



Appeal Decision

Site visit made on 27 July 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2021

Appeal Ref: APP/P0240/C/20/3264383

Land at Flaxbourne Farm, Salford Road, Aspley Guise, Milton Keynes MK17 8HZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Geoffrey Barrett against an enforcement notice issued by Central Bedfordshire Council.
- The enforcement notice was issued on 11 November 2020.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the building to use as self-contained residential flats and the related external alterations to the building.
- The requirements of the notice are:
 1. Cease the residential use of the building
 2. Remove the bathrooms and kitchens
 3. Remove the dormer windows from the building.
- The period for compliance with the requirements is 8 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. Since the appeal has been made the Council has adopted the Central Bedfordshire Local Plan 2015 -2035 (LP). The LP replaces the Core Strategy and Development Management Policies DPD, 2009. The Council has subsequently advised which LP policies are relevant to this appeal and the appellant has been provided with an opportunity to comment on them, so has not been prejudiced.
3. In addition, a revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. The main parties were given the opportunity to comment on any relevant implications for the appeal and have not therefore been prejudiced. I have had regard to the responses and the Framework in reaching my decision.

Appeal on ground (a), deemed planning permission

Main Issues

4. The main issues in this case are:

- Whether or not the development provides for acceptable living conditions for existing and future residents, with particular regard to noise, contamination, air quality, light and external amenity space;
- Whether or not the appeal site in this location is suitable in principle for residential accommodation, with particular regard to local and national planning policy; and
- The effect on the character and appearance of the area.

Reasons

Living conditions

5. The appeal premises comprise a former agricultural building. However, prior to its unauthorised conversion to flats, the building had been in use, with planning permission, for the storage of building materials. It is situated at Flaxbourne Farm, where the original farmhouse is now in use as flats and the former farm buildings/yard in commercial use. From the evidence before me and my own observations on my site visit, the former farm buildings are utilised by a landscaping business, including offices, a car recovery business, car repair/ valeting use and storage. In addition, Flaxbourne Gardens which adjoin the former farmhouse operates as a wedding venue.
6. Taking into account the location of the building within a commercial setting, including a biomass boiler located adjacent to the appeal site, the Council are concerned about the living conditions for existing and future occupiers of the flats. In response to that concern, and as part of the appeal submissions, noise, air quality and soil sampling reports have been prepared and submitted on behalf of the appellant.
7. The conclusions of the air quality report and soil analysis are not disputed by the Council, and from the evidence I have before me I see no reason to disagree with their findings. In addition, I was able to observe the biomass boiler in operation during my site visit. The height of the stack is well above the first floor windows of the flats, and at the time of my visit, I did not witness any acrid smells, smoke emissions or noise from the boiler. The noise report which accompanied the appeal submission¹, and was undertaken to assess the noise impact of the biomass boiler on the flats, concluded that there would be a low impact on the properties during both day and night periods. I have had regard to the Council's concern that the noise assessment was undertaken on a single Friday and Saturday in the winter and therefore does not take into account the likely demands of the boiler throughout a normal working week and ignores the likelihood that in the summer months residents are more likely to have their windows open. However, I have not been provided with any substantive evidence that would demonstrate to me that the demands of the boiler would be greater during the week. Furthermore, the assessment assumed that the windows would be slightly open and it seems to me that in

¹ Noise Assessment report, Biomass Boiler Flaxbourne Farm, Prepared by Anglia Consultants, January 2021.

the summer months the demands of the boiler would be less. From the evidence before me I am satisfied that, when in operation, the impact of the biomass boiler would not result in significant and harmful effects on the living conditions of neighbouring residents by reason of noise and air quality.

8. However, the flats occupy a building situated within a predominantly commercial environment. Whilst I appreciate that the converted building is adjacent to the former farmhouse, which retains a residential use, the outlook from the new flats and their location is in an area generally characterised and utilised by commercial enterprises. Their habitable room windows look towards and abut the site's internal access road. That road services the landscaping business and is also utilised for deliveries/servicing of the wedding venue. The flats also directly overlook the landscape business offices and the wood piles used to fire the biomass boiler. I have no doubt that the occupiers of the flats suffer from noise and disturbance from the use of the access road by employees, visitors and delivery vehicles associated with the neighbouring commercial uses, as well from the activities associated with stoking of the biomass boiler. In addition, I noted on my site visit, which took place in the middle of a hot and sunny day, when the windows of the flats were open, that operations associated with the car valeting/ repair and vehicle recovery businesses were clearly audible and disturbing.
9. Therefore, although the biomass boiler itself may not have a harmful impact on the living conditions of existing and future occupiers through air quality and noise impacts, I agree with the Council that the activities associated with the neighbouring commercial activities, which are taking place close too and directly overlooked by the flat's habitable accommodation, does not provide for suitable living conditions for either existing or future occupiers. The introduction of residential accommodation into a location which is predominantly commercial in character, does not to my mind result in a form of development that functions well. It conflicts with the Framework's aim of ensuring that schemes provide acceptable living conditions (paragraph 130). In addition, the development conflicts with Policy HQ1 of the LP which seeks to ensure that there is not an unacceptable adverse impact on existing or permitted uses, including impacts on amenity, privacy, noise or air quality.
10. The only bedroom within Flat No 3 does not have a window or access to natural light. Consequently, the room is dark, without ventilation and its occupiers have no outlook from it. The appellant recognises that such accommodation does not provide for suitable living conditions but suggests that they could remove the internal wall which separates the bedroom and living room and create a studio flat. Whilst I appreciate that it might be possible to reconfigure the layout of the flat to provide open plan accommodation, those works would not overcome the harm I have identified to its occupiers from its commercial setting.
11. In addition, the flats have no private external amenity space available to them. I have taken into account the appellant's concern that the enforcement notice relates solely to the building and does not include adjoining land which is available for their use. However, there was no evidence from the previous planning application for this development that there would be land available for such use, and the appellant has not provided any mechanism by which this space could be secured for the continued use of all the occupants of the flats. From my observations on my site visit, the space identified in the appeal

