

Appeal Decisions

Site visit made on 1 November 2016

by Elaine Worthington BA (Hons) MTP MUED MRTPI

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

Decision date: 14th November 2016

Appeal A - Ref: APP/X1355/W/16/3154873

Barn 2, Todhills Farm, north-west of Long Lane (opposite Primrose Hill), near Bishop Auckland, County Durham, DL14 8BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Alan Etherington AET Limited against the decision of Durham County Council.
 - The application Ref DM/16/00647/PNC, dated 25 February 2015, was refused by notice dated 26 April 2016.
 - The development proposed is prior approval of proposed change of use of agricultural building to 1 no. dwelling house (Use Class C3).
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Appeal B - Ref: APP/X1355/W/16/3154874

Barn 3, Todhills Farm, north-west of Long Lane (opposite Primrose Hill), near Bishop Auckland, County Durham, DL14 8BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Alan Etherington AET Limited against the decision of Durham County Council.
 - The application Ref DM/16/00648/PNC, dated 25 February 2016, was refused by notice dated 26 April 2016.
 - The development proposed is prior approval of proposed change of use of agricultural building to 1 no. dwelling house (Use Class C3).
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Appeal C - Ref: APP/X1355/W/16/3154875

Barn 4, Todhills Farm, north-west of Long Lane (opposite Primrose Hill), near Bishop Auckland, County Durham, DL14 8BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Alan Etherington AET Limited against the decision of Durham County Council.
 - The application Ref DM/16/00649/PNC, dated 25 February 2016, was refused by notice dated 26 April 2016.
 - The development proposed is prior approval of proposed change of use of agricultural building to 1 no. dwelling house (Use Class C3).
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Decisions

1. Appeals A, B and C are dismissed.
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Application for Costs

2. An application for costs was made by Mr Alan Etherington AET Limited against Durham County Council. This application is the subject of a separate Decision.

Preliminary Matters and Background

3. Since it is not provided on the application forms, I have taken the description of development from the Council's decision notices. The appeals concern three buildings within the farm complex at Todhills Farm. I have dealt with them together unless indicated otherwise in the decisions.
4. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) grants planning permission for certain forms of development, including the change of use of an agricultural building to a dwelling house, provided that certain conditions, limitations and restrictions are complied with. The Council in determining the applications seems to have been satisfied that if prior approval were to be granted, the proposals would be permitted development (since they would meet the requirements of Q1 (a) to (m)). I see no reason to come to a different view on this matter.
5. In this context, the proposals fall to be considered on the basis of the matters set out in Section Q2(1) of the GPDO. These conditions concern (a) transport and highway implications, (b) noise impacts of the development, (c) contamination risks on the site, (d) flooding risks on the site, (e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a dwelling house, and (f) the design or external appearance of the building.
6. The GPDO requires the proposed development to be assessed against the criteria set out in Class Q, taking into account any representations received. My determination of these appeals has been made in the same manner. Additionally I am mindful that all species of bats are protected under the Conservation of Habitats and Species Regulations 2010. Regulation 9 requires a competent authority to exercise their functions which are relevant to nature conservation so as to secure compliance with the requirements of the Habitats Directive. Since competent authorities must consider these Directives in making decisions relating to any of their planning functions, I have also determined the appeals with regard to this duty.
7. Section Q2(1) confirms that the provisions of paragraph W of the GPDO apply. Paragraph W (10)(b) states that local planning authorities must have regard to the National Planning Policy Framework (the Framework) so far as relevant to the subject matter of the prior approval, as if the application were a planning application.
8. Paragraph W (3)(b) of the GPDO indicates that an application for prior approval may be refused if the developer has provided insufficient information for it to be established whether the proposal complies with any conditions, limitations or restrictions specified in Part 1 of the GPDO applicable to the proposal. Paragraph W (13) of the GPDO allows conditions to be attached to a prior approval provided that they are reasonably related to the subject matter of the prior approval.

9. The Council refused to grant prior approval for the same reasons in each of the appeals. These reasons relate to insufficient information having been provided to assess the potential environmental impacts of surrounding uses on the proposals (in particular noise and disturbance from the nearby brickworks and the operations of the farmyard) or to assess the risks from land contamination. Additionally the Council is concerned about the impacts of the proposals on protected species and on the historic character and appearance of the host buildings.
10. In terms of transport and highways implications, the appeal buildings would be accessed from the road adjoining the site to the south via an existing access between the outbuildings. The Highways Authority would like to see improved visibility at this access and the preclusion of the residential use of a further existing site access to the west. The Council indicates that these matters could be controlled via planning conditions and they are not reasons for refusal. I am also satisfied that the proposals would be acceptable in this regard. Additionally, no issues are raised by the Council in relation to flood risk and I see no reason to come to a different view.
11. This background has led to my identification of the main issues, which are the same for all three appeals, as set out below.

