

Appeal Decision

Site visit made on 14 September 2021

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th October 2021

Appeal Ref: APP/H0738/W/21/3279066

Westgate Farm, A67 from Urlay Nook to Airport, Eaglescliffe DL2 1HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr N Hewitson against the decision of Stockton-on-Tees Borough Council.
- The application Ref 21/00384/FUL, dated 11 February 2021, was approved on 25 May 2021 and planning permission was granted subject to conditions.
- The development permitted is the erection of replacement grain and machinery store.
- The conditions in dispute are Nos 3 and 5 which state:

Condition 3

Should the building, hereby approved, use for the purpose of agriculture cease, the buildings should be removed from the Site and the land be restored to a condition as to be agreed in writing by the Local Planning Authority within a period of 12 months from cessation of the use.

Condition 5

Notwithstanding the submitted details there shall be no installation of plant or machinery.

- The reasons given for the conditions are:

Condition 3

Reason: In the interest of the visual amenity of the open countryside.

Condition 5

Reason: In the interest of safeguarding the amenity of the occupiers of the adjacent residential dwellings.

Decision

1. The appeal is allowed and the planning permission Ref P/4455/18 for the erection of replacement grain and machinery store at Westgate Farm, A67 from Urlay Nook to Airport, Eaglescliffe DL2 1HP granted on 25 May 2021 by the Stockton-on-Tees Borough Council, is varied by deleting condition No. 3.

Background and Main Issues

2. Planning permission was granted¹, subject to conditions, in May 2021 for the erection of a replacement grain and machinery store building within the appeal site. That approval was subject to a number of conditions, of which two are the subject of this appeal.
3. The main issues therefore are whether or not the disputed conditions are necessary reasonable having regard to:
 - The character and appearance of the surrounding area; and
 - The living conditions of occupiers of nearby residential properties.

¹ LPA Ref No: 21/00384/FUL

Reasons

Character and appearance

4. The imposition of condition 3, the Council's decision notice states, was in the interests of the visual amenity of the open countryside. Although the Council have subsequently pointed out that the intention to impose such a condition was considered in the section on the 'Principle of Development' there is no dispute between the parties that the proposed building is not reasonably necessary for the purposes of agriculture. Nor did the Council, in the section of its officer report which considered character and visual amenity, feel that the scale, design, materials or appearance of the proposed building were inappropriate either for its intended purpose or within the context of its immediate surroundings or wider agrarian context.
5. Stockton-on-Tees Local Plan policy SD4 sets out the Council's Economic Growth Strategy and, at SD4(18) considers the matter of appropriate economic growth development within the countryside, setting out a range of circumstances in which economic growth development within the countryside will be supported if it is of an appropriate scale and does not harm the character and appearance of the countryside. It is agreed between the parties that the proposed building would be of an appropriate scale and would not harm the character or appearance of the countryside. From my observations of the site, nearby buildings and the surrounding area, I do not disagree.
6. The Council state that an assessment of visual amenity is just one test of LP policy SD4(18) and that consideration must also be given, inter alia, to the principle of development within the open countryside. However, LP policy SD4(18) is broadly supportive of a range of open countryside development types. Whilst it is agreed that the proposed building is, in this instance, predicated on its need to support the existing agricultural enterprise, so the agreed absence of harm to visual amenity, character or appearance is such that the imperative for its removal, should agricultural uses cease, would be much reduced.
7. I have not been presented with any evidence which would lead me to conclude that the on-going operation of the agricultural undertaking is parlous, and so I have no reason to believe that agricultural use is likely to cease. However, LP policy SD4(18) does not preclude development in the open countryside for purposes beyond only agricultural or forestry undertakings. The appellant is therefore correct to suggest that, should this scenario arise, the provisions of the development plan would apply where applicable or permission would be forthcoming by way of such national permitted development rights² as may exist at the time.
8. It may be that the Order³ requires the removal of a building granted under its provisions to be removed eventually should its agricultural use cease, but it is not under those provisions that the appellant seeks this matter to be determined. I have no evidence before me to suggest that the prevailing agricultural use may, or is likely to, cease or that any harm to landscape or visual amenity, character or appearance would arise through the construction

² Eg; Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)

³ The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) Part 6 Class A(5)

or use of the building in question. I am also satisfied that subsequent provisions for either obtaining planning permission or from national permitted development rights, should the use ultimately cease, provide sufficient scope in the case of the appeal site, building and surrounding area to deal with such matters.

9. The removal of disputed condition 3 would not result in harm to the visual amenity of the open countryside, that being the Council's stated reason for the condition, nor do I consider that it is necessary in relation to the principle of the development proposed. Thus, for the reasons I have set out, the removal of disputed condition 3 would not prejudice the aims, objectives or provisions of LP policy SD4 and I conclude that it fails the test of reasonableness and necessity set out by the Framework and Planning Practice Guidance.

Living conditions

10. The siting of the proposed building is such that it is closely located to the rear of the neighbouring residential barn conversion. Although indicated to be within the appellant's ownership, and occupied by the appellant's son who also works on the farm, I have no evidence before me to indicate that it could not be occupied independently of the main house, or the operation of the agricultural enterprise.
11. There is a further outbuilding at the rear of the neighbouring barn conversion which provides a degree of screening, both in visual terms and also in terms of being a reasonably substantial intervening structure capable of suppressing or mitigating the transmission of noise between it and the proposed building. However, without the control afforded by the disputed condition 5, the installation and operation of such equipment as, for example, a grain dryer without further specific mitigation would potentially be harmful to the living conditions of occupiers of that property, and potentially also that of the main house.
12. Whilst I have noted the appellant's reference to the presence of the nearby airport and its effect on the local noise environment, in my experience grain dryers are more likely to operate for a longer and more continuous period than aeroplanes taking off and landing intermittently. I am also satisfied that the disputed condition would not unduly hamper the use of the proposed building as a grain or machinery store, or indeed as a workshop as suggested by the appellant. Nor do the Council seek to state that it would, merely that the purpose of the condition is both reasonable and necessary to avoid unfettered or unrestricted introduction of plant or machinery which could cause harm to living conditions. Thus, with respect to disputed condition 5, I find that the condition is both reasonable and necessary.

Conclusion

13. I conclude that with regard to condition No. 3, its removal would not result in harm to the visual amenity of the open countryside, that being the Council's stated reason for the condition, nor do I consider that it is necessary in relation to the principle of the development proposed. Thus, for the reasons I have set out, the removal of disputed condition 3 would not prejudice the aims, objectives or provisions of LP policy SD4 and I conclude that it fails the test of reasonableness and necessity set out by the Framework and Planning Practice Guidance.

14. With regard to that condition No. 5 is reasonable and necessary in the interests of living conditions and residential amenity in respect of occupiers of properties situated close to the building in question, and is consistent with the requirements of LP policies EG7, SD1, SD4, SD5 and SD8. Condition No. 5 should therefore be retained in its present form.
15. Thus, for the reasons set out, I allow the appeal and vary the planning permission Ref: Ref P/4455/18 for the erection of replacement grain and machinery store at Westgate Farm, A67 from Urray Nook to Airport, Eaglescliffe DL2 1HP granted on 25 May 2021 by Stockton-on-Tees Borough Council by deleting condition No. 3 but retaining condition No. 5, of that permission. My decision alters the existing permission and should be read in conjunction with it.

G Robbie

INSPECTOR