



Appeal Decision

Site visit made on 22 October 2019

by Andrew Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 11 November 2019

Appeal Ref: APP/W0340/W/19/3234643

Old Street Farm, Old Street, Beedon Common, Newbury RG20 8SU

- 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 carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Russell Kilvington against the decision of West Berkshire Council.
 - The application Ref 18/03251/FUL, dated 21 November 2018, was refused by notice dated 6 February 2019.
 - The application sought planning permission for the erection of agricultural barn for storage of hay, straw, feedstuffs and machinery without complying with a condition attached to planning permission Ref 03/00577/FUL, dated 22 September 2004.
 - The condition in dispute is No 1 which states that: *'The barn hereby permitted shall be used only by Mr Russell Kilvington for the purposes of his tenancy agreement on the adjacent land marked blue. When the building ceases to be occupied by Mr Russell Kilvington for such purposes, the building hereby permitted (and all materials and equipment brought onto the premises in connection with the use) shall be removed, within 2 months of the cessation of such occupation'.*
 - The reason given for the condition is: *'Regard has been shown to the extenuating circumstances of the applicant in this instance in accordance with Berkshire Structure Plan 1991-2006 Policies OS1, C2 and LD3 and West Berkshire District Local Plan Policies OVS2, ENV17 and ENV18'.*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of agricultural barn for storage of hay, straw, feedstuffs and machinery at Old Street Farm, Old Street, Beedon Common, Newbury RG20 8SU in accordance with application Ref 18/03251/FUL without compliance with condition No 1 previously imposed on planning permission Ref 03/00577/FUL dated 22 September 2004, but subject to the following condition:
 - 1) Irrespective of the provisions of the Town and Country Planning (General Permitted Development) Order 2015 or any subsequent revision, no further development can occur unless permission has been granted by the Local Planning Authority on an application made for the purpose.

Background and Main Issue

2. Planning permission was granted for the erection of an agricultural building at the site in 2004. The permission was issued with a condition that tied the use of the building to the appellant for the purpose of his tenancy agreement on the adjacent land. The condition requires the building to be removed in the event that it is no longer occupied by the appellant for the purposes associated with the tenancy agreement. In its reason for the condition the Council referred

to the extenuating circumstances of the applicant. The appeal seeks the removal or variation of this condition.

3. Accordingly, the main issue is whether the condition is reasonable and necessary having regard to the building's use and location in the countryside.

Reasons

4. The appeal site is located in an area of open countryside, to the west of the small settlement of World's End, within the North Wessex Downs Area of Outstanding Natural Beauty (AONB). As well as the large barn subject of this appeal the appeal site includes a number of other buildings. Evidence before me, including that presented as part of a recent appeal at the site for the siting of a mobile home¹, suggests that the appellant intends to reintroduce the previous use of the site as a pig farm.
5. In terms of whether the condition is necessary, relevant to planning or to the development², The 2004 planning permission was for the erection of an agricultural barn. The omission of the condition would not allow the building to be put to other uses without the grant of planning permission. The Inspector who considered the recent appeal at the site clarified that even without the condition the barn would retain its agricultural use. Although the condition could be considered to make the use of the building clear, I am not satisfied that its removal would allow the building to be put to other uses.
6. In this regard, matters have been raised relating to the use of the building for other purposes, including the servicing of motorhomes. However, this is a matter for the Council to consider by exercising its enforcement function and has no bearing on the merits of the appeal before me. In any case, the appellant is not suggesting that the condition should be lifted so that he can put the building to a non-agricultural use.
7. The condition also seeks to limit the benefits of the planning permission to the appellant. The Planning Practice Guidance advises that it is rarely appropriate to impose such a condition³. Although there may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds. Examples given include residential accommodation for agricultural workers.
8. The Council refers to the extenuating circumstances of the appellant. It suggests that it is clear that the purpose of the condition is to ensure that if the appellant vacates the site or ceases to engage in agriculture on the adjacent land then the building should be removed. If the Council only found the erection of the building to be acceptable on the basis of extenuating circumstances, then it would be reasonable to assume that the Council consider that the development would otherwise be inappropriate if those circumstances did not exist. However, the extenuating circumstances of the appellant are not explained in the submissions before me. Furthermore, the Council does not explain in any detail what harm would occur or why the development would not normally be permitted in the absence of such circumstances. In its refusal reason the Council states that the removal of the barn would comply with the

¹ APP/W0340/W/18/3215057

² Paragraph 55 of the National Planning Policy Framework

³ Paragraph: 015 Reference ID: 21a-015-20140306 of the Planning Practice Guidance

National Planning Policy Framework (the Framework) and Policy ADPP5 of the West Berkshire Core Strategy (2206 – 2026) Development Plan Document adopted 2012 (DPD). This Policy seeks to ensure that development proposals conserve and enhance the special landscape qualities of the AONB.

