The Planning Inspectorate

# Appeal Decision

Site visit made on 18 February 2020

**by F Cullen BA(Hons) MSc DipTP MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 March 2020**

**Appeal Ref: APP/E2734/W/19/3242023**
**Land and Barn North Of The Homestead, Hopperton Street, Hopperton HG5 8NX**

- 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 Hopperton Homes Ltd against the decision of Harrogate Borough Council.
- The application Ref 19/00754/FUL, dated 13 February 2019, was refused by notice dated 28 May 2019.
- The development proposed is described as 'demolition of farm pig shed, erection of a part single part one and a half storey extension, erection of timber boundary fences, the formation of a access and turning area, and the change of use of land to enable an enlargement of the domestic curtilage.'

## Decision

1. The appeal is dismissed.

## Procedural Matters

2. Harrogate Borough Council formally adopted the Harrogate District Local Plan 2014-2035 (HDLP) on 4 March 2020 during the course of the appeal. The Council has confirmed that this replaces both the Harrogate District Local Plan (2001, as altered 2004) and the Harrogate District Core Strategy (2009). I have therefore determined the appeal having regard to the relevant policies within the HDLP. Both main parties have had the opportunity to comment on the implications of this for the appeal. I am satisfied that no interested party has been prejudiced by this approach.

3. It has been confirmed that a European Protected Species (bats) is present within the appeal site. I am therefore the competent authority for the purposes of the Habitats Regulations. I return to this matter later.

4. A Preliminary Bat Scoping Survey[1] has been submitted with the appeal in an attempt to address the third reason for refusal. I am mindful that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the Council as local planning authority, and on which interested people's views were sought. The Council has had the opportunity to comment on the report as part of the appeal. I am therefore prepared to accept it on this basis and I am satisfied that no interested party has been prejudiced by this approach.

[1] LOBO Ecology – Preliminary Bat Scoping Survey, Emergence Survey Results & Recommendations dated October 2019, Report No 2019002.1 V1.

5. The Council confirmed on 18 July 2017 that Prior Approval (PA) was not required for the change of use of the existing barn from agricultural to residential and the demolition of the disused pig shed on the site[2]. No works in relation to the extant PA have commenced on site which, with regard to the consideration and determination of this proposal, the Council contends is not ideal. However, the works that can be realised under PA do not prevent the submission of further planning applications related to the buildings converted through that procedure. Moreover, there is no evidence before me which would make me doubt that the appellant is not intent on implementing the proposed conversion. Indeed, the appellant has confirmed that because the extant PA is soon to expire, a new application[3] has been submitted to the Council which is a straight resubmission of the previous application. Therefore, I have had regard to the extant PA in determining the appeal.

## Main Issues

6. The main issues are: (i) the effect of the proposed development on the character and appearance of the existing barn; (ii) the effect of the change of use of the land on the setting of the existing barn and the character and appearance of the landscape; and (iii) the effect of the proposed development on protected species, with particular regard to bats.

## Reasons

*Character and appearance of the existing barn*

7. The appeal site is located on the western side of Hopperton Street in the rural hamlet of Hopperton and sited within the open countryside. The site comprises a detached, two storey, traditional agricultural barn, a single storey disused pig shed and associated surrounding land. A residential dwelling lies adjacent to the site to the south east.

8. The site is enclosed in part by a combination of a brick and rubble stone wall and hedgerows. Open pastoral fields lie immediately to the north and west and further to the east and south. The existing barn is constructed of red brick, incorporating bands of rubble stone to the lower parts of the walls, with a pantile roof.

9. The proposal includes the demolition of the vacant pig shed, and the extension of the existing barn with a timber clad single storey link and an adjoining larger single storey brick building, to create a L-shaped building within the north west corner of the site. Both elements of the extension would have pantile roofs. The detail of the extension was revised during the determination of the application in an attempt to address issues raised by the Council. Access to the site would be gained via a new access from Hopperton Street and the formation of a parking and turning area would create a partly enclosed courtyard. The site would be enclosed to the north and west by a timber post and rail fence with mixed hedgerow and to the south by a timber fence.

