



Appeal Decision

Site visits 17 December 2019 and 25 February 2020

Hearing held on 25 February 2020

by E Symmons BSc (Hons) MSc

an Inspector appointed by the Secretary of State

Decision date: 31 March 2020

Appeal Ref: APP/H0738/W/19/3238163

Easting: 439833, northing: 512629, Aislaby, Yarm TS16 0QW

- 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 Herring against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 18/2000/FUL, dated 29 August 2018, was refused by notice dated 5 April 2019.
 - The development proposed is conversion of existing farm buildings to residential dwellings.
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Decision

1. The appeal is allowed for conversion of existing farm buildings to residential dwellings at easting: 439833, northing: 512629, Aislaby, Yarm, TS16 0QW in accordance with the terms of the application ref 18/2000/FUL, dated 29 August 2018, subject to conditions set out in the attached schedule.

Procedural Matters

2. A declaration in accordance with the Statutory Declarations Act 1835 was submitted by the Appellant. This describes the history, design and alignment of the buildings and the reasons works were undertaken. This is accompanied by a series of photographs illustrating the points raised in the statement and which complement those previously submitted by the parties.
3. Within the Statement of Common Ground, Policies SD3 part (f) and SD5 criterion 1 (g) of the Stockton-on-Tees Borough Council Local Plan 2019 (Local Plan) are cited. However, it is Policy SD3 part 4 (c) and SD5 part 1 (g) respectively which are relevant. The Council confirmed that there was no conflict with Policies SD8, ENV1 and ENV4 of the Local Plan.
4. A completed planning obligation made under Section 106 of the Town and Country Planning Act, as amended, was submitted. This relates to provision of a contribution to achieve quantity and quality standards for open space in the vicinity of the development. This matter is discussed later.
5. The parties disagree on the lawfulness of the buildings however, there is no substantive evidence before me that the buildings are unlawful or evidence of enforcement action having been taken. I have therefore made my decision on the basis of the buildings' previous and current use.

Main Issues

6. Whether the proposal would accord with the development plan and national policies for the location of housing in the countryside.

Reasons

7. Aislaby West Farm is an arable farm within open countryside to the north west of the small settlement of Aislaby. The courtyard which forms the historical core of the farm comprises a group of brick-built, one and two-storey buildings to the north of the farmhouse. The site is currently accessed from Aislaby Road along a private drive which serves the farm. Large modern agricultural buildings are separate and distinct from the courtyard buildings.
8. The Appellant's grandfather bought the farm in 1927 and it has been within his family since that time. The agricultural buildings around the courtyard fell into disuse, particularly since the farm became purely arable by the end of 2001. Work within the courtyard began following a routine visit from the Health and Safety Executive in 2005 who stated that the buildings, having deteriorated in condition, needed to be made safe or demolished.
9. The proposal would convert the courtyard buildings to form eight residential dwellings with a new proposed access road following the line of an existing farm track accessed off Aislaby Road. The buildings are referred to within this decision numbered 01 to 08 in accordance with the proposed unit numbers shown on drawing reference 1372-14-204 C. The following text considers the footprint, design and function of each current building.

Building 01

10. This building is in two parts with only the southern section reconstructed. A building has been consistently shown in this position on both historical map and aerial images. Historical photographs show that it originally had decorative arched brick lintels, stable doors and glazed windows. It now has new glazed windows and a modern garage-style door at one end with the original sliding barn door at the other. It was evident during the site visit that the position of the doors and windows had been altered over time but are in similar positions to the originals. The flooring is in poor condition with vegetation growing through. The Council considers this building to be an original agricultural building which is now redundant.

Building 02

11. As shown on both historical maps and a 1968 aerial image, there was a building in this position in 1968 which the Appellant states was a turnip store. At some point between 1968 and 2000 the building was removed. Further aerial images from 2006 show construction work for the foundations of the current building in approximately the same position as the original.
12. The construction and external appearance of the building differs from the original with door and window positions altered. The original curved asbestos roof has been replaced as pitched and tiled. However, although the building does not replicate the appearance of the original, it is on substantially the same footprint and of a style and design consistent with the other agricultural buildings. The current use is for low level storage which was evident during my site visit. No substantive evidence of contrary use has been advanced.

