



Appeal Decision

Site visit made on 4 June 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2019

Appeal Ref: APP/C1625/W/18/3216695

Old Pigeon House, The Ham, Coaley GL11 5AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs R Carter against the decision of Stroud District Council.
 - The application Ref S.18/1494/VAR, dated 3 July 2018, was refused by notice dated 5 September 2018.
 - The application sought planning permission for the retention of an agricultural building and the erection of an additional agricultural building without complying with a condition attached to planning permission Ref S.07/1271/FUL, dated 9 October 2007.
 - The condition in dispute is No 4 which states that: *The existing and proposed new buildings shall be used for general agricultural purposes and not for any form of livestock husbandry outside the provisions of Class D3(a) and (b) of Schedule 2, Part 6, of the Town and Country Planning (General Permitted Development) Order 1995.*
 - The reason given for the condition is: *To safeguard residential amenity.*
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. Notwithstanding the references in the appeal form and decision notice, in my heading I have used the site address given in the planning application form.
3. The wording of condition 4 in my heading above is taken from the appeal decision¹ that retained and modified the wording of the original condition on the Council's decision notice. Condition 4 permitted the agricultural building that is the subject of this appeal but prevented its use to house livestock save for the limited exceptions outlined in paragraph D3(a) and (b) of Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) Order 1995. The wording of which remains similar to the corresponding section of the subsequent Town and Country Planning (General Permitted Development) Order 2015 (GPDO).
4. This restricts the accommodation of livestock to the following circumstances:
*D3(a) that no other suitable building or structure, 400 metres or more from the curtilage of a protected building, is available to accommodate the livestock;
and*

¹ Reference APP/C1625/A/08/2073593/NWF

D3(b) (i) that the need to accommodate the livestock arises from quarantine requirements, or an emergency due to another building or structure in which the livestock could otherwise be accommodated being unavailable because it has been damaged or destroyed by fire, flood or storm; or

(ii) in the case of animals normally kept out of doors, they require temporary accommodation in a building or other structure because they are sick or giving birth or newly born, or to provide shelter against extreme weather conditions.

5. The appellants wish to use the agricultural building as a bovine semen collection centre but are prevented from generally doing so by condition 4. They therefore propose an alternative condition such that the building shall be used for general agricultural purposes and not for any form of livestock husbandry other than for the keeping of up to 30 adult bovines as a licensed bovine semen collection centre.

Main Issue

6. The main issue is the effect that varying the livestock occupation of the building would have on the living conditions of nearby residents, with particular regard to noise and smell.

Reasons

7. The agricultural building that is the subject of this appeal is situated very close to the Old Pigeon House, and there are further residential properties within 200 metres of the building including The Old Barn and The Leigh. The Inspector who imposed condition 4 in 2009, had regard to the general prohibition in the GPDO 1995 preventing new farm buildings for the housing of livestock within 400 metres of the curtilage of a dwelling unconnected with the farm. He specifically considered that problems relating to noise and smell could easily result in untenable living conditions for nearby residential neighbours. The assessment was based on whether the resultant harm would go beyond that which would normally be expected for those choosing to live in the countryside. I agree that this remains a sound basis to consider the effects of the proposed variation to condition 4.
8. The fabric of the agricultural building and its relationship to the surrounding unrelated dwellings remains substantially similar to that considered in the 2009 appeal. Notwithstanding possible advances in agricultural machinery associated with animal husbandry since 2009 that may reduce impacts, the corresponding paragraph of the GPDO 2015 retains a 400 metres restriction for new agricultural buildings housing livestock primarily to avoid harming the living conditions of nearby residents.
9. When I visited the site there were 9 bulls being kept in the building within reasonably large pens, enclosed with predominantly metal fencing. I was able to detect the smell of bedding and feed within, and immediately adjacent, to the building, however I would not describe it as pungent or unpleasant. However, the conditions were damp and fairly cool, with fewer animals accommodated than that proposed and as such, with greater numbers, higher temperatures or changes to the animal husbandry regime, the smell may heighten. When this is combined with the proximity of the building to some of the upper floor windows of the Old Pigeon House, the potential for problems

