



Appeal Decision

Site visit made on 19 November 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2019

Appeal Ref: APP/P1615/W/19/3235218

**Agricultural Building, Eastwood Lodge Farm, Woolaston, Lydney,
Gloucestershire GL15 6PU**

- 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 John Williams against the decision of Forest of Dean District Council.
 - The application Ref P0061/19/FUL, dated 10 January 2019, was refused by notice dated 11 March 2019.
 - The application sought planning permission for the retention of agricultural building with amendments to include flue and roof light without complying with a condition attached to planning permission Ref P0171/08/FUL, dated 16 July 2008.
 - The condition in dispute is No2 which states that: *'When no longer needed for agricultural purposes, the building hereby permitted shall be permanently removed from the land.'*
 - The reason given for the condition is *'In the interests of visual amenities and in accordance with Policy (R)FBE.1 of the District Local Plan Review.'*
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Decision

1. The appeal is allowed and planning permission is granted for the retention of the agricultural building with amendments to include flue and roof light at Eastwood Lodge Farm, Woolaston, Lydney, Gloucestershire GL12 6PU in accordance with the application Ref P0061/19/FUL dated 10 January 2019, without compliance with condition number 2 previously imposed on planning permission Ref P0171/08/FUL dated 16 July 2008 and subject to the following conditions:
 - 1) Where the use of the building for the purposes of agriculture within the unit permanently ceases within 10 years from the date on which the development was substantially completed, and planning permission has not been granted on an application, or has not been deemed to be granted under Part 3 of the Town and Country Planning Act 1990 (as amended) for development for purposes other than agriculture, within 3 years from the date on which the use of the building for the purposes of agriculture within the unit permanently ceased, then the building must be removed from the land and the land must, so far as is practicable be restored to its condition before the development took place, or to such condition as may have been agreed in writing with the local planning authority.

- 2) No roof lights doors or windows other than those expressly authorised by permission reference P0171/08/FUL shall be constructed.

Preliminary Matters

2. Notwithstanding that retention of a building is not an act of development, in my heading above I have replicated the description of development that appears in decision reference P0171/08/FUL which granted permission for the building that is the subject of this appeal.

Main Issues

3. The main issue is whether the condition is necessary, relevant to the development permitted, reasonable and precise having particular regard to the location of the development with reference to local and national planning policies and the character and appearance of the countryside.

Background

4. There is a long and complex planning history to the detached building that is the subject of the appeal. However, the principal events so far as this appeal is concerned are that planning permission was granted retrospectively for an agricultural building under reference P0171/08/FUL dated 16 July 2008 (the original application). Condition 2 was imposed such that when the building was no longer needed for agricultural purposes it should be demolished. The reason given for the condition related to visual amenities and policy (R)FBE.1 of the Forest of Dean District Local Plan Review, November 2005 (DLPR). This policy required, amongst other things, development to be compatible with its surroundings and respectful of the surrounding landscape¹.
5. Subsequent applications and a related appeal have rejected a residential use of the building. Enforcement action raising concerns regarding residential use culminated in a breach of condition notice dated 11 October 2017, which related to condition 2 and required the removal of the building. This remains in force following unsuccessful legal challenges.
6. The appellant seeks to remove or vary condition 2 on the basis that it fails to meet all 6 tests referred to in paragraph 55 of the National Planning Policy Framework (the Framework). The Council disagree and consider that the condition continues to serve a useful planning purpose that meets the requisite tests. This is essentially the central issue for my consideration.
7. In deciding an application under section 73², the decision maker must only consider the question of the conditions subject to which planning permission should be granted. The application before me does not propose a residential use of the building. Accordingly, whilst reference to the breach of condition notice by both parties is understandable, and relevant in some regards, a finding in relation to the merits of the breach of condition notice is not a matter for my determination in this appeal.

Reasons

8. The reason given for condition 2 refers to visual amenities. The appeal site lies within an attractive area of countryside on the edges of the Tidenham Chase

¹ Appendix E, Appellant's Statement of Case

² Section 73(2) Town and Country Planning Act 1990 (as amended)

and Woolaston Scarp character areas of the Forest of Dean District Landscape Character Assessment, November 2002. This would have been the case when the original application was determined. I observed the external appearance of the building to be commensurate with an agricultural use in that it has a simple form with limited openings and is clad in timber compatible with the rural surroundings. In this regard, my findings are similar to the Inspector in the most recent appeal decision³ at the site.

9. Subject to controls to substitute a chimney with a flue, and the restriction of additional openings⁴, the evidence does not show that the Council otherwise had concerns regarding the design of the building when granting the original permission. The decision notice expressly refers to the building being acceptable and in accordance with policies (R)FBE.1 and (R)FNE.1 of the DLPR. It is not part of the Council's case that the design of the building as originally permitted is incompatible with the rural character and appearance of the area. Therefore, I have little basis to find that condition 2 is required to prevent visual harm arising from the presence of the building. Nevertheless, it is appropriate to consider whether condition 2 serves a useful purpose having regard to the current development plan and national policy.
10. Paragraph 83 of the Framework indicates that planning decisions should, amongst other matters, generally enable the development of agricultural businesses. Policy CSP.7 of the Forest of Dean District Council Core Strategy, February 2012 (CS), although it predates the Framework is broadly compatible with this. However, it states that that location of such development should be justifiable in accordance with the settlement hierarchy set out in policy CSP.4 of the CS. The overall development strategy in the CS, amongst other matters, seeks to concentrate development in existing towns and villages thereby safeguarding the open countryside. Policy CSP.4 generally requires development to reinforce the existing settlement pattern and hierarchy, with most new development directed towards towns and villages with defined settlement boundaries. It goes on to acknowledge that the nature of some development means that it may not be located within a settlement and expressly refers to agricultural development. However, such cases should be justified.
11. On this basis, the use of the building for agricultural purposes comprises an important part of the justification for its location in a countryside location with relatively poor access to facilities, where new development is carefully controlled. Accordingly, in principle a condition to secure the removal of the building in the event that it is no longer used for agricultural purposes would serve a useful purpose in reinforcing the overall development strategy in the CS. The central question is whether the degree of control imposed by condition 2 is precise, necessary and relevant to the development in order to reasonably safeguard the countryside from unjustified built form.
12. For comparative purposes my attention is drawn to the condition in paragraph A.2 (5), Part 6 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the Order) which requires the removal of an agricultural building granted under Class A of Part 6 of the Order. Such removal is required where the use of the building for agricultural purposes permanently ceases within 10 years from the date on which the

³ Reference APP/P1615/W/16/3162282 dated 15 August 2017, paragraph 13

⁴ Conditions 1 and 3 on planning reference P0171/08/FUL

development was substantially completed and where no subsequent permission is granted or deemed to be granted for an alternative use within 3 years of the cessation of the use for agricultural purposes. This condition safeguards the countryside from the proliferation of agricultural buildings constructed under permitted development rights and therefore, provides useful direction as to the appropriate degree of control. Given the similarities with the case before me it attracts considerable weight.

13. The Council suggest that the scope of condition 2 is no wider than the requirements of condition A.2 (5), Part 6 of the Order⁵. However, there are some notable differences in the wording of the respective conditions as condition 2 refers to the building as being 'no longer needed', rather than the 'use' of the building, for agricultural purposes. Moreover, the condition in the Order applies only when the use for agricultural purposes permanently ceases. The term 'no longer needed' allows for a greater degree of subjective judgement than the more certain term 'use' which is more readily established by factual events. Consequently, it is less precise than the condition in the Order. Although not found to be without meaning, the wording of condition 2 is referred to as unfortunate, imprecise and difficult to define in a recent High Court judgement⁶, which is of significant weight. It follows that the wording of condition 2 fails the test of precision required by the Framework.
14. Both condition 2 and the condition in the Order have significant implications in that they may, under relevant circumstances, require the removal of a building designed for permanent construction. Advice in the Planning Practice Guidance (PPG) in relation to planning permissions given for a temporary period states that '*A condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness*'⁷. Whilst I accept that condition 2 does not specify a stated period for the removal of the building, the advice resonates with the circumstances of the appeal proposal in that the limitation imposed is particularly onerous and consequently, in order to be reasonable, should be proportionate.
15. The limitation imposed by the condition in the Order applies for 10 years following the substantial completion of the building. Following that period, even if the agricultural use were to cease, the building need not be removed. Therefore, the removal limitation does not apply in perpetuity and the onerous limitation is tempered. Nevertheless, based on the information before me, the condition is sufficiently restrictive so as to deter the construction of new agricultural buildings in the countryside that could otherwise lead to the proliferation of development not originally intended by the permitted development. Consequently, it strikes a reasonable balance between a number of complex factors including supporting the need for new buildings for agricultural purposes, recognition that circumstances may change with the passage of time, whilst also protecting the countryside from more general development seeking to exploit agricultural permitted development.

⁵ Paragraph 1, Page 9, Council Delegated Report

⁶ Mr Justice Garnham, paragraph 20, R (John Williams and others) v Forest of Dean District Council [2018] EWHC 2409 (Admin) dated 18 June 2018, Appendix T, Appellant's Statement of Case & Appendix 5, Council's Statement of Case.

⁷ Paragraph 014 Ref ID:21a-014-20140306 Revision Date 06/03/14

16. By comparison, condition 2 applies in perpetuity and therefore, is wider in scope than is reasonably necessary to achieve a similar objective of safeguarding the countryside from unjustified development. Given the magnitude of the restriction, this is disproportionate and therefore, unreasonable without any form of qualification or timeframe. On this basis, the wording of condition 2 fails the test of reasonableness in the Framework.
17. The Council raises concerns that there is no agricultural justification for the building to be retained at the site. However, neither party suggests that this was not adequately shown in relation to the original permission which established the principle of the agricultural building in the first instance. The scope of my determination does not seek to reassess that principle as I must only consider the question of the conditions subject to which planning permission should be granted, which requires consideration of the tests for conditions in the Framework. Neither is it for me, based on the nature of the application and information presented, to speculate as to whether the appellant would be in breach of a varied condition that meets the tests.
18. Accordingly, I find that the wording of condition 2 lacks precision and has a wider scope than is reasonable to achieve the objective of safeguarding against unjustified development in the countryside. Nevertheless, I do consider that it remains necessary, relevant and reasonable to have some safeguards in this regard in order to comply with policies CSP.4 and CSP.7 of the CS and paragraph 170(b) of the Framework which recognises the intrinsic character and beauty of the countryside. I further find that redrafting condition 2 along similar lines to condition A.2(5) of Part 6 of the Order would correct the deficiencies in the current wording such that it would comply with the tests of precision and reasonableness in the Framework.
19. Policies CSP.1, CSP.5 and CSP.16 of the CS and policies AP.1 and AP.4 of the Forest of Dean District Council, Allocations Plan 2006-2026, June 2018 (AP) are also cited on the decision notice. Policy AP.1 of the AP sets out basic principles to achieve sustainable development and due to its general nature would not justify a specific condition. It will be seen from my reasoning above, that as I did not find the external appearance of the existing building to be harmful, the disputed condition was not necessary in order to protect the character and appearance of the area. As such, the condition is not required by policy CSP.1 of the CS and policy AP.4 of the AP which, amongst other matters, seek a quality environment with high quality design. Policies CSP.5 and CSP.16 reinforce the overall development strategy particularly in relation to residential development but do not make specific mention of agricultural buildings. The appeal proposal is not for a residential use, and therefore, these policies are not directly applicable to the condition under consideration.
20. Representations were made to the effect that the appellant's rights under Article 1 of the First Protocol of the Human Rights Act 1998 would be violated if the wording of condition 2 was to remain unchanged. However, as I have decided to allow the appeal subject to a condition with a varied wording that reduces its scope, it would be proportionate to the objectives to protect the public interest, and consequently, my decision would not lead to any violation.
21. In allowing the appeal, a fresh decision is made. The PPG indicates that decision notices for the grant of planning permission in these circumstances should repeat the relevant conditions from the original planning permission,

unless they have already been discharged. Condition 1 of planning reference P0171/08/FUL required the replacement of a chimney with a flue within 1 month of the decision date. The evidence suggests this was done⁸ and therefore, there is no further requirement for this condition. Condition 3 prevented the addition of further openings in order to protect the agricultural character of the building which I consider remains relevant and is imposed.

Conclusion

22. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting it with a varied wording and restating those undisputed conditions that are still subsisting and capable of taking effect.

Helen O'Connor

Inspector

⁸ Reference to flue in site description of Council's delegated report reference P0061/19/FUL