



Appeal Decision

Site visit made on 22 February 2021

by Alison Partington BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th March 2021

Appeal Ref: APP/N2739/W/20/3263786

Windyridge Farm, Fenton Lane, Little Fenton, Sherburn in Elmet, LS25 6HA

- 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 D Taylor against the decision of Selby District Council.
 - The application Ref 2019/1334/S73, dated 18 December 2019, was refused by notice dated 3 June 2020.
 - The application sought planning permission for a 2 storey extension to rear elevation of existing house and conversion and extension of existing barn to provide living accommodation and garage without complying with a condition attached to planning permission Ref 8/60/30/PA, dated 25 June 2001.
 - The condition in dispute is No 4 which states that: "The accommodation hereby permitted (barn conversion) shall be occupied only as ancillary accommodation in connection with the occupation of the main house (Windyridge Farm) and shall at no time be severed from the main house by reason of being sold or let as a separate unit of accommodation".
 - The reason given for the condition is: "The establishment of a separate unit of accommodation would be unacceptable given the proximity of the livestock building and given the absence of independent access and private amenity space".
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Decision

1. The appeal is allowed and planning permission is granted for a 2 storey extension to rear elevation of existing house and conversion and extension of existing barn to provide living accommodation and garage at Windyridge Farm, Fenton Lane, Little Fenton, Sherburn in Elmet, LS25 6HA in accordance with application Ref 2019/1334/S73, dated 18 December 2019, without compliance with condition 4 previously imposed on planning permission Ref 8/60/30/PA, dated 25 June 2001 and subject to the following condition:
 - 1) The barn conversion shall at no time be sold separately from Windyridge Farm.

Procedural matter

2. The appellants have highlighted that the barn conversion was not carried out in accordance with the approved plans and that the pre-commencement condition attached to the application was not discharged. It is therefore suggested that the development was unlawful, albeit this was unintentional, but as it is now immune from enforcement action, it is an unrestricted development. This is disputed by the Council. Within the context of an appeal under section 78 of the Act it is not within my remit to formally determine whether or not the proposal requires planning permission. However, I shall consider the evidence as to whether permission is required so far as it is material to this appeal. If

the appellant wishes to ascertain whether the development is lawful, they may make an application under section 191 of the Act.

Background

3. Planning was granted in 2001 for the conversion of a barn at Windyridge Farm to provide living accommodation on the first floor and a garage on the ground floor, as well as for an extension to the main dwelling. The appellant has stated that the application was made for an independent residential unit but that when the permission was granted it was subject to a condition that the barn conversion should be ancillary accommodation to the main house and not sold or let as a separate unit of accommodation. The appeal seeks to remove this condition and replace it with one which whilst preventing the flat being sold as a separate unit of accommodation, would enable the appellants to rent it out.
4. Following the refusal of this application, a subsequent section 73 application has been approved which allows the barn conversion to be used as a holiday let or as "ancillary temporary annex accommodation". This application, in contrast, would allow the property to be rented as a person's permanent residence.

Main Issue

5. The main issue in the appeal is whether the condition is necessary to protect the living conditions of future occupiers with particular regard to odour, noise and dust.

Reasons

6. The appeal building is a 2 storey barn that has been converted to have residential accommodation on the upper floor and storage and garaging for the appellants on the ground floor. The barn is located around 25m from the main dwelling on the site and shares the same access from Fenton Lane. The site is located in the open countryside.
7. The first floor is a fully self-contained unit of accommodation with its own parking and a small garden. I understand that for many years the flat was used by the appellants parents as their home and is currently being used by some friends.
8. The building formed one of a number of outbuildings associated with the main property which are in varying states of repair and which are largely used for storage. These are located around a central area of hardstanding.
9. Although called a farm, the appellants have stated that it is not a working farm nor a registered agricultural holding. This accords with what I saw at my site visit. However, the appellants do keep a small number of horses and chickens. In addition, some buildings located to the rear of the site, furthest away from the dwellings, are used on an informal basis during the winter to provide shelter for some cattle belonging to a local farmer.
10. The barns used for this purpose are relatively self-contained with a separate yard area to the rear which is used for any movement of the animals. The size of the barns restricts the number of animals that can be kept in them, with approximately 18 cattle being present at the time of my visit.

11. The Council's concerns relate to the potential for noise, odour and dust nuisance arising from the agricultural use of the buildings and the impact these could have on people living in the flat. From my observations, the majority of the buildings located in the courtyard closest to the appeal building are not suitable for use by livestock due to their size and/or physical condition. As such, I am satisfied that only the buildings in use at the time of my visit are capable of being used for the keeping of animals.
12. Given that these barns are accessed from the rear yard rather than from the yard adjacent to the appeal building any dirt and dust associated with them is restricted to this area and so would not affect occupiers of the appeal building.
13. Neither a noise nor an odour assessment have been submitted by the appellant. However, as it is stated that the barns are only used for occasional winter shelter, for the majority of the year there is no potential for any noise, dust or odour to be created. In particular, during the summer months, when people are most likely to be sitting out or have windows open there would be no animals in the barns.
14. Whilst I appreciate that my site visit only represents a limited snapshot in time, I observed that even when in the same barn as the animals there was no unacceptable odour and during my visit there was no significant noise from the animals.
15. When and how these barns are used is in the control of the appellants, although I accept that the intentions of any future owners of the main dwelling cannot be known. However, this is not a working farm and the buildings are not suitable for intensive livestock rearing, so I am not persuaded that their use for housing animals is likely to be much more than at present. Moreover, as this is not a working farm / agricultural land holding the appellants have stated that there are no agricultural permitted development rights, so any new agricultural building would require planning permission. As such, I am satisfied that the use of the wider site would not give rise to unacceptable noise, dust, or odours for future occupiers of the flat.
16. In addition, as the proposed condition would only allow it to be rented and not sold, even if things were to change in the future, should tenants be unhappy with their living environment they could look to rent a property elsewhere.
17. As highlighted above, planning permission has been granted for the flat to be rented out as holiday accommodation. The appellant has indicated that as no restriction has been placed on the type of holiday let permitted it could be let to one person for several months as a second home. This would not be significantly different to renting it out to someone as their sole residence.
18. The Council have indicated that the condition suggested by the appellant which prevents the unit being sold separately to the main dwelling but that would allow it to be rented out, would fail the test of reasonableness. However, conditions are regularly used to control how dwellings may be occupied such as in affordable housing schemes. As a result, I see no reason why the condition would conflict with the tests for conditions set out in the *National Planning Policy Framework*.
19. Consequently, I consider that the disputed condition is not necessary in order to protect the living conditions of future occupiers with particular regard to

odour, noise and dust and so its imposition is not reasonable. Therefore, removing it would not conflict with Policy SP19(k) of the *Selby District Core Strategy Local Plan (adopted October 2013)* or Policy ENV1(1) of the *Selby District Local Plan (adopted February 2005)* which seek to ensure that development would not be adversely affected by noise pollution or have a detrimental impact on the amenity of adjoining occupiers.

Conclusion and Conditions

20. For the reasons set out above, I conclude the appeal should be allowed. I have therefore granted a new permission which removes the disputed condition and replaces it with that suggested by the appellant. This condition is necessary to ensure the existing planning unit would not be sub-divided but would enable the flat to be rented out as a separate unit of accommodation.
21. The *Planning Practice 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. As well as the disputed condition, the original application had three other conditions. As the development has already been implemented, I consider that none of these need to be reapplied. This accords with what both the Council and the appellant have indicated.

Alison Partington

INSPECTOR