The Planning Inspectorate

Appeal Decision

Site visit made on 9 September 2019

by E Symmons BSc (Hons), MSc

an Inspector appointed by the Secretary of State

Decision date: 05 November 2019

Appeal Ref: APP/M0933/W/19/3231816
Highfield Farm, Great Urswick, Dalton in Furness, Barrow in Furness LA15 8JG

- 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 Liam Dixon against the decision of South Lakeland District Council.
- The application ref SL/2018/1019, dated 11 December 2018, was refused by notice dated 21 March 2019.
- The development proposed is a change of use from redundant agricultural building to use for vehicle bodywork repairs and associated mechanical repairs (Use Class B2).

Decision

1. The appeal is allowed and planning permission is granted for a change of use from redundant agricultural building to use for vehicle bodywork repairs and associated mechanical repairs at Highfield Farm, Great Urswick, Dalton in Furness, Barrow in Furness, LA15 8JG in accordance with the terms of application reference SL/2018/1019, dated 11 December 2018, subject to conditions set out in the attached schedule.

Procedural Matters

2. The Appellant contends that the description of the proposal was altered at the request of the Council during validation of the application. This was to include the term 'Use Class B2' which is for general industry and is shown in brackets following the description of the proposal. I have altered the banner heading accordingly and note these circumstances within my Decision.

3. The Council has indicated that Policies S2, E8 and E10 of the South Lakeland Local Plan 2006[1] referenced within the Officer Report, no longer apply. I have therefore had no regard to these policies within this Decision.

4. Within their Officer Report the Council refer to Policies DM1, DM2, DM7 and DM16 of the then emerging South Lakeland Local Plan Development Management Policies[2] 2017 (DMP). This plan was adopted on 28 March 2019 and complements the South Lakeland Core Strategy[3] 2010 (Core Strategy). Although the Council has not submitted an appeal statement relating this revised policy to the reasons for refusal, the appeal must be determined within the most recent policy framework. As the appellant has had an opportunity to

[1] South Lakeland Local Plan and alterations (Final Composite Plan). Adopted March 2006.
[2] South Lakeland Local Plan. Development Management Policies. Publication Document. November 2017. Adopted 28 March 2019.
[3] South Lakeland Local Development Framework, Core Strategy. Adopted October 2010.

comment upon these policies I do not consider they have been prejudiced by this.

5. Policy CS1.1 of the Core Strategy is cited within the Officer Report but not carried forward into the Decision Notice. This policy is relevant to the main issues within this appeal and as the appellant has had the opportunity to comment upon this policy, I have given it full weight within my Decision.

Application for costs

6. An application for costs was made by Mr Liam Dixon against South Lakeland District Council. This application is the subject of a separate Decision.

Main Issues

7. The main issues are the effect of the proposal on:

- the living conditions of occupiers of adjacent properties with respect to noise and disturbance;
- highway safety; and
- whether the proposal would be in a sustainable location.

Reasons

Living conditions

8. The proposal relates to a change of use of a large portal framed agricultural building which sits in an elevated position at Highfield Farm. It is within open countryside in a rural location with the closest settlement of any size being Dalton in Furness. It is accessed via a surfaced driveway which is reached via narrow single track roads. The appeal building sits adjacent to another large agricultural shed which houses goats, and between these sheds is a small building with two stables. The property is currently not a working farm. There are two properties adjacent to the farm access road, the first being a livery stables, whose ménage directly abuts the road, and the second is the residential property of Highfield Farm. There is a further residential property approximately 90 metres to the west.

9. The proposal would change the use of the agricultural building to provide a vehicle bodywork repair business incorporating a spray booth and facilities for associated mechanical repairs. The business intends to specialise in restoration of pre-1980 classic cars. There is concern that additional vehicle movements, when compared with the current situation, could cause noise, nuisance and disturbance which would affect the living conditions of occupiers of neighbouring properties.

10. It is possible that neighbouring properties would experience additional traffic over and above the current situation as a result of the proposal. However, the existing building could legitimately be used for agricultural purposes which could also generate various types of traffic including large vehicles. There is no evidence to support the view that the proposed business would create traffic noise and disturbance over and above that which could be expected by the current authorised use as an agricultural building.

11. There is concern that emissions from vehicle spraying would impact the local environment affecting residents and animals. The proposal includes installation of a spray booth with built-in extraction system which is designed to resolve such issues. Although the Environmental Protection Officer (EPO) raised concerns regarding other potential B2 uses, it was considered acceptable with restrictive conditions to limit potential noise and emissions. Additionally, conditions restricting business hours could limit disturbance and conditions requiring correct installation, operation and maintenance of the extraction booth could ensure control of emissions.

12. I concur with the view that an unrestricted B2 use could harm the living conditions of occupiers of neighbouring properties with the potential for noise over and above that which would be expected adjacent to an agricultural building. However, there is no evidence to support the view that a restricted B2 use as detailed within the appellant's description of the proposal would lead to significant harm to living conditions with respect to privacy, noise and disturbance.

