



Appeal Decision

Site visit made on 22 October 2020

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2020

Appeal Ref: APP/J1915/W/20/3246781

Bury Farm, Great Hormead, Buntingford, Hertfordshire SG9 0NS

- 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 & Mrs M Wyld against the decision of East Hertfordshire District Council.
- The application Ref 3/19/1503/VAR, dated 10 July 2019, was refused by notice dated 22 November 2019.
- The application sought planning permission for variation of condition 2 (approved plans) of LPA approval 3/14/1112/FP - Change of use of existing buildings to create 3no 3 bedroomed dwellings, 3no 4 bedroomed dwellings, 1no five bedroomed dwelling, provision of outbuildings, garages and office with associated landscaping and access. Demolition of grain store, ancillary building and structures. Revised design to unit 7, resulting in new layout and external appearance, without complying with a condition attached to planning permission Ref 3/17/0174/VAR, dated 22 March 2017.
- The condition in dispute is No 2 which states that: The development hereby approved shall be carried out in accordance with the plans listed at the end of this decision notice¹.
- The reason given for the condition is: To ensure the development is carried out in accordance with the approved plans, drawings and specifications.

Decision

1. The appeal is allowed, and planning permission is granted to retain and reuse the existing modern barn as opposed to its demolition as part of the previously approved residential re-development at Bury Farm, Great Hormead, Buntingford, Hertfordshire SG9 0NS in accordance with application Ref 3/19/1503/VAR without compliance with condition number 2 previously imposed on planning permission Ref 3/17/0174/VAR, dated 27 March 2017, subject to the conditions set out in the attached schedule.

Procedural Matters

2. For clarity, I have taken the address in the banner heading above from the appeal form as it is more succinct. I have also inserted 'Hertfordshire' to the address as it is listed on the Council's decision notice and application form.
3. For clarity, I have taken the description of development in my decision from the application form, as it more succinctly describes the proposal, omitting 'structure' and inserting 'modern barn' and adding 'as part of the previously approved residential re-development'.

¹ Plan no's: 211080DWG200; 211080DWG201; 211080DWG202; 211080DWG203; 211080DWG204; 211080DWG205 Rev A; 211080DWG206; 211080DWG207; 211080DWG208; 211080DWG210; 211080DWG211; 211080DWG212; 211080DWG213; 90016.02 Rev A; 90016.03 and 211080DWG20.

4. The appellant refers to the commencement of the residential development under a previous approved scheme, which has not been disputed by the Council. I have dealt with the appeal on this basis.

Main Issue

5. There is no dispute between the parties that the proposal constitutes a Minor Material Amendment. Based on the evidence before me, I find no reason to conclude otherwise. Therefore, the main issue is:
 - i. the effect of the proposed development on the character and appearance of the appeal site, including the setting of the curtilage listed barn (the listed barn) and the setting of the surrounding Great Hornead Conservation Area (GHCA).

Reasons

6. The modern agricultural barn (the modern barn), subject of this appeal, is located at the northern end of the planning unit and faces a yard area that separates it from the listed barn opposite. The listed barn falls within the curtilage of the Farmhouse² at Bury Farm, which is Grade II listed and is located within the GHCA. The modern barn is located just outside the boundary of the GHCA, which currently divides the yard area between the listed barn and the modern barn. However, the adopted GHCA plan³ indicates that a large proportion of the modern barn is located within an Area of Archaeological Significance.
7. The planning history identifies that the wider site, originally benefits from planning approval in 2014⁴, which was then varied in 2017⁵ through the approval of a planning application to vary the plans condition on the 2014 permission. The scheme before me, seeks to vary the plans condition on the 2017 permission, in order to retain the modern barn, and to allow its reuse in the redevelopment of the wider site, instead of its demolition. The modern barn would provide the car parking, storage and office space for the approved residential scheme, instead of the proposed 2no. blocks⁶ approved in the previous submissions.
8. It is common ground between the main parties that the modern barn is not curtilage listed. Furthermore, Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) sets out that in the exercise of planning functions with respect to any buildings or land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area. This statutory duty does not extend to the setting of a conservation area, but it is common ground between the parties that this is a material consideration in this appeal.
9. I consider from my findings during my visit that the significance of the GHCA to be the historic core, which includes various listed properties along the B1038 and off various side roads including, but not limited to, Horseshoe Hill located to the south of the site, which retains a high level of heritage interest. I find that the scheme is unlikely to be visible from the majority of public areas within

