



## Appeal Decision

Site visit made on 15 September 2020

**by Robert Hitchcock BSc DipCD MRTPI**

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

**Decision date: 02 October 2020**

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**Appeal Ref: APP/A0665/W/20/3251698**

**Dunham Barn, Longley Lane, Kelsall, Chester CW6 0TG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A 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 Adam Thwaites against the decision of Cheshire West & Chester Council.
  - The application Ref 20/00501/S73, dated 8 February 2020, was refused by notice dated 1 April 2020.
  - The application sought planning permission for the conversion of barn into one dwelling without complying with a condition attached to planning permission Ref 18/03548/FUL, dated 1 May 2019.
  - The condition in dispute is No 2 which states that:  
The development hereby permitted shall be carried out in accordance with the following approved plans:  
1:2500 Location Plan (received 2 April 2019)  
Site Plan as Proposed dwg no. 3989\_00\_11 Rev H  
Plans as Proposed dwg no. 3989\_00\_13 Rev F  
Proposed Mitigation Plan dwg no. 3989\_00\_17 Rev D  
External Envelope Details dwg no. 3989\_00\_18 Rev A  
Elevations as Proposed dwg no. 3989\_00\_19 Rev A  
Front Boundary Walls dwg no. 3989\_00\_FBW Rev A.
  - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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### Decision

1. The appeal is allowed and planning permission is granted for the conversion of a barn into one dwelling at Dunham Barn, Longley Lane, Kelsall, Chester CW6 0TG in accordance with the terms of planning permission 20/00501/S73 subject to the conditions set out in a schedule at the end of this decision.

### Procedural and Preliminary Matters

2. This appeal relates to a condition forming part of planning permission 18/03548/FUL which was granted on 1 May 2019. Further amendment of that permission has been granted by the Council on more than one occasion, I have therefore referred to the original substantive development in my decision to allow the appeal; this provides appropriate context for the new permission.
3. As the development subject of the appeal had already been carried out at the time of the determination of application ref. 20/00501/S73 and in breach of Condition 2 section 73A of the 1990 Town and Country Planning Act applies. I have therefore dealt with the appeal on that basis.

4. At the time of my site inspection, the works to convert the building to a dwelling were substantially complete and the building was occupied.

### **Application for costs**

5. An application for costs was made by Adam Thwaites against Cheshire West and Chester Council. This application is the subject of a separate Decision.

### **Main Issues**

6. The main issues are:

- whether or not the extent of the works required for the building to function as a dwellinghouse constitute a new building in a countryside area; and,
- the effect of the works on the character and appearance of the building and its locality.

### **Reasons**

#### *Extent of works*

7. From the evidence before me it is unclear as to the extent of building works that have been permitted by the Council in the conversion of the former barn. However, it is clear that the previous grant of planning permission and subsequent approved amendments included works requiring the installation of a first-floor level and the external cladding of the upper walls and roof.
8. The area of works in dispute is limited to the omission of a small area of rooflight glazing forming part of the new roof covering, the omission of westward-facing windows serving a bedroom and two small areas of new cladding. Along with a new recessed external wall incorporating a glazed opening and the alternative surfacing of the externalised floor, the works provide a recessed balcony.
9. In the context of the scale of the building and the absence of prescribed limits, the extent of alteration to the external envelope constitutes a very small percentage of the total area. Although the Council suggest that previous concessions brought the extent of re-construction to a limit beyond which the degree of works required to facilitate the change of use would no longer be considered a conversion, I find there is little material difference between the approved and as-built works in that regard. Furthermore, the balcony floor and recessed position of the new wall lie within the original envelope of the building, although they have been externalised, this adds weight to my finding.
10. For the above reasons, I conclude that the amendments to the building which constitute an omission of approved elevational and roof treatment would not significantly increase the degree of reconstruction of the building to the extent that it would constitute a new-build dwelling in the countryside. I therefore find it would be consistent with the Council's previous decisions, including the grant of planning permission 18/03548/FUL pursuant to the prior approval of similar schemes under the terms of Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GDPO).

### *Character and appearance*

11. The formation of a terrace within the upper part of the building's elevation and roof is not a feature common to modern agricultural buildings. It therefore results in a dilution of the character of the building away from its original utilitarian appearance. Although the building has been significantly altered through the addition of domestic proportioned openings, numerous rooflights and eaves windows, these are not a justification for development that would cause additional harm to the building's character and appearance.
12. However, the retention of the upper corner of the flank elevation limits visibility of the balcony to views of the north-west elevation only. Any views are consequently over significant distance such that they have little consequence in the reading of the building as a converted rural building. The balcony would present in a similar manner to the previously approved eaves window arrangement and have a very low degree of prominence. Accordingly, the effect on the character and appearance of the wider rural location is extremely limited.
13. For the above reasons, I conclude that the alteration of the building in respect of the balcony would cause harm to its original character and appearance and thereby conflict with Policies Strat 9 and Env 6 of the LP1 and Policies DM3 and DM22 of the LP2 as they seek to secure high standards of design which respect the rural character of the building. However, I find that, in the specific circumstances of the case, the alteration would not cause harm to the character and appearance of the wider rural location.
14. However, since the time of the Council's decision the building has been occupied thus triggering the provisions of the GPDO. Although the Council removed some of those rights, including enlargements or additions to the building's roof, the development would not fall within the scope of those limitations or prevent the alterations to the roof and rear wall that form the balcony.
15. Given the appellant's pursuance of the balcony earlier in the planning history and its recent construction, I find that there would be a realistic prospect that those rights would be exercised in the event that the Council sought completion in accordance with permission ref. 18/03548/FUL. Accordingly, I find that the provisions of the GPDO provide a genuine fallback position in this instance.
16. It is a well-established principle<sup>1</sup> that the provisions of the GPDO may provide a fallback position. Although I have found that the balcony would harm the character and appearance of the building, development under the GPDO would lead to a similar outcome. I therefore conclude that a strong justification in the context of Paragraph 38(6) of the Planning and Compulsory Purchase Act 2004 exists. This provides a clear reason for departing from the development plan in those circumstances.

