
Appeal Decision

Site visit made on 17 September 2019

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2019

Appeal Ref: APP/R1038/W/19/3232314

K J S Fisheries, Field Lane, Killamarsh S21 1AZ

- 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 Mr Ken Swain against the decision of North East Derbyshire District Council.
 - The application Ref 18/01061/FL, dated 26 October 2018, was refused by notice dated 15 February 2019.
 - The development proposed is the conversion of existing stable building to form 2 dwellings.
-

Decision

1. The appeal is allowed and planning permission is granted for the conversion of existing stable building to form 2 dwellings at K J S Fisheries, Field Lane, Killamarsh S21 1AZ in accordance with the terms of the application, Ref 18/01061/FL, dated 26 October 2018, subject to the conditions in the attached schedule.

Procedural Matter

2. The Emerging Local Plan has been submitted for examination. At this stage the Policies are gaining weight as the examination progresses however the Policies of the North East Derbyshire Local Plan (2005) remain extant and therefore carry most weight.

Main Issues

3. The main issues are:
 - Whether or not the proposal would be inappropriate development in the Green Belt;
 - Whether the development would provide suitable living conditions for future occupiers; and
 - The effect of the development on protected species, specifically bats.

Reasons

Inappropriate development

4. The appeal site comprises a stable block, set within a cluster of other buildings. The site falls within the North East Derbyshire Green Belt, in a countryside location.
5. The National Planning Policy Framework (2019) (the Framework) establishes that the construction of new buildings within the Green Belt are inappropriate which is, by definition, harmful and should not be approved except in very special circumstances. Paragraphs 145 and 146 identify exceptions to this which include the re-use of buildings provided that the buildings are of permanent and substantial construction. Policy GS2 of the North East Derbyshire Local Plan (2005) (Local Plan) similarly identifies exceptions and states that the re-use of buildings will be permitted provided it does not have a materially greater impact than the present use on the openness of the Green Belt, subject to satisfying the relevant criteria of policy GS7. Policy GS7 relates to the change of use and conversion of buildings and lists criteria to be met including that the building is of a permanent and substantial construction, is capable of conversion without major rebuilding or extension, respects the character of the existing building and does not have an adverse effect on the character of the area or neighbouring land uses.
6. The existing stable block is of a blockwork construction and is permanent. The existing external walls would be rendered, and a new tiled roof constructed. An extension to infill the overhanging roof would be constructed which would provide a new front elevation. The Council consider that these works would not amount to major rebuilding and would therefore comply with the relevant requirements of Policies GS2 and GS7 and I agree with this view.
7. Consequently, for the purposes of paragraphs 143 to 146 of the Framework and Policy GS2, the proposed development would not be inappropriate development and would therefore not be harmful to the Green Belt in this regard. Accordingly, it is not necessary for me to consider the impact on the openness of the Green Belt.

Living Conditions

8. The existing building is set within a working livery yard and in proximity to a commercial fishery. It is set adjacent to a courtyard area which provides access to the existing dwelling on site and other commercial and agricultural buildings.
9. The Council have raised concerns over the existing land uses which would be in proximity to the proposed dwellings in terms of the ménage, vehicular traffic and the use of the nearby buildings for agricultural and fisheries purposes.
10. Directly to the front of the appeal building is a ménage associated with the livery yard. The Appellant has identified that the ménage has limited use now and has deteriorated somewhat. There is also limited lighting to this area which would restrict its use to a degree. I also note that there are existing dwellings adjacent to the side boundary of the ménage. I therefore consider that the level of use of this part of the site would be relatively low. In addition, the proposed development would use part of the ménage for gardens for the proposed dwellings, thus reducing the useable area for riding purposes. I therefore find that the potential for the intensification of use of this area would

be limited and would also be unlikely to result in significant issues relating to dust.

11. In terms of traffic movements and intensification of the livery yard use, the proposed development would result in the loss of 6 stables. Whilst the building is located in proximity to other stable blocks, with one adjacent to the existing dwelling and another to the rear of the ménage, these do not amount to a large-scale livery yard in my view. Traffic would be travelling slowly when entering the yard as a result of the space and narrowness of the access road. Traffic for the fisheries does not access the yard but continues beyond the appeal site.
12. Directly to the rear of the appeal building is a storage shed. At the time of my visit this contained a variety of items related to the fisheries and agricultural uses but contained no working machinery and was for storage uses only. The size of this building would not give a great deal of scope for the use of machinery or excessive noise and whilst I note that the building could be used for other purposes, it is already in proximity to other residential properties, and its overall size would restrict its use to a degree.
13. I have had regard to the location plan showing the uses of the buildings within and near the site. From the evidence before me I consider that it would be unlikely that the overall business would expand to a degree which would have a harmful impact on the living conditions of future occupiers of the development. I have also had regard to the existing dwellings in proximity to the appeal site.
14. Consequently, whilst the Council have not referred to any specific development plan policies in their reason for refusal, I find that the proposed development would comply with the requirements of Policies GS7 of the Local Plan. It would also comply with paragraph 127 of the Framework which requires development to create places with a high standard of amenity of existing and future users.

Protected Species

15. Following concerns raised by Derbyshire Wildlife Trust (DWT) the Appellant has carried out a Bat Survey. This survey was carried out at suitable times of day within the recommended months of the year. The bat survey found no evidence of bat roosting and therefore only recommends that, in the unlikely event that bats are found during the course of the works, all work should cease, and qualified advice should be sought.
16. I note the Council have not sought further comments from the DWT on the additional bat survey, however I am satisfied that, on the basis of the evidence before me, it has been adequately demonstrated that the proposed development would not result in any adverse effects on bats. Accordingly, the proposed development would comply with Policy NE6 of the Local Plan which seeks to avoid adverse impacts on nationally rare species.

Conditions

17. In addition to the standard time limit condition I have imposed a condition listing the approved plans as this provides certainty. The Council have requested a number of conditions which I have considered against the advice in the Planning Practice Guidance and amended or omitted where necessary.

18. I have imposed conditions for details of foul and surface water disposal in the interest of the living conditions of future and nearby occupiers. Conditions for details of the boundary treatments, materials and landscaping are necessary in the interests of the visual character of the development and its surroundings. A condition for the provision of parking areas is required in the interests of highway safety.
19. Permitted development rights should only be removed in exceptional circumstances. I have not been provided with details of the circumstances which would justify the use of this condition and have therefore not imposed it.
20. Conditions 3 and 4 are required to be pre-commencement as it is fundamental to have these details agreed prior to any works beginning on site. The Appellant has confirmed his agreement to the Council's suggested conditions.

Conclusion

21. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

R Norman

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: Drawing Numbers PL01 A; PL02; PL03 and PL04.
- 3) Prior to the commencement of the development hereby permitted, a scheme for the provision of surface water drainage works shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full before the development is brought into use and retained as such thereafter.
- 4) Prior to the commencement of the development hereby permitted, a scheme for the provision of foul drainage works shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full before the development is brought into use and retained as such thereafter.
- 5) Before above ground works begin, a plan to show the positions, design, materials, height and type of boundary treatments to be erected shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be completed before the first occupation of the building and shall be retained as approved, unless otherwise agreed in writing by the local planning authority.
- 6) Before above ground works begin, precise details of the walling and roofing materials to be used shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
- 7) Before above ground works begin, a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. 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, a schedule of proposed plant locations, species, size and density and an implementation programme.
- 8) 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.
- 9) Prior to the first occupation of the development hereby permitted, the area shown on the approved plans as reserved for parking and manoeuvring of vehicles shall be provided in accordance with the approved details. Thereafter the area shall be used and maintained for those purposes only.