² Farmhouse at Bury Farm (formerly listed as Bury Farm House) first listed on 22 February 1967

³ Great Hornead Conservation Area Appraisal and Management Plan

⁴ 3/14/1112/FP granted on 26 September 2014

⁵ 3/17/0174/VAR granted on 23 March 2017

⁶ Garage Block 1 and Garage Block 2

the GHCA due to the existing landform and buildings and, therefore, the effect of the proposal on the setting of the GHCA would still be limited. Although I acknowledge that glimpses of the modern barn are possible from Anderson's Lane, but this is limited due to the mature vegetation surrounding the building and the fact that it is set into the land on its side and rear elevations.

10. Turning to the effect on the setting of the listed barn, which dates from approximately c.1850's and is constructed out of brick and flint. The historical value of the listed barn derives from it being curtilage listed to the Farmhouse and still contributes positively, forming part of its original setting. There is no doubt that the modern barn as an existing structure, already has a visual impact upon the listed barn, and setting of the GHCA, which I consider to form a material consideration of significant weight.
11. I accept that the modern barn, whilst not listed, does nonetheless represent a period in the history of the wider site when it was involved in agriculture. Additionally, I note the indication in the appellant's submission to the replacement of some of the external materials on the modern barn. This gives an opportunity to enhance the appearance of the utilitarian building, which I consider could be sufficiently controlled through the imposition of a suitably worded condition.
12. I have a statutory duty under Section 66 (1) of the Act, which requires me to have special regard to the desirability of preserving or enhancing a listed building or its setting or any features of special architectural or historic interest which it possesses. I consider the proposal accords with this duty. Paragraph 192 of the National Planning Policy Framework (the Framework) requires local planning authorities to take account of the desirability of sustaining and enhancing the significance of heritage assets, including conservation areas, and the desirability of development making a positive contribution to local character and distinctiveness.
13. Paragraph 193 of the Framework adds that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). I consider that the retention of the modern barn would have an overall neutral visual effect on the setting of the listed barn and the setting of the GHCA. Additionally, I do not consider that the development as proposed would undermine the high quality or cohesive design that is present in the extant residential scheme. Therefore, as the proposed development would not cause harm to the significance of the designated heritage assets for the purposes of the Framework, there is no requirement for me to consider public benefits to be weighed in a balancing exercise.
14. In conclusion, I find that the proposal would not harm the setting of the GHCA and it would preserve or enhance the setting of the listed barn. Accordingly, the it would comply with the design, heritage, character and appearance aims of Policies DES4, HA1, HA4, HA7 of the Council's District Plan 2018 and the requirements of the Framework.

Other Matter

15. The appellant has referred to the sustainable credentials of reusing the existing modern barn instead of demolishing it. Whilst I have had regard to this matter, it has not been decisive in reaching my decision. I have considered this appeal

scheme on its own particular merits and concluded that it does not cause harm for the reasons set out above.