10. Taking into account the extant PA and the appellant's intention to convert the existing barn to residential use, relevant guidance within the Council's House Extensions and Garages Design Guide Supplementary Planning Document

[2] Ref: 17/02464/PBR, Change of use of Agricultural Building to C3 (Residential) and demolition of agricultural building on the site.
[3] Ref: 20/00165/PBR.

(2005) (SPD) states that 'a far more restricted approach will be applied' to the extension of dwellings converted from barns 'because of the sensitivity of the design to retain an agricultural use appearance appropriate to the countryside.'

11. I acknowledge that, in relation to the existing barn, the link element of the proposed extension would be subservient in width and both elements of the extension would be clearly subordinate in height. However, its substantial cumulative footprint and the sizeable width and massing of the store/garage element, together with its dog-leg arrangement, would result in an addition which would unduly dominate the existing barn and detract from its simple linear form.

12. Furthermore, I recognise that the proposed extension's design would be relatively simple and incorporate elements such as large arched 'cart-shed' openings that would reflect the nature and appearance of agricultural buildings within the locality. However, its uncomfortable mix of heights, complex roof arrangement and extensive areas of glazing, that would be in marked contrast to the existing barn, would create a discordant addition which would diminish the plain architectural integrity of the agricultural barn.

13. Although the proposed extension would be constructed of materials to match the host building, and I note that the appellant is willing to accept a condition to control this element of the proposal, this would not be sufficient to overcome the fundamental objections to its combined footprint, massing, arrangement and design.

14. The substantial set back of the building from the highway and screening from the existing and proposed boundary hedgerows would mitigate the impact of the proposed extension when viewed from Hopperton Street to some degree. However, it is likely that it would be readily visible and highly conspicuous when viewed from the public footpath which is adjacent to the existing barn, revealing its incongruity in relation to the host building.

15. To conclude on this issue, I consider that the proposed development would have a harmful effect on the character and appearance of the existing barn. This would be contrary to Policies HS6, HS8 and HP3 of the HDLP, which together and amongst other things, require that the scale, form and general design of the building and its proposed conversion are in keeping with its surroundings; that extensions have no adverse impact to the character or appearance of the dwelling or the surrounding area; and that new development is of a high quality and responds positively to its context. It would also not accord with the Council's SPD referred to above.

*Change of use of the land*

16. The proposal includes the change of use of the land around the existing barn to enable an enlargement of the domestic curtilage. This would include the access from Hopperton Street, a parking and turning area and a garden. The Council refers to the existing barn as being an undesignated heritage asset. However, no evidence has been provided to substantiate this claim.

17. I accept that the removal of the existing disused pig shed would undoubtedly enhance the barn's setting, the appearance of the appeal site and wider views to it, and I note that the landscape within which the appeal site is located has no recognised designations. Nevertheless, the introduction of a formal access,

hardstanding for car parking and manoeuvring, a large domestic garden and other likely outdoor residential features, would create an incursion into the existing landscape which would detrimentally alter the setting of the existing barn. This, in conjunction with the loss of the existing brick and stone wall and the enclosure of the site with a timber post and rail fence with mixed hedgerow to the north and west and a timber fence to the south, would have an adverse impact on the rural character and appearance of the surrounding landscape.

18. The screening from the existing and proposed boundary hedgerows would mitigate the impact of the proposed change of use of the land when viewed from Hopperton Street to a certain extent. However, it is likely that the domestication of the land would be highly noticeable when viewed from the public footpath which is adjacent to the existing barn.

19. Accordingly, I conclude that the proposed change of use of the land would have a harmful effect on the setting of the existing barn and the character and appearance of the landscape. This would conflict with Policies HS6, HP3 and NE4 of the HDLP, insofar as they seek to ensure that a building and its curtilage can be developed without an adverse effect on the character of the local landscape or its setting; that new development protects, enhances or reinforces those characteristics, qualities and features that contribute to local distinctiveness; and resist development which would harm or be detrimental to the character of the local and wider landscape or the setting of a settlement.

*Protected species*

20. Circular 06/2005 states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that it '…is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision' (Paragraph 99).

21. Although the Circular states that surveys should only be required where there is a reasonable likelihood of species being present and affected by the development, it advises that surveys should be carried out before planning permission is granted. Furthermore, Natural England's (NE) Standing Advice states that a survey should be undertaken for bats if: 'records show that there are bat roosts in the development site or roosts in the area' or 'the area includes buildings or other structures that bats tend to use.'