### **Conditions**

17. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under s73 should repeat the relevant conditions from the original planning permission, unless they have already been discharged.

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<sup>1</sup> Mansell v Tonbridge and Malling BC & others [2017] EWCA Civ 1314

18. Aside from the amendment to original Condition 2 in relation to the approved plans, the Council have suggested several conditions some of which have been updated to reflect details agreed under the original permission (as amended). However, I have not been provided with the full particulars of any agreed details. I have therefore re-stated the remaining original conditions with the exception of the standard time limit as the development has been commenced. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
19. The Council have proposed an amendment to original Condition 5 to the extended removal of additional GPDO rights. Paragraph 53 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The PPG states that restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. In the context of a specific amendment to the original permission, which is limited to the omission of part of the roof and elevation treatments, I find the necessary justification for removal of additional GPDO rights has not been demonstrated. The condition is therefore applied in its original terms.

### **Conclusion**

20. Although I have found that the amendment to the previously approved scheme would cause harm to the character and appearance of the building, those alterations could now be completed under the terms of the GPDO resulting in a similar outcome. For the above reasons, the appeal should be allowed.

*R Hitchcock*

INSPECTOR

Schedule of Conditions to planning permission 20/00501/S73:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:  
1:2500 Location Plan (received 2 April 2019)  
Proposed Mitigation Plan dwg no. 3989\_00\_17 Rev D  
Front Boundary Walls dwg no. 3989\_00\_FBW Rev A  
Site Plan as Proposed inc B&BB Locations dwg no. 3989\_00\_11 Rev I (received on the 29/08/2019)  
Site Plan as Proposed inc access detail dwg no. 3989\_00\_11 Rev I (received on the 29/08/2019)  
Site Plan as Proposed dwg no. 3989\_00\_11 Rev I  
Landscaping as Proposed dwg no. 3989\_00\_15 Rev C (dated 31/08/2019)  
Retained vs New Detail dwg no. 3989\_00\_14 Rev J (dated 06/09/2019)  
Elevations as Proposed dwg no. 3989\_00\_14 Rev L (dated 08/02/2020)  
Roof Plan as Proposed dwg no. 3989\_00\_20 Rev B (dated 12/02/2020)  
Plans as Proposed dwg no. 3989\_00\_13 Rev I (dated 08/02/2020).
- 2) The materials to be used in the construction of the external surfaces of the development hereby permitted shall be as specified on the application form and/or approved plans.
- 3) The proposed development shall only involve the restoration and repair of the existing barn building only. Strictly no rebuilding works, other than those approved by this permission, shall take place.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking and re-enacting that Order with or without modification), no development consisting of the enlargement of the dwellinghouse, an addition to its roof or the provision of any building or enclosure incidental to the enjoyment of the dwellinghouse within Part 1 to Schedule 2 thereof, shall be carried out without the grant of planning permission by the local planning authority.
- 5) The dwelling, hereby approved, shall not be occupied until details of both hard and soft landscape works including boundary and surfacing treatments, in accordance with GCN habitat mitigation measures identified within Kingdom Ecology report dated 19th August 2018 and accompanying plan no. 3989\_00\_17 Rev D have been submitted to and approved in writing by the local planning authority. For the avoidance of doubt these details shall include:
  - details of proposed fencing or enclosure including access gates;
  - details of all soft landscape works to be undertaken, including planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers / densities where appropriate;
  - an implementation and maintenance programme for all landscape and planting works.

All landscape works shall be carried out as approved and maintained thereafter.

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- 6) If within a period of 5 years from the date of initial planting, any trees or shrubs planted in accordance with the approved landscaping works are removed, die, become diseased or seriously damaged then replacement trees or shrubs shall be planted in the next planting season with others of similar size and species, unless the local planning authority gives its written approval to any variation.
- 7) The development, hereby approved, shall be undertaken in strict accordance with the Great Crested Newt Method Statement as outlined within Kingdom Ecology 'Ecology Report' 'Appraisal and Mitigation Strategy Report Revised April 2019' and 'Proposed Mitigation Plan' dwg no. 3989\_00\_17 Rev D. All mitigation and compensation measures shall be implemented in full prior to the first occupation of the dwelling.
- 8) The dwelling, hereby approved, shall not be occupied until bat and bird boxes have been installed in accordance with a scheme which has been first approved in writing by the local planning authority. All bird and bat enhancement measures shall then be retained thereafter.
- 9) All building demolition operations or removal of any vegetation, undertaken as part of the development hereby approved, shall take place outside the bird nesting season (1st March to 31st August inclusive), unless the site is surveyed for nesting birds by a qualified ecologist prior to their removal. If nesting birds are found, a scheme to protect nesting birds shall be submitted to and approved in writing by the local planning authority. The development shall thereafter only be carried out in accordance with the approved scheme.
- 10) The dwelling, hereby approved, shall not be occupied until detailed plans in respect of the works required within the highway to form a suitable access including detail of any changes to the front boundary to achieve suitable visibility splays have been submitted to and approved in writing by the Local Planning Authority. All works shall only be carried out in strict conformity with the agreed details and completed prior to first occupation of the development.

End of schedule.