Conditions

16. The Guidance makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. However, the Council's suggested conditions and comments from the appellant have provided sufficient clarity surrounding the status of the conditions imposed on the latest planning permission.
17. I have therefore imposed all the conditions suggested by the Council that I consider relevant. I have also reviewed the conditions imposed on the original permission, taking account of the revisions suggested by the Council. In light of advice contained in Planning Practice Guidance, for clarity, and to ensure compliance with the Guidance, I have amended some of the Council's wording on the original conditions that I have included on this decision.
18. The variation of this condition under section 73 of the Town and Country Planning Act 1990 would result in a new planning permission being created. However, a time limit of commencement of 3 years is not required in this instance. A condition is required to ensure that the development is carried out in accordance with approved plans for certainty.
19. Whilst a schedule of materials has been agreed on a previous submission, there are no specific details before me, surrounding the new materials proposed for the modern barn. Therefore, a pre-commencement condition securing the submission of details of external materials to the Council is reasonable and necessary to ensure the facing materials of the proposed development is acceptable to the character and appearance of the appeal site and the heritage assets. Additionally, conditions for hard/soft landscaping, external lighting and the removal of some permitted development rights for gates, fences, walls or other means of enclosure are all reasonable and necessary in the visual amenities of the development and its effect of the heritage assets.
20. Conditions are reasonable and necessary surrounding the hours of construction works, contamination and the installation of obscure glazing on unit 2, in respect of existing neighbouring occupiers and future occupiers respectively. A drainage condition is reasonable and necessary in the interest of the surrounding environment. However, the surface water drainage condition as suggested by the Council does not satisfy the 6 tests set out in the Framework and the PPG.

Conclusion

21. For the reasons set out above I conclude that the appeal is allowed. I have granted a new permission with the disputed condition varied to allow the scheme to be undertaken in accordance with the design changes proposed in the Minor Material Amendment.

W Johnson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 211080DWG200; 211080DWG201; 211080DWG202; 211080DWG203; 211080DWG204; 211080DWG205 Rev A; 211080DWG206; 211080DWG207; 211080DWG208; 211080DWG210; 211080DWG212; 211080DWG213; 90016.02 Rev A; 90016.03 and 526.03A
- 2) The development shall take place in accordance with the written scheme of investigation submitted and agreed in writing with the Local Planning Authority under condition application reference: X/17/0281/CND. This condition will only be considered to be discharged when the planning authority has received and approved an archaeological report of all the required archaeological works, and if appropriate, a commitment to publication has been made.
- 3) Prior to the commencement of the works to the modern barn, details/samples of external materials to be used in the refurbishment of the modern barn shall first be submitted to and agreed in writing by the Local Planning Authority. The development shall then be constructed fully in accordance with the approved details/samples. The other elements of the development shall be constructed in accordance with the external materials of construction submitted to and agreed in writing by the Local Planning Authority, under condition application referenced: X/17/0281/CND.
- 4) All hard and soft landscape works shall be carried out in accordance with the approved details under condition application reference: X/17/0281/CND. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved, unless the Local Planning Authority gives its written consent to any variation.
- 5) Any external lighting for the development shall be carried out in accordance with the details submitted to and agreed in writing by the Local Planning Authority, under condition application reference: X/17/0281/CND. The lighting scheme shall be retained as such thereafter.
- 6) In connection with all site demolition, site preparation and construction works, no plant or machinery shall be operated on the premises before 0730hrs on Monday to Saturday, nor after 1830hrs on weekdays and 1300hrs on Saturdays, nor at any time on Sundays or bank holidays.
- 7) The land remediation of the site shall be carried out in accordance with the strategy for land contamination remediation submitted and agreed in writing by the Local Planning Authority, under condition application referenced: X/17/0281/CND. Prior to first occupation of the development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a long-term monitoring and maintenance plan) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.

8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), the erection or construction of gates, fences, walls or other means of enclosure as described in Schedule 2, Part 2, Class A of the Order shall not be undertaken without the prior written permission of the Local Planning Authority.

9) Prior to the installation of any surface water drainage scheme (SWDS), details shall first be submitted to and agreed in writing by the Local Planning Authority. The SWDS shall then be constructed fully in accordance with the approved details.

10) The development shall be carried out in accordance with the measures as set out in the ELMAW bat report dated August 2014 entitled 'Final Protected Species Constraints Assessment'.

11) The proposed window openings to the landing window serving unit 2 on west elevation shall be fitted with obscure glazing and shall be permanently retained in that condition.

End of Schedule.