Buildings 03, 04, 05 and 06

13. This group of buildings originally formed a mill house with the machinery at the top and a gin gan, grain store and housing for cattle at the bottom. In 2006 aerial images it is shown in the process of being rebuilt with work complete by 2008. Historical map and aerial images pre-2006 show a building present on this footprint with windows at first-floor level however, there are no photographs showing the lower windows. The window and door openings do resemble the size and style of those on other buildings where historical images are available. The roof profile of buildings 03 and 04 have been altered from a gable to a hipped profile, although their height and mass are consistent with the original. The roof of buildings 05 and 06 is similar to that originally present.
14. The windows and doors of buildings 03 and 05 have a mesh covering reflecting their use to house poultry. Building 04 has been used for minor agricultural storage, in particular hay, and no substantive evidence of contrary use has been advanced.

Building 07

15. This building was originally a cow byre and is consistently shown in this position in both historical and aerial images until 2006 when it has a similar construction timeline to buildings 03, 04, 05 and 06. Although there are no original photographs of this building its original position and size can be seen in historical photographs as an outline against the southern elevation of building 08 showing it as on substantially the same footprint and of the same size as the original. The Appellant contends that this building was reconstructed as a replica of the original and had its intended use been residential, its proportions would have been made more appropriate.
16. During the hearing the Appellant described its original use and indicated that the door and window position and dimensions had been replicated. Current use is stated as low level agricultural storage, and no substantive evidence to the contrary has been advanced.

Building 08

17. A building on this footprint is consistently shown on historical and aerial images. Its original function was as calf boxes and storage. Between 2006 and 2008 the building was reconstructed, and the roof replaced. Original photographs show similar door and window openings to those currently present, although their precise positions have been altered in a similar way to those of building 01. The western end of the building is being used as a farm chemical store with secure doors and windows fitted. During my site visit the remainder, and larger part of this building, was not in use although there is no substantive evidence of anything other than agricultural storage.

All buildings

18. Work was carried out between 2006 and 2013 without the benefit of planning permission and no work has taken place since 2013. The Council contend that work has, in most cases, constituted construction for residential purposes and describe the buildings as "new buildings (which are) not substantially complete for the purposes of residential use". The Council considers that this is supported by the presence of blockwork forming a cavity wall; partially

- installed electricity; plumbing infrastructure; domestic style door and window openings and an altered footprint when compared with historical images.
19. The stated purpose of the work was to repair and restore the original agricultural buildings on a like for like basis without altering their proportions. Due to their family association, this was an alternative to demolition and to retain them for the future. Work has involved reconstruction of the walls; addition of floor slabs; door and window openings; new roof timbers and roof tiles. In some cases, this has amounted to complete reconstruction.
 20. Originally, the walls were constructed with an inner and outer course of bricks whereas a cavity wall construction is now present comprising recycled/reused bricks as an outer skin with blockwork internally. The Appellant has indicated that this method of construction was used for several reasons. Firstly, there were insufficient reusable bricks to construct the walls; secondly, this was a more modern method of construction and, should stock be reintroduced, an insulated building would be preferable. Thirdly, the blockwork gave better support for the roof members when compared with the original bricks. Finally, as the buildings originally had water supplies, ducting to allow for its addition at a later date if required has been included. Furthermore, the presence of electricity to one of the buildings was part of general electrical works on the farm. No staircases or mezzanine floors have been added. The footprint of the buildings has been discussed earlier.
 21. As the Council considers that the buildings appear to be residential in character, it has submitted two examples of case law¹ in support of its case. Although these examples relate to permitted development rights, they support the view that to be designed for agriculture, a building must look like an agricultural building. The original buildings were of a traditional style and their appearance with regard to door and window openings in particular, had a domestic scale. Although some door and window positions have altered, this is not in itself determinative as demonstrated by alterations made to building 01 which has been established and is acknowledged by the Council as original.
 22. The buildings have some continuity of agricultural use and there is no evidence of any alternative and intervening planning use. They are of considerable scale and the low level agricultural use made of them is not consistent with their size and potential. Policy SD3 of the Local Plan, which is consistent with paragraph 79 of the National Planning Policy Framework (The Framework), establishes a presumption against new dwellings in the countryside unless it is one of the specified exceptions. Exception 4 (c) requires that they would involve reuse of redundant or disused buildings and lead to an enhancement of the immediate setting. The current large buildings with their low level agricultural use represent this exception as defined in Policy SD3 4.
 23. The buildings have replaced those previously present, have been reinstated to a high standard and photographic evidence shows that the renovation work has enhanced the appearance of the buildings and the area. Work within and around the courtyard would further improve its appearance and ensure the long-term future maintenance of the buildings. The proposal also includes a planting belt to the north which would give habitat gain and represent an environmental benefit.

