
Appeal Decision

Hearing held on 27 & 28 September 2016

Site visit made on 27 September 2016

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 01 November 2016

Appeal Ref: APP/W0530/W/16/3152125

**Dotterell Farm Barns, Cambridge Road, Balsham, Cambridgeshire
CB21 4HE**

- 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 Thurlow Estate against the decision of South Cambridgeshire District Council.
 - The application Ref S/1320/14/FL, dated 3 June 2014, was refused by notice dated 18 April 2016.
 - The development proposed is the alteration and conversion of agricultural buildings to five dwellings, erection of garages and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the alteration and conversion of agricultural buildings to five dwellings, erection of garages and associated works at Dotterell Farm Barns, Cambridge Road, Balsham, Cambridgeshire CB21 4HE in accordance with the terms of the application, Ref S/1320/14/FL, dated 3 June 2014, subject to the conditions in the Schedule below.

Procedural Matter

2. A draft S106 Unilateral Undertaking (UU) was discussed at the Hearing and a signed and dated version of this was submitted three weeks afterwards. I address the detailed wording of this below.

Main Issues

3. The main issues are:
 - (a) Whether sufficient marketing of the site has taken place in order to satisfy development plan policy
 - (b) Whether the external works proposed to the (Unit 5) stable/cart shed building would be appropriate including their effect on the setting of the Grade II listed tithe barn
 - (c) Whether the proposed development would meet the criteria for 'enabling development'¹

¹ As defined in Enabling Development and the Conservation of Significant Places, English Heritage, 2008 (ED)

- (d) Whether the proposal would be sustainable development as defined in the National Planning Policy Framework (NPPF) including in terms of the site's location in the open countryside

Reasons

Marketing

4. Policy HG/8 of the Council's Development Control Policies DPD (DCP) states that planning permission for conversion of rural buildings to residential use will not generally be permitted, and will only be granted exceptionally where it can be demonstrated that employment use or employment use with residential as a subordinate part is inappropriate.
5. The Council's first refusal reason states that no information was provided in relation to the price at which the permitted employment units² have been marketed and whether this accurately reflected the permitted use and the current condition of the vacant buildings.
6. At the Hearing the Council (LPA) expanded on this refusal reason. It acknowledged that the permitted (but unbuilt) employment floor space was marketed at £18 per square foot (psf) per annum but maintained that this was an uncompetitive price compared to similar Class B1 barn conversions in the area. For instance, in the Cheffins marketing information³ the marketing update of 10 March 2009 lists five available offices of a comparable size to those permitted at the appeal site. Only one of these, a new Grade A office, has a higher rent. The rent for the three new office buildings at Granta Park, which is in a more accessible location next to the M11, is only £17.50 psf. The other units on the list are offered at even lower rents.
7. However, available premises in the 5 October 2009 marketing report have a generally comparable or higher level of rents to the permitted premises at the appeal site. The appellant also stated that it was prepared to negotiate on the rent, as is customary, and also to sell the units freehold if required. As set out in Cheffins marketing summary letter of 3 June 2016, proposed terms were only sent out to one potential occupier, who did not pursue their initial interest. I consider this lack of interest by the market to be significant given that the B1 floor space was properly marketed as indicated in the Cheffins letter between September 2008 and October 2015, which is a substantial period of time.
8. The last two marketing reports recommended the appellant to construct at least part of the permitted offices without a pre-let in order to give potential occupiers confidence that they would actually be delivered. But the appellant pointed out that the £2.5-3 million cost of constructing the permitted offices without any pre-lets would be a significant financial risk and I agree.
9. The Council also argue that the appellant should have considered other uses, as Policy HG/8 states, such as other employment uses including Class B8, live/work units or holiday accommodation. The appellant stated that the buildings do not lend themselves to B8 use because of their physical limitations. I agree not least because they are unsuitable for modern agriculture, and by extension any modern storage use, and have been vacant for over twenty years.

² The subject of extant permissions S/2642/13/FL & S/2643/13/LB

³ Appendix 1 of the appellant's Statement of Case

10. The appellant pointed out that it had carefully considered the most likely viable policy compliant use to be B1 and spent a considerable amount of money designing and obtaining planning permission and listed building consent for such a scheme, which would have generated sufficient funds to have repaired the tithe barn. Although I cannot entirely discount the feasibility of live/work units it appears to me that the Estate may well have difficulty in finding tenants or buyers for these for the same reasons as the B1 units.
11. There was no discussion about the market for holiday lets in this area but given the proximity of the site to Cambridge and its employment market I agree with the appellant that a B1 use would be likely to be the most viable policy compliant use. But there has been no take up of the site for B1 use. I conclude therefore, for the above reasons, that sufficient marketing of the site has taken place in order to satisfy development plan policy.