Main Issues

12. The main issues in this case are as follows:

- Whether the location and siting of the buildings makes it otherwise impractical or undesirable for them to be used as dwelling houses having regard to the living conditions of future occupiers (in terms of noise and disturbance); and
- Whether the location and siting of the buildings makes it otherwise impractical or undesirable for them to be used as dwelling houses having regard to protected species; and
- Whether there are unacceptable contamination risks on the site; and
- Whether the design and external appearance of the proposals would be acceptable.

Reasons

13. The appeal buildings are within the farmyard at Todhills Farm which comprises the farmhouse and a number of traditional outbuildings along with some larger more modern barn structures on the north side of the site.

Living conditions future occupiers – noise and disturbance

14. There is no evidence of noise impact concerns from the proposed development itself (as set out at (b) of Section Q2 of the GPDO). However, the Council considers that due to the potential effect of noise and disturbance on the living conditions of future occupiers of the dwellings, the location and siting of the buildings would be such that it would make it otherwise impractical or undesirable for them to change from an agricultural use to a use falling within Class C3 (dwelling houses).

15. The Council has consulted its Environmental Health Noise Action Team and is concerned about noise and disturbance from the adjacent brickworks, the nearby landfill site, and the operation of the farm itself.
16. A large brickworks is around 100 metres to the south east of the appeal site and is separated from it by the road and a substantial area of mature trees and planting. I also understand that noise emissions from the operation of the brickworks are controlled via an environmental permit for the site. Nevertheless, the Council considers that there may be connected noise sources including that from traffic movements to and from the brickworks.
17. That said, I have seen nothing to suggest that vehicles visiting the brickworks would be likely to use the road immediately to the south of the appeal site (rather than Long Lane). Nor have I seen any evidence to demonstrate that that any such traffic movements would be likely to be of such a scale or frequency as to have a detrimental impact on living conditions at the appeal site. The existing farmhouse at Todhills Farm and other houses to the east of the appeal site share a similar relationship with the brickworks and nearby road network. The Council confirms that no complaints regarding noise from the brickworks have been received from these residents.
18. Although noise issues associated with the nearby landfill site are mentioned, no further details are given and I am not aware of the Council's particular concerns in this regard. However, I am mindful that this is some 450 metres away from the site to the north west, and in the absence of any further information, I see no reason why it would be likely to cause undue noise and disturbance to the future occupiers of the appeal site.
19. The appeal buildings are located within the farmyard of Todhills Farm which is a working farm. However, they are contained within the southern part of the farm complex close to the existing farmhouse. They face inwards into this part of the farmyard area and are for the most part contained within the wider site. As such, they are positioned way from the main working area of the farm to the north (and the larger agricultural buildings there) and, with the exception of the rear of Barn 4, are largely shielded from it. This being so, and since the proposed houses would share a similar relationship with the working parts of the farm as the farmhouse, I am content that satisfactory living conditions could be provided for the future occupiers of the proposed houses.
20. Overall, whilst I appreciate the Council's precautionary approach, in the context described, on balance, I am not persuaded that an acoustic report to establish if any sound attenuation measures are required is necessary. I also note the appellant's suggestion that a scheme of sound insulation could be provided to help to mitigate against any such outside noise and disturbance. This could be secured via a planning condition.
21. I therefore conclude on this issue that the location and siting of the buildings do not make it otherwise impractical or undesirable for them to be used as dwelling houses having regard to the living conditions of future occupiers (in terms of noise and disturbance). Thus, I see no conflict with the core planning principle of the Framework to secure a good standard of amenity for all existing and future occupiers of land and buildings.

Protected species

22. Bats are a European protected species that have to be taken into account even though protected species are not specifically referred to in Class Q. Although it was not submitted with the planning application, the appellant has provided a Bat and Barn Owl Report with the appeal.
23. Whilst foraging bats were present on the wider site, this report finds no roosts in the appeal buildings, records no emerging bats from the buildings and identifies no evidence of barn owl activity. It concludes that the well illuminated nature of the buildings and their surroundings means the buildings have low conservation status for bats as a roost site. In terms of mitigation it recommends that all contractors involved in the development read a method statement. The Council has considered the report and acknowledges that no bats or barn owls have been found to utilise the building. It also suggests that activities should be organised and timed to avoid breeding birds.
24. As such, whilst there is evidence to suggest that there is a reasonable likelihood of bats being present on or near the site, the report establishes that the proposals would not have an adverse affect on any identified protected species. I have seen no evidence that would lead me to a different view and am satisfied that the proposals are satisfactory in this regard.
25. I therefore conclude on this issue that, subject to the imposition of conditions relating to the method statement and the timing of works, the location and siting of the buildings does not makes it otherwise impractical or undesirable for them to be used as dwelling houses having regard to protected species. As such I see no conflict with the aim of paragraph 109 of the Framework to enhance the natural and local environment by minimising impacts on biodiversity.