submission is not private or enclosed. It is also a dark space which is heavily planted. Only one of the flats has direct access to the space and views over it. Therefore, even if that space could be secured it is not a suitable external amenity space and would conflict with the Council's adopted Design Guide 2014, which requires each flat to have access to a private open space.

12. For the reasons given above, I conclude that the use of the building as self-contained flats does not provide for acceptable living conditions for existing and future residents. There is conflict with the Framework and development plan policies set out above, including the Council's adopted Design Guide.

Suitable location

13. The appeal site is located outside of the settlement boundary for Aspley Guise. However, it is not in an isolated location, and is within walking and cycling distance of Aspley Guise Station. Moreover, both Policy DC1 of the LP and paragraph 80 of the Framework make provision for new homes in the countryside where they would involve the re-use of redundant or disused buildings and enhance its immediate setting.
14. It is understood that the building was last in use for the storage of builder's materials, and that the conversion has involved cladding the building in bricks and providing it with a new roof including dormer windows. Taking into account the building's previous use and condition, the works undertaken to convert the building have resulted in an enhancement to its overall setting where it lies adjacent to existing residential accommodation and at the entrance to Flaxbourne Farm.
15. I conclude that the appeal site in this location is suitable in principle for residential accommodation, having regard to local and national planning policy. There is no conflict with paragraph 80 of the Framework or Policy DC1 of the LP.

Character and Appearance

16. Flaxbourne Farm comprises an established collection of predominantly modern portal frame buildings located in a yard adjacent to the former farmhouse with its expansive landscaped gardens. The complex takes access from Salford Road, but is not visible from it or from within its wider countryside setting.
17. The alterations that have taken place to convert the building to residential use respond to the character and appearance of the original farmhouse, both in terms of the materials used to clad it, and the provision of dormer windows within the roof. Whilst I appreciate that the alterations have given the building a more domestic appearance, that appearance is not harmful to the overall visual qualities of the area or its immediate setting.
18. I conclude that the development does not have a harmful effect on the character or appearance of the area. There is no conflict with Policy HQ1 the LP which, amongst other things, seeks to ensure that all development relates well to the existing local surroundings in terms of materials and appearance. I also find no conflict with the design aims of the Framework.

Conclusion

19. Although I have found that the development is suitable in principle in this location and would not have a harmful effect on the character and appearance of the area, I have found that it does not provide for acceptable living conditions for existing and future residents. For the reasons given above there is conflict with the development plan when read as a whole and there are no material considerations or conditions that would outweigh or overcome the harm that I have identified. I conclude that the appeal on ground (a) should not succeed.

Appeal on ground (f)

20. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
21. Section 173 of the Town and Country Planning Act 1990 (as amended) (the Act) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose of the notice is to remedy the breach of planning control.
22. The appellant considers that the requirements are excessive, and in particular that there would be no public benefit in removing the bathrooms, kitchens or dormers.
23. Section 173 (5) of the Act gives the power to require the alteration of buildings for the purposes of remedying the breach. A notice directed at a material change of use may require the removal of works integral to and solely for the purposes of facilitating the unauthorised use, even if those works in their own right might not constitute development, so that the land is restored to its condition before the change of use took place.
24. The installation of the kitchens, bathrooms and the dormer windows facilitated the residential use of the building and were part and parcel of the change of use. There is no evidence that these were installed for a different purpose. Consequently, I am satisfied that their removal does not exceed what is necessary to remedy the breach. The breach can only be achieved by the cessation of the use and removal of the works that have facilitated that use. There are no lesser steps that would achieve the statutory purpose behind the notice.
25. Therefore, the appeal on ground (f) must fail.

Appeal on ground (g)

26. The issue is whether the compliance period of eight months is reasonable. The appellant considers that a period of twelve months is required to allow a more sustainable method for the removal of the materials.
27. I appreciate the appellant's desire to dispose of the materials used in the conversion sustainably and to recoup some of the costs. However, it seems to me that eight months would provide sufficient time for the premises to be vacated and the required works undertaken. Furthermore, I am mindful that planning permission has been withheld for reasons relating to the

unsatisfactory living conditions for existing residents. It is therefore expedient that those unsatisfactory conditions do not prevail for longer than necessary.

28. For these reasons given above I consider that the compliance period of eight months is reasonable and the appeal on ground (g) fails.

Human Rights

29. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights, and I recognise that dismissal of the appeal would interfere with the occupier's rights under Article 8 and the appellant's rights under Article 1 of the First Protocol. However, given the harm identified in the reasons for issuing the notice, the action pursues the legitimate aim of regulating land use in the public interest and is necessary and proportionate to the situation.

Conclusions

30. For the reasons given above, and having taken into account all other matters raised, I conclude that the appeal should not succeed.
31. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under Section 177 (5) of the 1990 Act.

Elizabeth Pleasant

INSPECTOR