The Works to Unit 5

12. The listed building is the tithe barn. It is acknowledged by the Council, as I understand it, that the farmhouse has been extensively altered and that various works to it did not require listed building consent. Nevertheless, it still appears that all the buildings at the site, including the brick built farmhouse and the former cart or carriage shed (the Unit 5 building), form a group of buildings that are approximately contemporaneous with each other. I consider all of them to be within the curtilage of the Grade II listed barn.
13. However, the farmhouse has been extensively altered including by the insertion of uPVC windows and it is located adjacent to the cart shed, which is itself further away from the tithe barn than the quadrangle of buildings that would comprise proposed Units 1-4.
14. The Council objects to the proposed elevational alterations to the cart shed. It objects to increasing the size of the windows in the twin gables of the south west elevation because this would make the building resemble a school or some institutional building rather than a farmyard ancillary structure. I disagree because it was clear from the site visit that the openings to these elevations were originally much larger; the brickwork below the existing windows has been more recently infilled. I acknowledge that increasing the opening to the size shown on the proposed elevation would involve removing historic material below the original opening, but the appellant has agreed to the wording of a condition that would prevent this and so there is no objection to the proposed change.
15. The LPA objects to the insertion of the door and window openings in the north east elevation facing the farmhouse. But these alterations retain the brickwork on this elevation and such alterations are relatively minor, especially compared to the historic changes to the farmhouse, which is much closer to the tithe barn.
16. It also objects to the five new openings on the rear south east elevation because at present this elevation is virtually blank and these new insertions would overly domesticate what has always been an ancillary farmyard

structure. I agree that the new openings, in particular the French doors to the living areas of Unit 5, would add a domestic feel to this elevation.

17. But the majority of the brickwork to this elevation would remain and this elevation faces away from the tithe barn and is not read in context with it. I also consider that these changes are the minimum necessary in order to allow any viable change of use, be it to residential, B1 or to a live/work unit and so consider such changes would be likely to occur at some point in the future in any case. It is these changes which allow the front north west elevation of this building to remain essentially unchanged and I consider this is the correct approach here.
18. For these reasons the external works proposed to the (Unit 5) stable/cart shed building would be appropriate including their effect on the setting of the Grade II listed tithe barn. They would therefore comply with DCP Policies CH/3 and CH/4, which require the preservation of listed buildings and their settings respectively. For the same reasons they would also comply with the Council's Listed Buildings SPD and Section 12 of the NPPF.

Enabling Development

19. The Policy in ED states that enabling development that would secure the future of a significant place (in this case the listed tithe barn and its setting including curtilage listed buildings), but contravene other planning policy objectives, should be unacceptable unless it complies with a number of requirements labelled a) to g). The Council argues that a), c), d), f) and g) would not be met.
20. I have concluded above that the works would not harm the cart shed building, Unit 5, and the LPA agrees that the works to the other buildings will preserve their character as curtilage listing buildings and not harm the setting of the tithe barn. Requirement a) would therefore be met.
21. Enabling development should secure the long-term future of the place and its continued use for a sympathetic purpose. The LPA argue that the works are not urgent because the tithe barn is structurally sound and are no more than routine repair and maintenance that the appellant should in any case carry out as the steward of a listed building.
22. However, it does not dispute that the costs of the works required to repair the tithe barn to ensure its future use for storage by the appellant or occupiers of the proposed units or farmhouse total at least £137,910⁴. This is a considerable sum of money, which I doubt the appellant would otherwise spend on the barn, especially since the Estate is not envisaging letting it commercially given the need to preserve its internal floor plan and structure. There is no suggestion from the Council that there is any evidence of deliberate neglect; indeed the appellant stated that the roof had been renewed about 15 years ago and the site inspection confirmed this.
23. This would comply with the test in paragraph 1.1.3 of ED: that a subsidy is necessary to cover the cost of the 'conservation deficit' – the cost of maintenance, major repair or conversion to the optimum viable use of a

⁴ As per the quote from John Cutmore Builds Ltd dated 30 October 2015, which was only valid until 31 March 2016

building is greater than its resulting value to its owner or in the property market. That is clearly the case here. The proposals would also provide a beneficial use and therefore a long-term future for the other buildings within the curtilage of the tithe barn, without adversely affecting their architectural and historic interest. For the above reasons requirement c) of the ED Policy would be complied with. For the same reasons I consider the proposal would also comply with requirement d) – to resolve problems arising from the inherent needs of the place, which in this case is the need to substantially repair the tithe barn as well as to find viable long-term uses for the curtilage listed buildings.

