
Appeal Decision

Site visit made on 15 November 2016

by I Jenkins BSc CEng MICE MCIWEM

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

Decision date: 7 February 2017

Appeal Ref: APP/E2734/Q/16/3156515

Far Buildings, Land to the south of Prospect House Farm, Sourby Lane, Timble, North Yorkshire, LS21 2NJ

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge a planning obligation.
 - The appeal is made by Mr J Greenwood and Mr D Greenwood against the decision of Harrogate Borough Council.
 - The development to which the unilateral planning obligation relates is described in appeal decision Refs. APP/E2734/C/09/2103454 & APP/E2734/A/09/2104163 as *i) the erection of a building on the former site of a dilapidated barn identified approximately as building "A" on the attached plan. ii) the creation of a hard surfaced access track to the buildings referred to in paragraphs (i) and (ii) above. iii) the construction of curved and splayed walls to the entrance to the access track from Askwith Moor Road.*
 - The unilateral planning obligation, dated 9 July 2009, was made by Mr John Greenwood, Mr Derek Greenwood and Mr Kevin Morris, with Harrogate Borough Council identified as the enforcing authority.
 - The application Ref 16/01296/S106 (6.131.75.A.S106), dated 21 March 2016, was refused by notice dated 27 June 2016.
 - The application sought to have the planning obligation discharged.
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Decision

1. The appeal is allowed. The unilateral planning obligation, dated 9 July 2009, made by Mr John Greenwood, Mr Derek Greenwood and Mr Kevin Morris, regarding *land at Far Buildings Farm, Prospect House Farm, Sourby Lane, Timble, Otley LS21 2NJ*, which identifies Harrogate Borough Council as the enforcing authority, no longer serves a useful purpose and is discharged.

Main Issue

2. I consider that the main issue in this case is whether the unilateral planning obligation no longer serves a useful purpose and so should be discharged.

Reasons

3. The appeal building is a barn, which is situated on agricultural land and is accessed along an access track from Askwith Moor Road. It is located within the Nidderdale Area of Outstanding Natural Beauty (AONB). The *National Planning Policy Framework* (the Framework) confirms that great weight should be given to conserving landscape and scenic beauty in Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty.
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4. The subject *section 106 unilateral planning obligation* (S106), dated 9 July 2009, was submitted in support of appeal Refs. APP/E2734/C/09/2103454 and APP/E2734/A/09/2104163. The second schedule of the S106 sets out the restrictions that the owners covenant with the Council to observe. It states that *'the land shall be used for Agricultural or Forestry purposes and uses ancillary or incidental to such purposes only, which will commence on the date of receipt of permission for the development'*. The land, which is shown edged red on the attached plan, is occupied almost entirely by the appeal barn.
5. This planning obligation has the effect, amongst other things, of preventing the appeal barn from benefiting from recent changes in national permitted development rights, under the *Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)* (GDPO), which would ordinarily allow certain changes of use of agricultural buildings, such as to a flexible commercial use¹, even in the AONB.
6. The Framework indicates that national permitted development rights should not be restricted unless there is clear justification to do so. I consider that, given the visually exposed and isolated location of the appeal barn within the AONB, some distance from the highway and set apart from groups of buildings, restraint in terms of restricting permitted development rights such as this is reasonable and necessary in this particular case. This is in the interests of safeguarding the character and appearance of the Nidderdale Area of Outstanding Natural Beauty, in keeping with the aims of the Framework.
7. However, whilst my colleague, when determining the previous appeals, acknowledged the existence of the S106, which was a material consideration in the cases before him, and that justification would be required for it to be discharged, it is not self-evident that he placed any reliance upon it as a means of ensuring that the development for which planning permission was sought would be acceptable in planning terms. On the contrary, he went on to allow the appeals and granted planning permission for the appeal barn, dated 21 August 2009, subject to a number of conditions, including condition no. 1, which states that *'the development shall be used only for the purposes of agriculture as defined in section 336(1) of the Town and Country Planning Act 1990 as amended and for no other purpose'*.
8. The Council has not provided any evidence to show that condition no. 1 is unlikely to provide an effective means of restricting the use of the appeal property to use *'for the purposes of agriculture'* and I have no reason to believe that it is unenforceable. It appears to me that condition no. 1 places a more onerous restriction on the use of the land than the S106, not least as it does not allow for the land to be used for the purposes of forestry. Furthermore, I am conscious that the Framework indicates that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Under these circumstances, I consider that the S106 is not necessary to make the development for which planning permission was granted by my colleague acceptable in planning terms.
9. I acknowledge that it would be open to the appellants to make an application to the Council for the removal of condition no. 1. However, consideration of the merits of such an application would be a matter for the Council in the first instance, not for me.

¹ Class R, Part 3, Schedule 2 of the GDPO.

10. I conclude that, in light of the terms under which planning permission was granted for the appeal barn, with particular reference to condition no. 1, the unilateral planning obligation no longer serves a useful purpose and so should be discharged.

Other matters

11. I understand that in support of the previous appeals, the appellants confirmed that the appeal barn was suitable for accommodating livestock as well as agricultural storage. This is supported by their record of usage, which indicates that between 2009 and 2014 it was routinely used for those purposes. Against this background, I give little weight to the unsupported assertion of agricultural agents Thomlinsons that the building serves no useful purpose for modern agricultural practice. I also give little weight to the unsupported assertion of the appellants that the building is subject to flooding, not least as it is not in a flood zone and there is no evidence to show that any issues in this regard could not be simply resolved through the implementation of reasonable maintenance measures. Nor am I convinced that the provision of a new barn at Four Lane Ends Farm in 2011 and changes in farming practices, such as a move away from cattle farming, have rendered the building redundant. During the period 2011 to 2014, the building was used for over wintering of sheep and sheep farming remains the focus of the appellants' farming activities.
12. Whilst the appellants have identified that the Council has granted planning permission in relation to a number of applications involving the conversion of agricultural buildings to dwellings in its area, no such application is before me, I do not know the full circumstances of those cases and there is no evidence before me to show that the circumstances of any were directly comparable to those in the case before me. I give the Council's record of approval in relation to such matters little weight.
13. Neither these, nor any other matters raised, are sufficient to outweigh the considerations which have led to my conclusion on the main issue.

Conclusion

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

I Jenkins

INSPECTOR