

Appeal Decision

Site visit made on 13 March 2017

by Thomas Bristow BA MSc MRTPI

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

Decision date: 31 March 2017

Appeal Ref: APP/W1145/W/16/3164604

East Banbury, Broadwoodwidge, Lifton, Devon PL16 0JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Messrs Gary & Paul Baker against the decision of Torridge District Council.
 - The application Ref 1/0583/2016/FUL, dated 13 June 2016, was refused by notice dated 30 August 2016.
 - The development is described on the application form as the 'erection of agricultural building to be used for workshop and store'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of an agricultural building to be used for workshop and store at East Banbury, Broadwoodwidge, Lifton, Devon PL16 0JJ in accordance with the terms of the application Ref 1/0538/2016/FUL, dated 13 June 2016, subject to the schedule of conditions attached to this decision.

Preliminary matters

2. The appeal site is nearby three agricultural buildings within a larger land holding, the extent of which I shall return to subsequently. It is presently occupied by the building relevant to this appeal, hereafter for brevity referred to as 'the building'.
3. Application Ref 1/0583/2016/FUL, the scheme to which this appeal relates, follows a previous unsuccessful retrospective application for the building as it stands.¹ However the proposal before me has only been partially implemented.²
4. The plans before me illustrate a building without the windows or glazed doors that are currently present.³ They also propose the installation of roof lights.⁴ I have therefore referred to the current scheme as 'the development proposed' in this decision.

Main issues

5. The main issues in this case are:

¹ Application Ref 1/0075/2016/FUL.

² The appellants' set out that construction of the building commenced on 5 January 2016.

³ Plans 'Baker PL JUL 16' and 'Baker EL JUL 16'.

⁴ Notwithstanding that the appellants' no longer intend to effect this element of the scheme as set out in paragraph 5.2 of their appeal statement.

- 1) whether or not the development proposed would result in the creation of a new dwelling, and if so
- 2) whether or not the appeal site is an appropriate location for a new dwelling with reference to local and national planning policy.

Reasons

6. Accessed via a lengthy private track and falling within the rolling open countryside, the appeal site is part of a farm estate owned by Mr Gary Baker (the 'estate'), which I understand has been established in its current form via the subdivision of a formerly more extensive single holding.⁵ The estate comprises a further three buildings nearby and approximately 50 acres of land, the majority of which is used for arable farming.⁶
7. The existing building is barely perceptible in the wider landscape on account of the screening provided by adjacent buildings, the rolling topography, and owing to the presence of hedgerows and trees within the landscape. Indeed the building is in the same location and of broadly the same scale as a former piggery.⁷
8. I understand that the land surrounding the appeal site ceased to be actively used for agriculture for a period of time, and that as a consequence the three existing buildings nearby are in relatively poor condition owing to lack of upkeep. None of these are watertight, two are in part open sided, and they contain only limited space which is enclosed and secure.
9. The appellants' have explained that it is the intention of Mr Gary Baker to move 'into farming 100% of the time'.⁸ They have further explained that the agricultural activities currently undertaken at the estate includes the keeping of 58 sheep, 14 horses, 2 sows, various fowl, and the production of hay,⁹ which accords with my site visit observations.
10. The building is of rectangular form with a pitched slate roof and uPVC fascias and soffits. It sits on a concrete slab slightly higher in level than that of the surrounding ground, has blockwork cavity walls, two double-glazed uPVC doors, and a number of double-glazed uPVC windows of domestic appearance.
11. Whilst in my view there was no readily identifiable distinct outside space related to the building,¹⁰ at present it nonetheless appears residential in character rather than representing a simpler utilitarian design typically associated with functional agricultural buildings.

⁵ The appellants have clarified the extent of the estate owned by Mr Gary Baker in the course of the appeal via correspondence from Parnalls Solicitors dated 21 March 2017, reference PPG.WM.BAK00232.00 2, to which there is an appended plan where this estate is edged green. This correspondence explains that the current land ownership arrangements are 'being processed by the Land Registry'. As such the situation set out in this correspondence supersedes the extent of land associated with the building as referred to by the Council (Land Registry title number DN667018, dated 25 May 2016).

⁶ As set out in paragraph 3.7 of the appellants' appeal statement.

⁷ As shown via aerial photograph PJR10 appended to the appellants' statement of case.

⁸ At paragraph 3.6 of the appellants' statement of case.

⁹ Ibid.

¹⁰ The Council suggest that the building benefits from a garden at paragraph 5.1.2 of their appeal statement.

