements of the proposal would be highly reliant on car use. Travel by customers is unlikely to take place on public transport as although there is a bus stop nearby the service is infrequent. More frequent services stop at Linton, which has a range of other services, though this is considerably further away from the appeal site and not within convenient walking distance. In my judgement, the proposed change of use cannot be viewed as a sustainable form of development and would conflict with criteria 2 and 3 of General Development Strategy Policy 1 of the Structure Plan.
14. While PPS7 says that residential conversions may be more appropriate in some locations, and for some types of building, accessibility should be a key consideration in all development decisions. Planning authorities are advised to have regard to a number of criteria, including settlement patterns and accessibility to service centres, markets and housing. While this advice applies to preparation of policies, I consider the same principles should apply to decisions on planning applications. I conclude that if allowed the appeal proposal would establish a permanent residential use in an unsustainable location in the countryside. Although there would be a business element, there is no substantial evidence that this would be viable, or deliver the suggested sustainability benefits of a live/work arrangement.

Character and appearance

15. Housing Policy 7B of the Local Plan permits the residential conversion of buildings outside settlements subject to a number of criteria. This building is constructed to a high specification, with cavity walls and mains water and electricity installed. I acknowledge

that it could be altered without extensive alteration, rebuilding or extension. It is also screened by surrounding hedges. While I accept that the conversion of part of the building would have limited visual impact I consider that the establishment of a permanent residential use with associated business activity would be at odds with the rural character of the area and thus conflict in part with Policy 7B. At present the site is mainly unoccupied at night, except for occasional overnight stays. Dogs are not left at the site overnight and there is limited potential for noise caused by vehicle movements or disturbance from activities associated with domestic occupation at this time. This ensures the surrounding peaceful and tranquil countryside character is retained for at least part of the time.

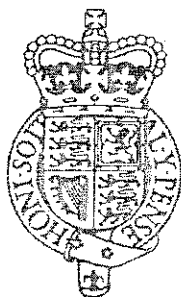
16. The current pattern of recreational use which is appropriate to the location would be replaced by a permanent residential use. While the number of vehicle movements would be similar to what presently occurs, it is still the case that the night-time use of the building in an otherwise isolated location, for residential use would result in a noticeable change through the increased frequency of lighting and activity. There would also be an increase in domestic paraphernalia which would be of limited visibility due to the surrounding courtyard, however, I agree with the previous inspector that such changes and particularly an increase in parked vehicles on the driveway would add cumulatively to a creeping suburbanisation of the site. This would be hard to prevent by the imposition of planning conditions and would further dilute the unspoilt rural character of the area. The proposed conversion of what is essentially a stable/recreational building to residential and business would result in a fundamental change to the character and use of the property. To my mind this would conflict with Policies H7 and Employment Policy 4 of the Local Plan, General Development Strategy Policy 4 of the Structure Plan and guidance within Paragraph 17 of PPS 7. My concerns on this matter are consistent with those reached in a previous appeal at the site.
17. I have considered other properties identified by the appellant at the hearing. Some of these properties are adjacent to the main road passing through Coton Park, others are infill development alongside other properties on the road to Barn Farm. I am of the opinion that these situations are different from the appeal location as this proposal is isolated along a separate access track.

Other matters

18. One of the reasons put forward by the appellants for the sites current limited use is its isolated location which makes the building prone to acts of vandalism and attempted break-ins. The appellant indicated by living on site it would allow greater use of the existing premises because equipment would not need to be taken off site on a daily basis. I noted there were a number of security measures, the brick courtyard around the building being one of them. While I understand the security concerns, they could be addressed by other means and do not justify granting permission for a dwelling at such a location.
19. I have had regard to the argument that the proposal would free up the appellants' current dwelling for a new occupier. However there is no evidence of any pressing need to make further sites available to meet the housing needs of the locality
20. I have considered all matters including Mr Tunnicliffe's personal circumstances and the benefits a ground floor dwelling may provide to him, but this alone is insufficient to grant permission. For the reasons provided above I dismiss the appeal.

Craig Woodburn

Inspector



Appeal Decision

Site visit made on 4 December 2006

by Peter Eggleton BSc (Hons) MRTPI

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Date 18 December 2006

Appeal Ref: APP/F1040/A/06/2022903

Egginton Hall, Egginton, Derby DE65 6HP.

- 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 and Mrs K Ellis against the decision of South Derbyshire District Council.
- The application Ref. 9/2005/1394/U, dated 23 November 2005, was refused by notice dated 14 February 2006.
- The development proposed is the conversion of garden store to work unit (B1).

Decision

1. I dismiss the appeal, for the reasons given below.

Reasons

2. The existing building is a large structure which has no architectural merit and detracts from the character of the surrounding area. The proposal would improve its appearance but as a two-storey property it would be more prominent in the landscape. The proposed design would be perceived as a new dwelling in a rural location which would be harmful to the character of the countryside.
3. I appreciate that it would have a BI office use which would generally be accepted in appropriate building conversions, but there is nothing in the policy framework to justify the increase in size of the building or the creation of additional accommodation. The works would be contrary to Local Plan Employment Policy 4 and Structure Plan General Development Strategy Policy 4, as although they support business uses of existing buildings, this proposal would fail to meet the requirements that the form, bulk and design be in keeping and appropriate to the surroundings and location.
4. I accept that improvements to its appearance and condition would be beneficial and that a positive use of the building could enhance security. However, these benefits could be achieved without increasing the height and prominence of the building. Although the appellants advise that there is a need for office accommodation, I am unclear as to whether it is essential for it to be located at this site, in this building or be of the scale proposed. Overall, I do not find that any of the matters put forward in support of the proposal outweigh my concerns regarding the character of the countryside. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR

