
Appeal Decision

Site visit made on 14 October 2019

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2020

Appeal Ref: APP/P1615/W/18/3215880

2 Oaktree Cottage, Tibberton Lane, Tibberton, Gloucestershire GL2 8EB

- 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 Paul Colley against the decision of Forest of Dean District Council.
 - The application Ref P0722/18/FUL, dated 9 May 2018, was refused by notice dated 12 October 2018.
 - The development proposed is for a new agricultural barn.
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Decision

1. The appeal is allowed and planning permission is granted for a new agricultural barn at 2 Oaktree Cottage, Tibberton Lane, Tibberton, Gloucestershire GL2 8EB, in accordance with the terms of the application, Ref P0722/18/FUL, dated 9 May 2018, subject to the conditions set out in the attached Schedule.

Main Issues

2. The main issues are the effect of the development on:
 - The character and appearance of the site and wider area;
 - The living conditions of neighbours;
 - The local ecology and protected species in the area.

Reasons

Character and Appearance

3. The proposal is for a two bay barn within an agricultural field. The barn is of a typical agricultural appearance with the main materials being blockwork with profile metal sheeting above, with a pitched roof. Although near to the rear of neighbouring dwellings, the proposed barn is within a field and in a general rural setting. A barn, such as the one proposed, would not appear out of keeping within this setting.
4. The size of the barn was amended during the application process and now has two bays. This would therefore be only a modest sized barn. It would not be readily visible from many points along Tibberton Lane, but there would be views from elsewhere including a nearby Public Right of Way. However, these views would only be of a modest sized barn of typical agricultural appearance set within a field, which I would regard as appropriate.

5. The proposed barn, in my opinion, would not be overly prominent and its scale and design are such that it would not result in harm to the visual landscape qualities of the area. Therefore, the proposal is of a suitable character and appearance for its context and is in accordance with Forest of Dean Core Strategy policy CSP.1, and Allocations Plan policies AP.1 and AP.4. These policies seek to, amongst other things, require development to take account of the character and the landscape of the area.

Living Conditions

6. The proposed barn is to the rear of neighbouring houses which front Tibberton Lane. This is not where the appellant lives, but it is for me to consider if the development on the site as proposed is acceptable rather than considering alternatives.
7. The Council states that the position of the proposed barn to the rear of neighbouring houses, would result in an overbearing impact. Whilst close, the barn would not be a particularly tall or wide structure. Coupled with the separation distance I would not regard the siting of the proposed barn as resulting in significant overbearing impacts to the living conditions of neighbours.
8. The barn is not a habitable building and so should not have any adverse impact to privacy of neighbours. Its position and the separation distance are such that it would not result in significant overshadowing either. Furthermore, I note that there has been no objection from Environmental Health with regards potential environmental impacts to neighbours, which from the evidence before me I would agree with.
9. Therefore, the proposed barn would not result in any significant impacts to the living conditions of neighbours to the site or be an un-neighbourly development. The proposal is therefore in accordance with Allocations Plan Policy AP.1, which requires development to be within the principles of sustainable development. I also find the proposal accords with Core Strategy policy CSP.1, although this policy is more related to design and landscape protection than living conditions of neighbours.
10. The proposal also accords with the relevant sections of the National Planning Policy Framework (the Framework) on this issue.

Ecology

11. The site of the proposed barn is near a pond. Both the appellant and Council agree that there is likely to be Great Crested Newts (GCN) at the pond and in its vicinity. The appellant has submitted revised version of the Protected Species Report for Great Crested Newts, prepared by Fauna Ecology Ltd. This report concluded that due to certain conditions, such as the distance of the barn from the pond and also that the grass is usually mown quite short, that harm to the GCN is unlikely. The report also uses the Natural England 'Rapid Assessment Tool' which concluded based on the inputs given that an offence against the Conservation of Habitat and Species Regulations 2017 (the Habitat Regulations) would be highly unlikely.
12. The Council raised this issue that the initial report did not contain the details of the Ecologist which undertook the site assessment. This has been provided with the latest version, which states that this was undertaken by an experienced

- ecological consultant with a Newt Licence Level 2. I have no reason to regard there to be a lack of detail about the ecologist or his experience in dealing with such issues.
13. The Council has also not agreed with the conclusion within the submitted report that an offence against the GCN protected species would be highly unlikely. The Council's Ecologist stated that due to the proximity of the pond to the site of the proposed barn it should be considered that there would be a likely offence.
 14. However, it is clear from the Council Ecologist comments that even if an offence would be likely the mitigation proposed with the reasonable avoidance measures (RAMs) would be sufficient. This can be required by condition.
 15. The Council also set out the three tests that would be required to be met if a Natural England licence were to be necessary. The Council make clear that they do not regard it likely that the first and second tests would be met as part of the licence process. However, this is only if a licence is required. Whilst it seems likely to me that there are GCN present at certain times of year in and around the pond area, evidence has been provided by the appellant that for various reasons an offence would be highly unlikely which would mean, from my understanding, that a licence would not be necessary. For these reasons, it is my conclusion that there is no compelling evidence that a Natural England licence would be needed for the proposed development. Therefore, planning permission should not be withheld based on the Habitat Regulation tests, that would only be necessary to pass if such a licence from Natural England was necessary.
 16. Overall, I am satisfied that the proposed development would not be contrary to the National Planning Policy Framework which states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused (Paragraph 175). In this regard, from the evidence before me, I am satisfied that significant harm to biodiversity and protected species can be avoided.

Other Matters

17. There have been comments as to the potential future use of the proposed barn. The barn is proposed to have an agricultural use and would be positioned within an agricultural field. I have no substantive evidence that it would be used for non-agricultural purposes. Furthermore, a condition can be imposed to ensure that the barn remains in agricultural use.
18. There has been reference to a shipping container on the site. However, this is not being considered under this appeal, which is focussed on the merits of the proposed barn.
19. This appeal has considered just the single barn as proposed. Any intention for further development at this field would have to be considered separately on its merits and likely to be subject to new applications. However, I do not regard an approval for the barn as necessarily setting a precedent for more development within this field.

20. I understand from comments received that this field sometimes floods. However, I have no substantive evidence that the proposed barn would affect or exacerbate flood risk if located in this area of the field as proposed.
21. There is no obvious vehicular access to the proposed barn, although I note that the site is near the rear of the appellant's house. However, it is not clear that the barn as proposed would need a new access for vehicles. In any case, this appeal is based on the merits of the barn proposed and as there is no new vehicular access included with the proposals then this is not something I have considered further.
22. I note comments within the Officer Report regarding the need for details of a root protection area for the oak tree on site. However, there is no specific mention of this in the Decision Notice. There appears to be a significant separation distance between the proposed barn and the tree. I have no substantive evidence that the barn would likely result in potential harm to the tree roots or the longevity of the tree itself. Furthermore, there is no condition recommended by the Council regarding the need for tree protection.

Conditions

23. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the Framework. The conditions I have included from the recommended list have been subject to some alterations to improve clarity and ensure consistency with the Framework and PPG.
24. I have attached the standard time limit condition and a plans condition as this provides certainty.
25. I have included a condition requiring the implementation of the reasonable avoidance measures (RAMs) which were described in the Protected Species Report for Great Crested Newts. This is necessary to safeguard this protected species. Furthermore, I have imposed a condition for a biodiversity enhancement scheme, which I regard as being necessary prior to any above ground works rather than prior to commencement of development.
26. I have amended the condition the Council recommended about external lighting to allow for details of lighting to be submitted to the Council for approval. This is preferable to a condition stating no lighting is permitted, as there could be some external lighting on the barn which may be acceptable.
27. I have included a condition to state that the barn should be for agricultural uses only. I have not stated that it should be used just for agricultural machinery as I do not see there being a justification to restrict other non-machinery agricultural items being stored here also.
28. I have not included the Council recommended condition for the removal of the barn when not used for agricultural storage. I have found the barn not to result in harm to the character of the area or living conditions of neighbours and so there is no necessity for this condition for the barn to be removed in these circumstances.

Conclusion

29. For the reasons given above the appeal is allowed, subject to the following conditions.

S. Rennie

INSPECTOR

Schedule – 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: PL 001 A; PL 002 A; PL 003 A;
- 3) Development shall be carried out in accordance with the reasonable avoidance measures (RAMs) described in Section 5 of the Protected Species Report for Great Crested Newts (Final Amendment 27/10/18) prepared by Fauna Forest Ecology Ltd.
- 4) Prior to any above ground works for the development hereby permitted, a biodiversity enhancement scheme, such as incorporation of permanent roost/nest features for bats and birds, shall be submitted to and be approved in writing by the Local Planning Authority. The approved scheme shall include elevation and block plans detailing the type, design, number and location of biodiversity enhancements proposed and their timescale for installation. Development shall be carried out in accordance with the approved details and thereafter permanently maintained as agreed.
- 5) Prior to the installation of any external lighting on the barn hereby approved, details of any such lighting shall be submitted to and approved in writing by the Local Planning Authority. Any external lighting shall be in accordance with the approved lighting details.
- 6) The building hereby approved shall be solely used for agricultural uses and no other purpose.

End of Schedule