¹ Belmont Farm v MHLG [1962] 13 P&CR 134 and Harding v SSE [1984] JPL 503.

24. Although the walls have a cavity construction it is not unreasonable to reconstruct a building using modern methods. The intention was to replicate original agricultural buildings in scale, design and footprint as supported by the submitted photographic evidence and I am satisfied that replacement was undertaken for good reason. Many have subsequently been used for storage and there is no evidence that prior to or following their repair and reconstruction they have had anything other than an agricultural use. Furthermore, there is no substantive evidence that they are residential in nature, nor is there evidence of enforcement action having been undertaken.
25. I consider that the current buildings are underused buildings and conversion would be consistent with Policy SD3 4 (c) of the Local Plan. The proposal would also not conflict with Policy SD5 1 (g) of the Local Plan which seeks to direct new development in the first instance within the countryside towards existing underused buildings or conversion.

Planning Obligation

26. A completed Unilateral Undertaking was submitted, and the Council has raised no objection. This adequately addresses the off-site open space provision as set out in the Stockton-on-Tees Open Space, Recreation and Landscaping Supplementary Planning Document 2009² (SPD). These contributions comply with the SPD and appropriately the impact of the proposal. I have considered this obligation and find that it complies with the tests set out in the Framework, the advice in the Planning Practice Guidance³ (PPG) and with Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended).

Conditions

27. The conditions set out in the accompanying schedule, some of which are pre-commencement, are based on those submitted by the parties and discussed and agreed at the hearing. These conditions have been considered against the tests of the Framework and advice provided by the PPG on conditions⁴. I have undertaken some minor editing and rationalisation in the interests of precision and clarity. Those included in the schedule are found to be reasonable and necessary in the circumstances of this case.
28. For certainty, conditions have been included regarding time for implementation and approved plans. In the interests of highway safety, a condition requiring details of the site access which joins the adopted highway has been included. Ecological mitigation works and tree protection are secured by a condition to ensure protection of existing and future biodiversity and protected species and retention of trees during and after construction works. Additionally, due to the presence of bat roosts and foraging areas within and adjacent to the development, a specific condition requiring appropriate external lighting is included. A condition to secure appropriate hard and soft landscaping is included to ensure that the character and appearance of the development would be appropriate to the area.

² Stockton-on-Tees Open Space, Recreation and Landscaping Supplementary Planning Document. Stockton-on-Tees Borough Council Local Development Framework. Adopted December 2009.

³ Planning Obligations. Use of planning obligations and process for changing obligations. Published May 2016. Last updated 1 September 2019.

⁴ Guidance. Use of Planning Conditions. Last updated 23 July 2019.

29. Finally, although there is no indication of contamination present on the site, but due to the nature of the land use, a condition requiring notification of any contamination found has been included as a precautionary measure in the interests of the health and safety of construction workers and future occupiers.