- arising from smell to those occupants, as identified by the Inspector in 2009, remain.
10. At my site visit the barn was largely open on the north eastern side and noises from the bulls primarily came from their physical contact with the metal pen enclosures, which due to their size resulted in a clanging sound exacerbated by an echo within the barn. Whilst they did not make a significant amount of noise themselves through snorting or bellowing, when they did, this was appreciably loud. The irregular, resonant sound of contact with the pens was clearly detectable when I visited the gardens of neighbouring residences located to the north east. The background level of noise is otherwise generally low, making the sporadic noise particularly noticeable, and likely to cause disturbance if present during the night. Furthermore, as the bulls would be kept indoors throughout the year the potential for problems would arise with the more intensive use of residential gardens.
 11. In addition, the Council's Environmental Health Officer considers the proposed variation would result in noise and odour problems for local residents. Considering his specialist expertise and experience, this attracts considerable weight. Notwithstanding the support for the proposal from some nearby residents, this is consistent with the experiences outlined by other nearby residents referring to the disturbance from noise from the more recent keeping of bulls in the building.
 12. I acknowledge that some of the noise concerns mentioned by residents relate to tractor movements, which the appellants indicate are mostly unrelated to the keeping of livestock within the building and would reduce in the event of the variation. However, the more manual husbandry techniques outlined by the appellants would not be secured in the long-term and could be subject to change. Moreover, the appellant refers to the future of battery powered and autonomous machinery that is likely to affect the nature and number of other tractor movements. As such, this limits the weight I can give to this matter, which in any event would not address issues of noise and smell likely to arise from the cattle themselves.
 13. Therefore, whilst 30 bulls kept individually may not create as much noise as other husbandry regimes, this number of cattle remains highly likely to result in noise and to a lesser extent some odour, that would give rise to untenable living conditions beyond that which would normally be expected for those choosing to live in the countryside, living close by.
 14. Condition 4 allows for animal housing during times of emergency or quarantine in line with the GPDO wording and was included in order to strike a balance between the needs of the farming enterprise and the protection of the living conditions of residential neighbours. It was accepted in 2009 that this covered circumstances of quarantine under bovine TB movement restrictions, and there remains no dispute between the parties on this point. The appellants highlight that the building has been occupied by livestock under this exception over the last 12 years, with up to 70 cattle for sustained periods.
 15. The GPDO wording generally envisages urgent, unexpected conditions which require immediate action. It is reasonable to suppose that those conditions and any consequential harmful impact will not last indefinitely. Even though the quarantine and movement restrictions associated with bovine TB have been protracted, the appellants state that the variation is sought in anticipation of

the removal of the TB restrictions. Nevertheless, the occurrence of quarantine conditions that may impact upon the living conditions of nearby residents under specific pressing circumstances, does not justify a more permanent arrangement that would be similarly detrimental.

16. The absence of enforcement action in relation to a statutory noise nuisance under other environmental legislation does not lead me to a different conclusion with regards to the planning merits of this appeal. Separate legislation is likely to use a different threshold than whether the resultant harm would go beyond that which would normally be expected for those choosing to live in the countryside.
17. The appellants point out that unrestricted numbers of cattle can be kept within other farm buildings, the yard and fields near to the appeal building. Be this as it may, it is not shown that this results in harm to nearby residents nor that the proposed variation to condition 4 would prevent the use of nearby fields and other buildings from continuing to house livestock in addition to that proposed. Although comparisons are made with the stabling of horses, it is not necessarily always the case that equestrian proposals are acceptable in such proximity to residential properties. In any event, I have determined the proposal on its own merits.
18. I accept that the development would have the benefit of making more efficient use of the existing building, contribute towards the appellants pedigree breeding enterprise, lead to an additional full-time stockman job and provide a facility beneficial to the wider farming community. I further acknowledge that there are policies in the Stroud District Local Plan, 2015 (LP) and the National Planning Policy Framework (the Framework) that are supportive of proposals that benefit farming enterprises and the rural economy. These benefits weigh in favour of the proposal. However, the evidence does not show that the appeal proposal is the only means by which these economic benefits could be delivered, and therefore I give them limited weight.
19. Accordingly, I find that the wording of condition 4 still serves a useful planning purpose in that it remains reasonable and necessary to protect the living conditions of those living nearby. Furthermore, I am satisfied that it meets the requirements for planning conditions set out in paragraph 55 of the Framework. There is a significant possibility that the proposed variation to the condition would result in unacceptable harm to the living conditions of nearby residents having particular regard to the noise and smell associated with accommodating livestock in the appeal building. Therefore, it would be contrary to policy ES3 of the LP which, amongst other matters, includes objectives to maintain the quality of life for residential occupants.
20. Although the Council also refer to policy EI4 of the LP in their decision notice, this policy applies to development on existing employment sites in the countryside. It is not clear that an agricultural unit is an employment site for the purpose of the development policy, especially given that the explanatory text suggests that policy EI4 does not apply to farm diversification and associated proposals. Therefore, on the evidence presented, it is not shown that the appeal proposal would conflict with this policy.

Other matters

21. The nearest residential property to the appeal building, The Old Pigeon House, is a Grade II listed building. I am required to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess which are set out in the Listing Description. Given that the proposal to vary the condition would not result in physical changes to the appeal building, nor its agricultural use, it follows that there would be negligible impact upon the setting of the listed building. Accordingly, no harm would be caused to the significance of the designated heritage asset.

Conclusion

22. For the reasons given above I conclude that the appeal is dismissed, and the condition retained in its present form.

Helen O'Connor

Inspector