24. The Council argues that the amount of 'enabling development' is way above that justified to preserve the future of the tithe barn and that, for instance, £50,000 would be sufficient to secure its future preservation and use. But it does not deny that all the works set out in the John Cutmore quote are necessary and it also appears to me from the site visit that they are. The appellant stated at the Hearing that it would 'take a hit' if the eventual cost of the works to the tithe barn were more than the John Cutmore quote and the submitted UU provides for the balance (i.e. £150,000 – £137,910 = £12,090) to be transferred to the Council as a contribution towards providing affordable housing in the District.
25. As set out above, the proposed development would also secure a long-term viable use for the curtilage listed buildings, which have been vacant for many years. For these reasons I consider the works to be the minimum necessary to secure the future of the place in accordance with requirement f) of the Policy.
26. NPPF paragraph 126 states that LPAs should take into account the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation, and the wider benefits that conservation of the historic environment can bring. I consider that the important benefits of preserving this historic group of buildings and securing their long-term future would decisively outweigh the disbenefits of allowing residential development in the countryside contrary to development plan and national policy, and so the proposal would comply with requirement g) of the Policy in ED.

Sustainability

27. It is agreed that the surplus from the development would be £150,000. As set out above, the UU provides that the balance of moneys after the quoted works to the tithe barn would be provided to the Council as a contribution towards off-site affordable housing in accordance with DCP Policies HG/3 and H/9. This meets the requirements of Regulation 122 of the *Community Infrastructure Levy Regulations 2010*. I also consider that Planning Practice Guidance (PPG) that incorporates the Written Ministerial Statement of 28 November 2014 excluding the need for development of 10 or less residential units to contribute towards providing affordable housing does not take precedence over Policy HG/3, for the reasons set out in the two recent appeal decisions cited by the Council⁵.

⁵ APP/K3605/W/16/3146699 & APP/W0530/W/16/3142834

28. The site is 2 miles north west of Balsham, which is poorly served by public transport. There are no bus stops near the vicinity of the site. It is incontrovertible that anyone living in the proposed units would rely on the private car in order to access any facilities and employment.
29. But the Council cannot demonstrate a five year supply of deliverable housing sites. More importantly, the proposed development would secure the long-term future of not only the listed tithe barn but the curtilage listed buildings that have all been unused for about 20 years. The NPPF highlights the importance of doing so. Contrary to the Council's arguments I have not found any harm to the significance of the curtilage listed buildings or the setting of the tithe barn arising from the proposals.
30. For these reasons I consider that the three dimensions of sustainable development – economic, social and environmental – would together be met by the proposed development. There is therefore no reason to withhold planning permission in this instance.

Conditions

31. The Council provided a list of 20 conditions at the hearing. I agree that most of these are necessary although I have amalgamated some and altered some of the wording in the interests of brevity and to meet guidance in the NPPF and Planning Practice Guidance.
32. Conditions relating to drainage are not necessary in this case because they would be adequately covered by the Building Regulations. Conditions covering construction contractors' storage and access arrangements and the use of power operated machinery are also not in my opinion necessary because the farmhouse, the only existing dwelling directly abutting the site, and the cottages on the other side of the road, are in the ownership of the appellant and it is in their interests not to adversely affect the living conditions of their tenants. An additional condition is also required reserving details of the new window openings in the south west elevation of Unit 5, for the reasons stated above.
33. A condition is necessary listing the approved plans as this provides certainty. Conditions requiring the prior submission of details of external materials including windows, doors, vents and rainwater goods and landscaping are necessary to ensure that the listed buildings and their settings are preserved.
34. Various highway conditions are necessary in order to maintain highway safety on the adjacent road. Conditions requiring cycle parking, details of boundary treatments and refuse storage are necessary for the living conditions of the scheme's residents.
35. A contaminated land condition is necessary because the site used to be a farmyard and there is potential for contamination as a result. And conditions specifying that the development shall be carried out in accordance with the submitted tree and ecology surveys are necessary to protect bats and other protected species and the trees to be retained on the site.