13. Article 8 of the Human Rights Act has been drawn to my attention with respect to potential severe detriment to private and family life due to a negative effect of the proposal upon the local environment. I acknowledge that this proposal could affect the living conditions of neighbouring residents. In this regard, I have taken into account Article 8(1) of the European Convention on Human Rights, as enshrined in the Human Rights Act (1998), which states that everyone has the right to respect for his private and family life, his home and his correspondence. Due to the scale of the proposal which could be restricted by conditions, this could be substantially mitigated and would not represent severe detriment.

14. With respect to its effect upon the living conditions of neighbouring occupants the proposal would not conflict with Policies CS1.2, CS7.4 and CS10.2 of the Core Strategy or Policies DM1 and DM7 of the Local Plan. These policies, together and amongst other matters seek that development does not detract from the amenity of the area and protects environmental and public health.

Highway safety

15. The Highway Authority commented twice on this proposal. The first comment refers to an earlier application[4] for a similar proposal on the site. The comment states that the proposal, similar to that within the previous application, would generate a slight increase in vehicular use which would not affect highway safety. This was followed by a second response which considered an unrestricted B2 use and stated that the road access would be inadequate for this. Although an unrestricted B2 use could generate regular and increased movements of large vehicles which would be unsuitable for the local road network, there is no evidence that the specific proposal before me would generate this level of traffic. Should the use be restricted to vehicle bodywork repairs and associated mechanical repairs only, the Highway concerns would therefore be minimised.

16. Footpath 580012 runs across the fields to the south of the appeal site and crosses the highway to the south east of the site. In the second response from the Highway Officer, it is stated that the proposal would have a detrimental

[4] Reference SL/2017/0538.

effect upon this route. However, in response to the previous planning application for this site, the Countryside Access Officer stated that there would be no detrimental effect upon this footpath. The point where the footpath crosses the highway is on a straight section of the road and I concur with the view of the Access Officer that the level of traffic potentially generated by this specific proposal would not have a significant impact upon the safety of this route when taken within the context of the current road use.

17. Interested parties have raised concerns regarding highway safety on the narrow surrounding roads which are used by cyclists and horses. Specific concern has also been raised regarding the potential for young horses being schooled in the ménage adjacent to the farm access road to be distracted or frightened by traffic. However, the ménage is not only adjacent to the access road, but also the highway which is currently used by many different types of vehicles. Given the potential traffic levels and the existing use of the access road and highway, the proposal is unlikely to cause a significant greater disturbance to horses than the current situation.

18. In more general terms, the potential use must be considered within the context of the current road use which includes farm vehicles and those associated with the livery yard. Should the farm be used as a working farm, there would be an associated vehicle use which, in all likelihood, would include tractors, large delivery vehicles and cars. There is no evidence to suggest that this proposal would generate traffic over and above that which might be expected from an active farm building. The proposal would therefore not harm highway safety and would not conflict with Policies CS1.2, CS3.1, CS7.4 and CS10.2 of the Core Strategy and Policies DM1 and DM16 of the Local Plan. These policies together and amongst other matters seek that development links with the wider transport network; provides safe and convenient access on foot, cycle, public and private transport; does not give rise to unacceptable levels of traffic or harm highway safety.

Location

19. Policies CS1.1 and CS3.1 refer to the need for most new development, including those in use category B2 to be directed to existing service centres. This is to ensure there is adequate service and infrastructure capacity to accommodate the development and the presence of sustainable means of transport. The very nature of the proposal as a garage would require cars to be driven or transported to the business, irrespective of the availability of other transport methods. Even if this were not the case, the appellant has provided evidence to suggest that the site can be reached on foot or by cycle from Dalton in Furness and then onwards by public transport.

20. This proposal would support the rural economy through employment opportunities and service delivery. Policy CS7.4 of the Core Strategy and Policy DM16 of the DMP supports the rural economy where it involves re-use of suitable rural buildings for employment-generating uses, and diversification of the rural economy. Such uses should not result in unacceptable levels of traffic or detract from the amenity of nearby residents. I have discussed the effects of the proposal on the living conditions of neighbouring residents and upon highway safety earlier within this decision.

21. Policy CS1.2 has a presumption against new development in the countryside but lists a series of exceptions. The appropriate change of use of an existing

building is one such exception. Consequently, if this exception is met, there is no need to demonstrate an essential need for the location. The Council makes reference to the appellant's home address in nearby Barrow in Furness rather than on site, and that the business is not yet established. These issues therefore, whilst relevant to the sustainability of the proposal, would not constitute a reason to dismiss this appeal and I give them limited weight.