Contamination risks

26. The Council's Environmental Health (Contaminated Land) team consider that insufficient information has been provided to assess the risks from land contamination including ground gas. Paragraph 109 of the Framework requires the planning system to contribute to and enhance the natural and local environment by remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land. The Council requires as a minimum a Phase 1 preliminary risk assessment to identify and evaluate all potential sources and impacts on land and/or ground water contamination relevant to the site.
27. The appeal site is a working farm where past and current farm practices may have resulted in contamination. Todhills landfill site is 450 metres to the north west and the Council advises that this is known to be gassing and considers there to be a high potential risk of landfill gas and leachate migrating from there to the appeal site. On the other hand, the proposals are for a conversion only and the floors of the appeal buildings would be built up from the existing compacted/made ground and lined, rather than built downwards or excavated. No new foundations would be dug and the ground would not be disturbed. There is an existing farmhouse on the site and other residential properties nearby and I have not been made aware of any existing problems arising from gas or leachate migration from the landfill site which is some distance away.

28. As set out above, although the GPDO allows prior approval to be withheld if there is insufficient information, it also allows conditions to be imposed. Even appreciating that since a residential use is proposed the end user is sensitive, on the basis of the information before me, I see no reason why a condition to ensure that appropriate investigations are carried out and to ensure that remediation would be undertaken if necessary, would not be sufficient to address any contamination risks on the site.
29. I therefore conclude that, subject to the imposition of a condition, there would be no unacceptable contamination risks on the site.

Design and external appearance

30. The barns form part of a historic farmstead that, despite some alterations, remains relatively intact and largely unchanged. The Council advises that the buildings were partially complete at the time of the 1860 OS Map and the layout roughly as it is today was completed by 1898. Given this planned and complete grouping, and taking into account the quality of the stone and brick buildings, the Council considers the complex as a whole to be a non-designated heritage asset. Although the appeal buildings are somewhat run down and dilapidated, they retain their traditional and functional appearance and layout and contribute to the attractive character and appearance of the farm complex.
31. Planning Practice Guidance (the Guidance) indicates that when considering development proposals, local planning authorities should establish if any potential non-designated heritage asset meets the definition in the Framework at an early stage in the process. Ideally, in the case of buildings, their significance should be judged against published criteria, which may be generated as part of the process of producing a local list.
32. Annex 2 of the Framework defines a heritage asset as a building identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. Heritage assets include designated heritage assets and assets identified by the local planning authority (including local listing). The appeal buildings were recognised as non-designated heritage assets during the Council's consideration of the applications.
33. I have not been made aware that they are on a local list or that the Council has published criteria against which the significance of such buildings would be judged. Nevertheless, the Council has identified the buildings as non-designated heritage assets in the general spirit of the Framework and the Guidance. I appreciate that the appeal site is not in a Conservation Area and the buildings are not listed. I also acknowledge they have no statutory protection and could be demolished. Even so, paragraph 135 of The Framework indicates that the effect of an application on the significance of a non-designated heritage asset should be taken into account.
34. Barn 2 is L shaped building with a long frontage to the road. Its west elevation is visible from the access to the site where the gable end of the southern wing has a large square door opening close to the road. This would be replaced by an arched window opening. Six new windows would be inserted on the west elevation, three on either side of the existing door opening, and this fenestration pattern would be repeated on the east elevation. A total of 12 relatively large rooflights, 6 to each wing, would be provided in the roof.