Conclusion

30. The very particular circumstances of this case include the long-term history of the Appellant's family with the farm, the necessity to carry out work on the buildings driven by the Health and Safety Executive and the substantially similar style, mass and position of the current buildings to those originally present. There is no evidence that either the new or the historical buildings have been used for any purpose other than for agriculture or have been purposefully left vacant. This is a finely balanced judgement and the balance of evidence falls on the side of the current buildings representing disused agricultural buildings, despite their reconstruction.
31. I conclude that the appeal should be 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 in accordance with the following approved plans:
1372-14-200 REV B; 1372-14-202 REV C; 1372-14-203 REV B;
1372-14-204 REV C; 1372-14-209 REV A; 1372-14-201B;
1372-14-205B; 1372-14-206A, 1372-14-207A and 1372-14-208A.
- 3) a) Notwithstanding the hereby approved development, no works shall commence until the access to the site has been set out and constructed in accordance with a scheme to be submitted to and approved in writing by the local planning authority (LPA). Such scheme shall be in accordance with the Council's design guide and should include the following requirements:
 - i) the existing access shall be improved to include 6 metre radius kerbs, a minimum carriageway width of 5.5 metres over a length of 15 metres, and that part of the access road extending 15 metres into the site shall be constructed up to and including the surface course;
 - ii) any gates or barriers shall be erected a minimum distance of 15 metres back from the carriageway of the existing highway and shall not be able to swing over the existing or proposed highway;
 - iii) that part of the access extending 15 metres into the site from the existing highway shall be at a gradient not exceeding 1:12, and
 - iv) provision to prevent surface water from the site discharging onto the existing or proposed highway shall be provided and maintained thereafter to prevent such discharges.b) All works are to accord with the approved scheme.
- 4) Prior to commencement of the development hereby approved, a programme of ecological mitigation shall be submitted to and approved in writing by the LPA. The programme of mitigation shall include but not be limited to, replacement bat roosts, owl boxes, swallow cups, sparrow terraces and potential water vole mitigation associated with the new stream crossing, all based upon the Naturally Wild Ecological Impact Assessment PP-19-01 (July 2019). All works carried out shall be supervised by a licenced ecologist. Thereafter the approved mitigation shall be fully implemented in full accordance with the approved details and maintained and retained at all times during the life of the development.
- 5) External lighting shall adhere to the Bat Conservation Trust, Guidance Note 8, Bats and Artificial Lighting.
- 6) a) Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a scheme for the protection of the retained trees, in accordance with BS 5837: Trees in relation to design, demolition and construction - Recommendations) (or in an equivalent British Standard if replaced), including a tree protection plan (TPP) and an arboricultural method statement (AMS) shall be

submitted to and approved in writing by the LPA. Specific issues to be dealt with in the TPP and AMS include, but are not limited to:

- i) details of construction within the RPA or that may impact on the retained trees;
- ii) a specification for protective fencing to safeguard trees during both demolition and construction phases;
- iii) tree protection during construction including the alignment of the protective fencing should be indicated on a TPP, and construction and construction activities clearly identified with signage as prohibited in this area, and
- iv) detailed levels and cross-sections to show that the raised levels of surfacing, where the installation of no-dig surfacing within RPAs is proposed, can be achieved.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

b) The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the LPA.

- 7) a) Notwithstanding the submitted details, and prior to first occupation of the development hereby approved, details of both hard and soft landscape works shall be submitted to and approved in writing by the LPA. These details shall include;
 - i) boundary treatments, and
 - ii) planting plans for soft landscape works including written specifications (including cultivation and other operations associated with tree, plant and grass establishment); schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate.
- b) The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the submitted details. The completed scheme shall be managed and maintained in accordance with an approved scheme of management and maintenance. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) At any time when carrying out the approved development, in the event that contamination is found that was not previously identified, works must be halted on that part of the site affected by the contamination and it must be reported in writing immediately to the LPA. An investigation and risk assessment must be undertaken to the extent specified by the LPA prior to resumption of works.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT:

Mr Steve Barker
Mr Jonathan Helmn
Mr Herring

Prism Planning
Prism Planning
Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Kieron Campbell

Stockton-on-Tees Borough
Council

DOCUMENTS SUBMITTED AT THE HEARING

- Photograph showing an aerial view of the farmyard in 1968.
- Photographs taken by the Council during an enforcement officers site visit in 2013.
- Stockton-on-Tees Open Space, Recreation and Landscaping Supplementary Planning Document. Stockton-on-Tees Borough Council Local Development Framework. Adopted December 2009.
- A list of conditions agreed by the parties prior to the hearing.