The Planning Inspectorate

# Appeal Decision

Site visit made on 18 January 2017

**by R W Allen B.Sc PGDip MRTPI**

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

**Decision date: 02 February 2017**

**Appeal Ref: APP/A2525/W/16/3159330**
**Adjacent to Edelweiss, Hunts Gate, Tydd St Mary, Spalding PE12 0HZ**

- 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 E Bell against the decision of South Holland District Council.
- The application Ref H21-0025-16, dated 11 January 2016, was refused by notice dated 22 March 2016.
- The development proposed is replacement dwelling (three bedroom bungalow).

## Decision

1. The appeal is allowed and planning permission is granted for the construction of a dwelling house at adjacent to Edelweiss, Hunts Gate, Tydd St Mary, Spalding PE12 0HZ in accordance with the terms of the application, Ref H21-0025-16, dated 11 January 2016, subject to the conditions set out in the Schedule of Conditions at the end of this decision.

## Preliminary Matter

2. As I will discuss further below, the proposed development before me is for a new, rather than a replacement property. I have therefore removed references to the words 'replacement' and 'three bedroom bungalow' as described in the application form and repeated in the banner heading, in my decision above. As both main parties acknowledge the property would be a two-storey dwelling house, and have already advanced their cases on the issue of whether or not the proposal replaces an existing building, I am satisfied that neither is prejudiced by this action.

## Main Issue

3. The main issues are:

    - Whether the proposed development would constitute a replacement or new dwelling in the countryside; and
    - Whether there are any circumstances that justify permanent residential development given the site's rural location and in pursuance of sustainable development.

## Reasons

*Policy context*

4. The development plan for the area comprises the South Holland Local Plan 2006 (Local Plan). A number of policies from the Local Plan were 'saved' following a direction from the Secretary of State including policies HS7 and HS17, which the Council cites in its objection to the proposal.

5. However, the Council states that it cannot demonstrate a five-year supply of deliverable housing land. Accordingly, paragraph 49 of the National Planning Policy Framework (the Framework) is engaged, and dictates that relevant policies for the supply of housing should not be considered up-to-date. In my judgement, both Local Plan policies HS7 and HS17 are such relevant housing policies and are out-of-date. However, because both policies have a degree of consistency with the Framework's approach to avoid isolated new dwellings in the countryside as advocated by paragraph 55, I have attached moderate weight to them in my decision.

*Whether replacement or new dwelling*

6. The appeal site consists of an existing two-storey building located within a farm complex. The appellant states, and not disputed by the Council, that the building was constructed circa 1900 and was used as residential accommodation for farm workers until the late 1970s, when the last occupiers moved out. Since then, it has not been occupied as a residential property.

7. The proposed development seeks to demolish this building and replace it with a two-storey detached dwelling, positioned slightly further back into the site. A number of redundant glasshouse structures would also be removed. Local Plan policy HS17 states that replacement dwellings in the countryside will only be permitted where, amongst other things, the original building has not been abandoned or allowed to fall into a state of disrepair and it would not be capable of habitation without significant structural repair; is of a similar scale and size as the original building; and is on a similar footprint. The Council asserts that the proposed development fails to comply with the Local Plan policy HS17 primarily because it considers the existing residential use of building has been abandoned. This is disputed by the appellant.

8. Whether a use has been abandoned has been subject to much case law, but pertinent to the appeal is the Judgement handed down in *Trustees of Castell-y-Mynach Estate v Taff-Ely BC*, [1985] JPL 40. Here, the Court suggested four criteria to test whether abandonment had taken place, which are; the period of non-use, the physical condition of the land or building, whether there had been any other use, and the owner's intentions as to whether to suspend the use or to cease it permanently.

9. The building has not been in residential use for almost 40 years, which I find to be amount to a substantial period of inactivity. While the front façade retains a domestic appearance and displays some attractive features, overall the building cannot be said to be anything but in a rundown and disused state, and I have no reason to doubt the appellant's assertion that it is beyond viable repair. Photographic evidence has been advanced by the Council which illustrates that in 2015, the building was being used to store agricultural machinery, and where a substantial part of one of the flank walls has been removed

presumably to facilitate this. While the equipment was not present at my site visit, the opening in the wall remains.

10. The appellant states that it was never the intention of the current and previous owner of the site to abandon the residential use of the building, but that an absence of available funds prevented the building being renovated and brought up to a modern standard. While I have some sympathies, previous intentions cannot be decisive in this matter. In evaluating all four factors, I conclude that the existing building has been abandoned for residential use, and the proposal would not therefore constitute a replacement residential building.

11. It follows that the proposal would amount to a new dwelling in the countryside, albeit that it would result in the removal of the existing building. While I note that the proposed development would be occupied by the appellant's parents, and that he has ambitions to expand the farm enterprise, there is no dispute between the parties that the proposed dwelling would not be related to agriculture, or that the proposed dwelling would be in an isolated location. I have no reason to disagree.