22. Taking into account the location of the site, the vacancy of the buildings and the nature of the proposed development, along with North Yorkshire Bat Group records, the Council considered that a survey was required for bats, barn owls and breeding birds. Surveys need to show whether protected species are present in the area or nearby, and how they use the site. As no information was provided at application stage this formed the basis of the Council's third reason for refusal.

23. A Preliminary Bat Scoping Survey has been submitted by the appellant in support of the appeal. A daytime building survey to inspect for evidence of bats and their roosts was undertaken in August 2019. Two bat emergence surveys were undertaken including 11 sessions of dusk/dawn remote monitoring. The

surveys were undertaken towards the end of the optimal time of year for determination of summer roosts including maternity roosts, and advises that further nocturnal/bat activity surveys will be required.

24. The report states that the barn was assessed as having high potential for bats including evidence in the form of droppings and feeding remains. Evidence of transitional roosting by a single Brown long-eared bat (BLE) was confirmed along with the likelihood of an occasional/ transitional roost for a single Common pipistrelle. Occasional Myotid was detected but not considered to be utilising the barn for roosting. It goes on to declare that, at the present time, following the results of the surveys and monitoring there is no evidence to suggest bat roosts of high conservation value including maternity roosts.

25. The survey confirms that a derogation licence would be required before works can commence. It then outlines a number of mitigation and compensation measures. The appellant states that the recommendations of the survey, and the necessity for a derogation licence are duly noted.

26. There is no requirement for a derogation licence to be provided prior to the grant of planning permission, but the decision-maker must be assured that there would be a reasonable prospect of the licence being granted by NE, having regard to the requirements of the Habitats Directive[4]. The Council's Ecology Officer has reviewed the survey and remains of the opinion that, on the basis of the current level of available information, it is not certain that NE would be likely to grant a derogation licence. Therefore, the Council states that its third reason for refusal still stands.

27. As the competent authority for the purposes of the Habitats Regulations it is necessary for me to assess whether there is a reasonable prospect of a licence being granted, having regard to the three derogation tests. When determining whether or not to grant a licence NE must be satisfied that the following tests have been met: (a) preserving public health or public safety or other imperative reasons of overriding public interest; (b) that there is no satisfactory alternative; and (c) that the action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range.

28. I recognise that the surveys and monitoring concluded that there is no evidence to suggest the presence of bat maternity roosts. However, given that they were carried out towards the end of the optimal time of year to confirm this and the identified need to carry out more surveys, there is the potential for BLE bat maternity roosts to be present on site. Taking into account the lack of provision for a bat loft, which may be necessary if a BLE maternity roost on site is confirmed, I would question whether the proposal would maintain the population of the species concerned at a favourable conservation status in its natural range.

29. Therefore, without further survey work, it cannot be verified that the proposal would meet part (c) of the derogation tests. On this basis, I consider that there is insufficient evidence for me to deduce that there would be a reasonable prospect of a derogation licence being granted by NE.

[4] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

30. Accordingly, I am not satisfied that the proposed development would not have a harmful effect on protected species, with particular regard to bats. As such, it would not comply with Policy NE3 of the HDLP, which supports proposals that protect and enhance features of ecological and geological interest and provide net gains in biodiversity. It would also be contrary to the Conservation of Habitats and Species Regulations 2010 (as amended) and provisions within the National Planning Policy Framework which aim to protect and enhance biodiversity and geodiversity.

**Other Matters**

31. I note that the appellant is amenable to the imposition of a condition to ensure that the use hereby sought remains in accordance/conjunction with the PA and not brought into use until the residential accommodation in the existing barn has been provided. However, this would not overcome the harm that I have found and, therefore, it can only be given limited weight.

32. I am aware that no technical concerns, subject to the imposition of conditions, were raised by Environmental Health and the Local Highways Authority (Public Rights of Way). I also note that no objections to the proposed development were received from the Parish Council, Harrogate Group of Ramblers and occupiers of neighbouring buildings. However, these are neutral considerations in the planning balance and do not outweigh my conclusions on the main issues.

**Conclusion**

33. For the reasons given above, I conclude that the appeal should be dismissed.

*F Cullen*

INSPECTOR