Conclusion

36. For the reasons given above I conclude that the appeal should be allowed, subject to the conditions in the Schedule below.

Nick Fagan

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: D1/8a.1-00, D1/8a/1-02, D1/8a/1-241 Revision C, D1/8A/1-242 Revision C, D1/8a/1-244 Revision C, D1/8a/1-245 Revision C, D1/8a/1-246 Revision C, D1/8a/1-301, & D1/8a/1-302 Revision C.
- 3) No development shall take place until a sample panel of the materials to be used in the construction of the external surfaces shall have been prepared on site for inspection and approved in writing by the local planning authority. The sample panel shall be at least 1 metre x 1 metre and show the proposed material, bond, pointing technique and palette of materials (including roofing, cladding and render) to be used in the development. Detailed plans at a scale of 1:20 shall be submitted to and approved in writing by the local planning authority of all new windows and doors, rooflights, rainwater goods and extraction vents. The development shall be constructed in accordance with the approved sample, which shall not be removed from the site until completion of the development, and the approved plans.
- 4) Prior to the first occupation of any part of the development, visibility splays shall be provided on each side of the new vehicular access in accordance with the details on approved plan D1/8a/1-02. The splays shall thereafter be maintained free from obstruction exceeding 600mm above ground level of the adjacent highway carriageway.
- 5) The access shall be a minimum of 5 metres in width, for a minimum distance of 10 metres from the near edge of the highway boundary. Any work required to achieve this shall be undertaken prior to the first occupation of any part of the development hereby approved. The development shall be retained as such thereafter.
- 6) Prior to the first occupation of any part of the development hereby approved, the proposed access to the site shall be constructed so that its falls and levels are such that no private water from the site drains across or onto the adopted public highway.
- 7) All of the existing accesses to the site shall be permanently closed and the highway verge restored to a condition approved in writing by the local planning authority within 28 days of bringing the new access into use.
- 8) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of both hard and soft landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development. It shall include a specification of all proposed trees, hedges and shrub planting, which shall include details of species, density and size of stock.
- 9) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which

- within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 10) The development hereby approved shall be carried out in strict accordance with the recommendations listed in the ecology report submitted with the application.
 - 11) The development hereby approved shall be carried out in strict accordance with the recommendations listed in the tree survey submitted with the planning application.
 - 12) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 15 days of the report being completed and approved in writing by the local planning authority.
 - 13) No part of the development shall be occupied until covered and secure cycle parking has been provided within the site in accordance with a scheme to be submitted to and approved by the local planning authority.
 - 14) No development shall take place until there has been submitted to and approved by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment for each dwelling shall be completed before any of the dwellings are occupied in accordance with the approved details and thereafter retained.
 - 15) No development shall take place until a scheme for the siting and design of the screened storage of refuse has been submitted to and approved in writing by the local planning authority. The screened refuse storage for each dwelling shall be completed before any of the dwellings are occupied in accordance with the approved scheme and shall thereafter be retained.
 - 16) Notwithstanding the approved plans the development shall not commence until plans have been submitted to and approved in writing by the local planning authority showing the window details of the south west elevation of Unit 5, such plans to show the retention of the historic opening.

APPEARANCES

FOR THE APPELLANT:

Brian Barrow BSc(Hons) MRICS
John Frowd MCIAT FCIOB FCABE

Acorus
Thurlow Estate

FOR THE LOCAL PLANNING AUTHORITY:

David Thompson MRTPI
Gail Broom BSC(Hons) Dip Bldg Cons
PG Cert Urban Design
James Fisher

Planning Case Officer

Conservation Officer
S106 Officer

DOCUMENTS SUBMITTED AT THE HEARING

1. Notification of date, time & place of Hearing 16/9/16
2. DCP Policy HG/3
3. DCP Policy H/9
4. Enabling Development and the Conservation of Significant Places, English Heritage, 2008 – Title Page and Policy
5. Draft UU
6. Wording for condition re SW elevation of Unit 5
7. Suggested wording for condition for enabling works by appellant
8. Supplemental appeal statement by Mr Fisher re affordable housing & vacant Building Credit
9. Appeal decision APP/W0530/W/16/3142834
10. Appeal decision APP/K3605/W/16/3146699
11. List of Conditions

DOCUMENT SUBMITTED AFTER THE HEARING

1. Signed UU dated 18/10/16

End of Documents List