12. I therefore find that the proposed development would not comply with Local Plan HS17, details of which I have set out above. It would also not comply with Local Plan policy HS7, which states that that new housing development in the open countryside will only be permitted in certain circumstances where it is proven to be an essential need to meet the needs of agriculture or that it is a small scale rural exception site for affordable housing. However as I have stated above, I attach only moderate weight to this conflict with the Local Plan policies. It would also conflict with paragraph 55 of the Framework.

*Other circumstances*

13. The Council states that the proposal development would not amount to sustainable development, because it would not accord with paragraph 17 the Framework, which amongst other things seeks to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and to minimise travel. In my judgement, the private motor car would be highly likely to be the main means of transport for future occupiers of the proposed property. However, having regard to the scale of the proposed development and the relatively little traffic that would be generated by it, I find the level of harm would not be significant.

14. However, paragraph 6 of the Framework states that the policies in the Framework must be taken as a whole in order to ascertain what sustainable development means in practice. Paragraph 47 of the Framework requires local planning authorities to boost significantly the supply of houses. Because the Council does not have a five year housing land supply, paragraph 14 of the Framework is engaged, which states that a presumption in favour of sustainable development exists and where the development plan is absent, silent, or relevant policies for the supply of housing are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

15. The proposed development would have social and economic benefits in providing a new dwelling to meet the needs of the appellant but also for future generations, and would provide local construction employment opportunities.

The proposed development would also make a small but nonetheless welcomed contribution to the supply of housing in the borough and help contribute to the five year supply.

16. Furthermore, the proposed development would in my judgement significantly improve the appearance of the site by removing the existing and rather unsightly existing building and glasshouse structures; all of which would highly probably remain in-situ if the appeal were dismissed. The Council does not object to the design or size of the proposed dwelling. Although not positioned exactly on the same footprint as the extant building, it would be broadly similarly sited and only marginally larger in size, such that I am satisfied the proposed dwelling would closely replicate the existing character of the site. I attach considerable weight to these benefits.

17. In applying the tilted balance set out in bullet point 4(1) of paragraph 14 of the Framework, I find that the moderate level of harm caused by the construction of a new dwelling in the countryside, and its reliance on the private motor car would not be capable of significantly and demonstrably outweighing the considerable benefits of the provision of a dwelling and the visual improvements that would occur to the site. I find that the proposed development would amount to sustainable development when applying the Framework as a whole, and as such the balance lies in favour of the scheme.

**Conditions**

18. I have considered the conditions suggested by the Council against paragraph 206 of the Framework, and made changes necessary to comply with those requirements.

19. I have specified the approved plans for the avoidance of doubt and in the interests of proper planning. Conditions relating to materials, landscaping, rainwater goods, external utility boxes, the timely demolition of the existing building, and the removal of permitted development rights under Classes A and B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 are necessary to ensure the appearance of the development would be satisfactory in this rural location. However, the Council has not advanced sufficient evidence for the need for specific conditions for brick samples and bonding, the detailing of windows, doors and their frames, detailing of the eaves and chimneys, and gutter fixings. Accordingly, I find they are onerous and unnecessary. No evidence is before me of any likely land contamination on the site, and I find the Council's suggested wording for a condition in this regard also to be somewhat onerous. That said, I will take a precautionary approach and impose such a condition to ensure that contaminates would be adequately remediated if found. As no garage is proposed, I do not find that a condition in respect to garage doors is necessary.

**Conclusion**

20. For the reasons given above I conclude that the appeal should be allowed.

*R Allen*

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 plans: 2917-16-01A and 2917-16-02A.

3) No development shall commence until 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 the Local Planning Authority for approval in writing. Development shall be carried out in accordance with the approved details and samples.

4) No development shall take place until a scheme of landscaping has been submitted to the Local Planning Authority for approval in writing. The approved scheme of landscaping shall be carried out in its entirety within a period of 12 months beginning with the date on which development is commenced. All trees, shrubs and bushes shall be maintained by the owner or owners of the land on which they are situated for the period of five years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.

5) No development shall take place until details of the design and positions of all external boxes for gas and electricity supplies and of any gas flues and soil vent pipes have been submitted to the Local Planning Authority for approval in writing. Development shall be carried out in accordance with the approved details.

6) The rainwater goods utilised in the development hereby permitted shall be coloured black and thereafter maintained as such.

7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no development shall take place within Schedule 2, Part 1, Class A and B of that Order without the prior written approval of the Local Planning Authority.

8) If, during development, contamination not previously considered is identified, then the Local Planning Authority shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspect contamination has been submitted to and agreed in writing with the Local Planning Authority. The development shall thereafter not be carried out except in complete accordance with the approved scheme.