35. Barn 3 is long linear building with a gable end to the road which includes a traditional arched cart entrance with double timber doors. It has a slate roof with ventilation features on its ridge. A number of openings are proposed including a large folding door to the west elevation where there is currently no opening. The existing feature opening to the south elevation is to be replaced by a high level arched window directly abutting the pavement. Additionally the roof ventilation features would be removed and a total of 13 rooflights would be inserted.
36. Barn 4 is also a low linear building that has been built in different sections, and is predominantly red brick with a profile sheet roof. A number of openings to the south elevation are shown including a large folding door opening which would bear no resemblance to those existing. This elevation would be prominent from the road seen set back behind an open grassed area. Additionally 10 rooflights are proposed.
37. Overall, it seems to me that too many new door openings, windows and rooflights are proposed, and a good deal of these would also be unduly large. Moreover, they would be positioned having little regard to the existing openings. This extensive degree and unrelated pattern of new fenestration and doors would be wholly unsympathetic to all three of the traditional host buildings. Whilst in some cases the openings would be placed symmetrically I cannot agree that this arrangement would be simple or logical. Rather, the new openings would appear as a proliferation of dominant and discordant features that would seriously detract from the simple functional agricultural appearance of the buildings.
38. Whilst the appeal buildings are not prominent in the wider countryside, elements of all three of them are seen from the road, at rather close quarters in the case of Barns 2 and 3. Although I acknowledge the appellant's contrary view, given the low height of the buildings, it seems to me that the rooflights would be highly visible from the nearby roads and footpaths. The alterations would also be seen in the context of the adjacent farmhouse at Todhills Farm which retains for the most part its attractive original and tradition appearance. This being so, the proposals would appear at odds with the farmhouse and would undermine the largely unaltered historic character and appearance of the farm complex as a whole.
39. I accept that for the buildings to function as dwellings it is necessary to introduce some new openings, not least in order to provide light to the internal rooms. However, I am not persuaded that this would necessarily be so on the scale proposed. In particular I share the Council's concern that the number and size of rooflights proposed may not be needed given the other sources of light to the rooms. Furthermore I agree with the Council that the careful design of the proposed internal layouts could also secure the retention of some of the buildings' existing historic features, such as Barn 3's cart entrance.
40. Whilst I note the appellant's view that the Council did not request further design details, from the submitted email correspondence it is evident that the appellant responded to the Council's Design and Conservation comments prior to the determination of the applications. As such, I am content that he was aware of the concerns raised.

41. I also note the appellant's view that design details could be required via a condition. However the proposed changes to the windows and doors described form part of the proposals before me. Any alternative schemes would need to be the subject of further applications to the Council.
42. Paragraph 135 of the Framework advises that in weighing applications that directly affect non-designated heritage assets, a balanced judgement is required having regard to the scale of any harm or loss and the significance of the heritage asset. For the reasons given, I consider that the harm to the appearance of the buildings would be considerable and would be unacceptably detrimental to the significance of the non-designated heritage assets. This would be contrary to the Framework.
43. Paragraph 58 of the Framework aims to ensure that development optimises the potential of the site to accommodate development. However, I am conscious that it also expects development to respond to local character and history and reflect the identity of local surroundings. The Council does not resist the conversion of the buildings per se and I do not regard it to have prevented or discouraged appropriate innovation or to have been over prescriptive or detailed in terms of design. Although the appellant refers to paragraph 60 of the Framework, nor do I consider the Council to have imposed architectural styles of particular tastes in this instance.
44. I therefore conclude on this issue that the design and external appearance of the buildings would not be acceptable.

Other matters

45. The site is located close to the road and adjacent to other houses and there are no objections in highway terms. The absence of harm in these regards counts neither for, nor against, the proposals. Whilst the appellant considers the proposals to concern the re-use of previously developed land, the Framework excludes from this definition land that is or has been occupied by agricultural or forestry buildings.
46. The appellant argues that the proposals would help to address a housing shortage and I accept that this is a benefit of the schemes. That said, even their combined contribution to housing land supply would not be great given their limited scale. The re-use of the currently vacant buildings is a further benefit and aligns in principle with the advice in the Framework. In particular paragraph 131 of the Framework recognises the desirability of putting heritage assets to viable uses. However, I am mindful that this benefit, along with that to housing delivery, could be achieved via an alternative design approach. This limits the weight that these factors add in favour of the proposals.
47. The appellant suggests that the Council does not have an up to date plan and that the Framework's presumption in favour of sustainable development applies. I have not been presented with any further evidence in this regard, but in any event confirm that in this instance, the adverse effects of granting planning permission would significantly and demonstrably outweigh the benefits. As such, I do not regard the proposals to be sustainable development.
48. I note the appellant's view that the Council's approach runs contrary to the spirit of the prior approval process and appreciate the government's pro-

growth agenda and aspiration that decisions makers do not impose unnecessary burdens on development. However, I am not convinced that the Council has hindered development that would have been acceptable or sought to control matters that fall under other legislation.

Conclusions

49. I have found that the location and siting of the buildings would not make it otherwise impractical or undesirable for them to be used as dwelling houses having regard to the living conditions of future occupiers (in terms of noise and disturbance) or protected species. I have also concluded that subject to the imposition of a condition, there would be no unacceptable contamination risks on the site. However, the absence of harm in these regards counts neither for, nor against, the schemes, and the unacceptable design and external appearance of the proposals provide compelling grounds to dismiss the appeals.
50. For the reasons set out above, I conclude that the appeals should be dismissed.

Elaine Worthington

INSPECTOR