22. Paragraph 83 of the National Planning Policy Framework[5] (The Framework) supports diversification of rural businesses and sustainable growth and expansion of all types of businesses in the rural area through conversion of existing buildings. Paragraph 84 states that local business need may be situated beyond existing settlements. Although the proposal conflicts with the spatial aspect of Policy CS1.1 which seeks that development of this type should be directed to existing service centres, it is supported by other aspects of the policy with respect to rural diversification. As the change of use is within an existing building, and I consider the proposal appropriate with respect to its impact upon highway safety and the living conditions of neighbouring occupiers, the exception within Policy CS1.2 has been met. In conclusion, and on balance, I find that the proposal would not constitute unsustainable development and would not conflict with Policies CS1.2; CS3.1 and CS7.4 of the Core Strategy or Policy DM16 of the DPD.

Conditions

23. The conditions set out in this decision are based on those suggested by the Appellant. Both parties have been consulted on the following conditions and no objections have been raised. These conditions have been considered against the tests of the Framework and advice provided by the Planning Practice Guidance[6] (PPG) on conditions. Those included are found to be reasonable and necessary.

24. In addition to the standard condition regarding the time period for implementation and in the interests of certainty and clarity, there is a need for a condition specifying the plans to which the permission relates. Condition 4 limits the use of the building for this proposal specifically to the appellant. The PPG states that personal permissions should only be imposed in exceptional circumstances. In this case there is justification as the business use would rely upon the appellant's adjacent parental home for welfare facilities. Should the business be sold or transferred to another person it is likely that further development would be required in order to install additional facilities and this condition mitigates the likelihood of this occurring.

25. To protect the living conditions of occupiers of neighbouring properties regarding noise, disturbance and visual amenity, conditions 3, 5, 6, 7, 8 and 9 limit the nature of the business to that applied for within the application form; the working and delivery hours; confinement of activity within the building; control of emissions and disposal of waste. The appellant has suggested an additional condition which would specify a maximum number of people working within the building to limit adverse effects upon the living conditions of nearby occupants. However, due to the existing size of the building, the requirement for all operations to be limited to within the appeal building and the link of the use to the appellant, this is not considered necessary.

[5] February 2019.
[6] Planning Practice Guidance. Use of Planning Conditions. Published 6 March 2014. Last updated 23 July 2019.

Other Matters

26. Interested parties have suggested that the site does not provide toilet and washing facilities, has no water supply and cite existing problems with an overflowing cesspit. The Appellant has indicated that welfare facilities exist at an adjacent dwelling owned by his father and that the appeal building has water and electricity. I have no evidence to suggest this is not the case. Regarding the issue relating to the existing cesspit, although there may be an increase in the number of people using the current toilet facilities the EPO raised no concerns regarding current or future pollution incidents. I have no substantive evidence before me regarding an existing issue and in view of the lack of technical objections from the EPO I give this little weight within my decision.

27. The application form makes reference to use of a soakaway to deal with surface water. There is no evidence to suggest that the proposal would lead to surface water over and above that which currently exists. Due to the nature of the proposed use, there is a potential requirement to dispose of chemical waste which could be secured through a condition.

28. It has been suggested that the existing building does not have planning permission however, this matter is not before me. The need for, and future feasibility of the business due to potential local competition, has been raised. I have no details regarding local market forces within this industry. As this would not be a reason to dismiss the appeal I give this issue little weight.

29. Interested parties are concerned that should this business receive consent it would set a precedent for other development. Each case must be considered on its own merits and this would be the case for any other application.

Conclusion

30. For the reasons stated above, and with respect to the policies of the DMP, Core Strategy and Framework taken as a whole, the appeal is allowed.

E Symmons

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: Location Plan A4; Block Plan A3; Dalby Spray Booth Details (Harry Dalby Engineering Ltd received 9 June 2017); 1-LD11 A3; 2-LD-11 A3; 3-LD-11 A3; 4-LD-11 A3; 5-LD-11-A3; 6-LD-11 A3; 7-LD-11 A3; 8-LD-11 A3; 9-LD-11 A3; 10-LD-11 A3 and 11-LD-11 A3.

3) The premises shall be used for vehicle bodywork repairs and associated mechanical repairs and for no other purpose (including any other purpose in Class B2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

4) When the premises which are the subject of this permission cease to be occupied by Mr Liam Dixon the use hereby permitted shall cease and all materials and equipment brought on to the premises in connection with the use shall be removed.

5) The use hereby permitted shall only take place between the hours of 0900 to 1700 on Monday to Friday and at no time on Saturdays, Sundays or on Bank or Public Holidays.

6) Deliveries shall be taken at or despatched from the site only between the hours of 0900 to 1700 on Monday to Friday and at no time on Saturdays, Sundays or on Bank or Public Holidays.

7) The use hereby permitted shall only operate within the building as detailed within the approved plans. There shall be no storage of, deposit or display of any goods, vehicles, machinery, equipment or other materials associated with the use outside the building.

8) Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.

9) A refuse and waste management strategy (the strategy) including details of waste storage and disposal, shall be submitted in writing to the local planning authority for approval. Upon implementation of the approved strategy specified in this condition, the use shall thereafter be carried out in accordance with that strategy.

END OF SCHEDULE