12. Internally the building is subdivided into a number of rooms via blockwork partitions. The floor is concrete, walls bare blockwork, and internal doors and architrave rough sawn timber. Whilst a toilet and water supply is present in one room, all rooms within the building were at the time of my site visit used for the storage of an array of miscellaneous items including agricultural machinery, power tools, hand tools, earthmoving equipment, fuels, animal feed, fence posts and barbed wire.
13. Given the appearance and construction of the building, the presence of agricultural buildings nearby, and the history of the use and ownership of the surrounding land, I understand what has motivated the Council to question its intended use. Indeed, were the building to be used as a dwelling, this would not be readily identifiable as no changes to the exterior of the property would be necessary.
14. However, as set out above, the building is clearly presently used for purposes associated with surrounding land rather than as a dwelling. Many items stored within the building would be damaged by water, notably power tools, and it is therefore reasonable for the building to have been constructed to be water-tight (taking account of the relatively poor state of repair of the three nearby buildings). Notwithstanding any previous use or ownership history of the surrounding land, the scale of the building is clearly in my view fairly related to the existing and intended agricultural operation of the estate.
15. There is no definitive evidence before me to establish that the conversion of any of the three building nearby to dwellings would be permissible via the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO'). Nevertheless were it the appellants' intention to create a dwelling within the estate, an application via Class Q of the GPDO would be a far more straightforward approach (as has been highlighted by the appellants).
16. Furthermore, the application has not been made with the intention of providing a dwelling as is clear from the description of development given within the application form.¹¹ Moreover the proposal before me is for a building without windows or glazed doors. This would in my view result in a building of significantly different and essentially functional external appearance to the building as it stands, which would therefore not be incongruous in relation to the existing buildings nearby.
17. Whilst I accept that the changes proposed via the current scheme compared to the extant building may be reversible, the installation of windows would be a readily identifiable action (thereby enabling the local planning authority to take enforcement action if undertaken, where expedient). I would further note that the reinstatement of windows or doors via permitted development rights set out in Schedule 2, Part 6 of the GPDO would require the windows to be reasonably necessary for the purposes of agriculture, which the appellants have stated that they are not.¹²

¹¹ Section 75 of the Town and Country Planning Act 1990 establishes that where permission is granted for a building, it is also granted for the use thereof as specified.

¹² The appellants' have explained in their statement of case that the windows were installed out of convenience rather than for any particular functional requirement.

18. For the above reasons I conclude that, subject to appropriate conditions, the development proposed would not result in the creation of a dwelling. No conflict therefore arises with the relevant provisions of saved policy ECD5 'Agricultural Development' of the Torridge District Local Plan adopted originally in September 2004 (the 'Local Plan'), which, briefly stated, seek to ensure that development is justified by the operational needs of the associated enterprise, that careful consideration has been given to the re-use of existing agricultural buildings, and that development will not detract from the living conditions of those nearby or from the character or appearance of the area.
19. Similarly no conflict arises with the relevant provisions of saved policy DVT2C 'Development in the open countryside' of the Local Plan which, amongst other things, seeks to ensure development in the countryside is linked to a countryside need and does not detract from the character or appearance of the area. For the sake of comprehensiveness, having considered the National Planning Policy Framework (the 'Framework') as a whole, there are no elements therein with which the proposal would conflict pursuant to my findings above. Accordingly it is unnecessary for me to consider the second main issue in this appeal.

Other Matters

20. Much of the Council's case at appeal relates to matters of land ownership. I accept that this has a practical bearing on who may or may not be entitled to make use of the building proposed and to what end. Land ownership may also have a bearing on future planning matters in the event that development is proposed with reference to ownership constraints.
21. However the land ownership situation in respect of the building has been clarified at appeal as set in paragraph 6 above. There is no substantive evidence before me to indicate that the building proposed would be used other than in connection with the agricultural use of the surrounding land. Therefore although I have taken account of all the information before me and referred to it in so far as material to the planning matters relevant to this appeal, neither the history nor present situation regarding land ownership alters my findings in respect of the main issues in this appeal.

Conditions

22. As development has been commenced, it is unnecessary to impose a time limit for commencement pursuant to Section 91(1)(b) of the Town and Country Planning Act 1990 as amended. Whilst I cannot reasonably impose a condition requiring that the development proposed is completed within a set period, it is necessary to require via condition that the walls of the building are constructed within 3 months of this decision. For the reasons given above, this is essential to ensure that the form of the building represents its intended function, and to ensure that it is consistent with the character of buildings nearby.¹³

¹³ The appellants' have at appeal explained that they have no objection to such a condition.

Conclusion

23. For the above reasons, and having taken all other matters raised into account, the proposal accords with the development plan taken as a whole and with the approach in the Framework. I therefore conclude that the appeal should be allowed subject to the conditions set out below.

Thomas Bristow

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 'Baker BLPL JUL 16', 'Baker EL JUL 16' and 'Baker PL JUL 16', except in respect of the roof lights shown on those plans.
- 2) The external walls of the development hereby permitted as shown on the approved plans shall be constructed within a period of 3 months from the date of this decision.