9. The statutory purpose of AONBs is to conserve and enhance the natural beauty of the area⁴. The Framework states that great weight should be given to conserving and enhancing the landscape and scenic beauty of AONBs, which carries the highest status of protection⁵. Despite referring to this Policy the Council makes no case for landscape harm. At my visit to the site I viewed the building from nearby footpaths to the north of the site on higher ground. The building was visible from the footpath, however I found it to be visually anchored against the edge of the field and its substantial hedge boundary, which rises to a similar height to the building. Furthermore, its muted finishes ensure that it is not overly prominent. From the lane immediately alongside the site the building is almost entirely hidden from view owing to the substantial hedge boundaries which are interspersed with mature trees.
10. Planning permission was granted recently for a similar sized agricultural building on the parcel of land on the opposite side of the lane from the appeal site⁶. Although on the other side of the lane, I saw that this building would have a similar relationship to the open rural landscape of the AONB. In its officer report the Council states that this type of agricultural building is considered to sit within the expected buildings in the AONB. In this case the Council did not impose a condition to control the use of the building or to limit the benefits of the permission to an individual. Taking these matters into account, I find that the retention and continued use of the building subject of this appeal for agricultural purposes for a person or persons other than the appellant would not cause harm to the character or appearance of the AONB.
11. Policy ADDP1 of the DPD sets out the Council's spatial strategy and is referred to in the Council's refusal reason. In areas of open countryside such as the appeal site only appropriate limited development will be allowed. Beyond the refusal reason the Council do not refer to this Policy, but it is reasonable to assume that an agricultural building that serves an associated area of agricultural land would constitute an allowable form of limited development in the open countryside.
12. The Council also refers to Policy CS13 in its refusal reason, which relates to transport impact. I have no reason to believe that the removal of the condition would result in an increase in vehicle movements associated with the site and note that this is not a case that the Council has made.
13. The Council refers to the uncertainty regarding the sustainability of the agricultural enterprise associated with the appeal site. However, I note that the Inspector who determined the recent appeal at the site found the farming operation to have the potential to realise a modest profit which would sustain the employment of a stockman. I also note that a number of other permissions have been granted at the site associated with its agricultural use since the barn was originally permitted in 2004. There is no evidence before me to suggest

⁴ Section 85 of the Countryside and Rights of Way Act 2000

⁵ Paragraph 172 of the Framework

⁶ Council's ref 17/00041/FUL

that these were all issued on a temporary basis or with conditions that limit the benefits of the permissions to the appellant only. In any case, there is nothing before me to suggest that the building would not continue to serve a useful purpose associated with agricultural activities at the site in the event of a change in ownership.

14. No other adverse impacts that would occur without the disputed condition have been put to me, and none became apparent following my visit to the site. In summary, having regard to the building's use and location in the countryside the condition is not necessary, relevant to planning or to the development permitted, in accordance with Policies ADPP1, ADPP5, CS13, CS14, CS18 and CS19 of the DPD and the Framework, which together seek to limit countryside development, conserve and enhance local character including the special landscape qualities of the AONB and reduce the need to travel.
15. The Council referred to Policy CS18 in its refusal reason. The appeal site does not meet the criteria for green infrastructure as set out in paragraph 5.124 associated with the Policy. Therefore this Policy has not been determinative as it is not relevant to the appeal proposal.

Other Matters

16. The Council suggests that the condition could be modified rather than removed, although advises that this was not possible as this is not what the appellant applied for. However, under Section 73 of the Town and Country Planning Act 1990 a Council may amend or remove conditions. Although an amended condition could be an outcome of the appeal, for the reasons above I am not satisfied that it is necessary to retain the condition in any form.

Conclusion and Conditions

17. For the reasons above, the appeal should be allowed. I will grant a new planning permission without the disputed condition but retain any non-disputed conditions from the previous permission that appear still to be relevant. The Council has provided comment in relation to the relevance of the other conditions that were imposed on the original 2004 permission, and the appellant has had opportunity to respond to those comments. The Council confirms that pre-commencement conditions were discharged.
18. I do not consider a condition relating to the approved plans to be necessary. The building appears to be complete and no further work is proposed. As the building is complete conditions referring to materials, floor levels and disposal of spoil are not necessary. In terms of the landscaping condition, more than five years has passed since the building was constructed so this condition is no longer necessary. I have re-imposed a condition referring to the general permitted development order. This condition is necessary to ensure that the Council has the opportunity to consider the effect of further development at the site, with regard to its location within the AONB.

Andrew Tucker

INSPECTOR