



Appeal Decision

Site visit made on 18 October 2021

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2021

Appeal Ref: APP/A0665/W/21/3275947

Outbuildings at Monument Place, Stannage Lane, Churton By Aldford, Chester CH3 6LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr E Trevor-Barnston against the decision of Cheshire West and Chester Council.
 - The application Ref 20/02380/FUL, dated 8 July 2020, was refused by notice dated 7 April 2021.
 - The development proposed is building works to facilitate a C1 use as granted under 20/00216/PDR.
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Decision

1. The appeal is allowed and planning permission is granted for building works to facilitate a C1 use as granted under Ref 20/00216/PDR at outbuildings at Monument Place, Stannage Lane, Churton By Aldford, Chester CH3 6LE in accordance with the terms of the application Ref 20/02380/FUL, dated 8 July 2020, subject to the attached schedule of conditions.

Application for Costs

2. An application for costs was made by the appellant against the Council. This is the subject of a separate Decision.

Background

3. The Council recently granted prior approval under Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) to change the use of the appeal building to Class C1¹.
4. GPDO Class R does not permit any operational development associated with the change of use. Thus, a subsequent planning application is required for associated operational development to enable the change of use of the building granted by Class R (defined in paragraph R.3 (4) as buildings or other operations which are 'reasonably necessary'). Policies in the development plan are relevant to the subsequent planning application but only in so far as they are relevant to matters relating to the proposed operational development required to facilitate the change of use.

¹ 20/00216/PDR

5. The original submission included two barns. The scheme was amended and 'barn 2' has been removed from the scheme. The revised scheme only seeks building works to 'barn 1'. The Council determined the application on that basis, and I have determined the appeal accordingly. I have therefore set aside any implications in terms of 'barn 2' in my determination of this appeal.

Main Issues

6. The main issues are:

- whether the proposed associated operational development is reasonably necessary; and
- whether the site represents an appropriate location for the proposed development, having regard to local planning policy.

Reasons

Associated operational development

7. The appeal building is a rectangular, steel framed barn which is clad in profiled metal sheeting with a concrete slab floor. The barn benefits from prior approval, by virtue of Class R, for a change of use to C1 which is a significant material consideration. Given the condition of the building, significant operational development would be required in order for the building to function as a C1 use.
8. The Council state that in line with appeal decisions elsewhere², they could not assess whether the degree of building works required to enable the proposed change of use was acceptable with reference to the original prior approval application. In contrast to Class Q of the GPDO, there is a lack of official guidance and legal judgements in connection with the interpretation of Class R.
9. Nonetheless, Class R sets out that "associated operational development" means building or other operations in relation to the same building or land which are reasonably necessary to use the building or land for the use proposed under Class R. Paragraph R.3 (3) also refers to associated operation development in terms of the time limit for commencement of the development.
10. The level of work allowed under Class R is unspecified. Nevertheless, it would be reasonable to take the position that if subsequent works would have the effect of demolishing and rebuilding the building for which prior approval was gained then that would neutralise the existence of the development permitted by Class R.
11. A Structural Report relating to the appeal site concludes that the overall structure of the building appears to be in reasonable condition and suitable for re-use subject to a full structural analysis and investigation being carried out. It is important to note that the report relates to a previous planning application³ which sought to convert the building to a dwelling. That planning application was subject to an appeal⁴.

² APP/D0840/W/20/3254577 and APP/P1045/X/19/3223796

³ LPA reference 19/00422/FUL

⁴ APP/A0665/W/19/3241408

12. The previous Inspector found that it was not possible to be sure that the barn was of sufficiently permanent construction to sustain the proposed conversion to habitable accommodation. That case was assessed against the fourth bullet point of Policy STRAT 9 of the Cheshire West and Chester Council Local Plan: Part One: Strategic Policies (2015) (LPPO). The assessment was primarily whether the building was of a permanent construction and could be reused without major reconstruction. In contrast, given the Class R approval, the assessment in the appeal case before me is whether the building works are reasonably necessary.
13. Since the Structural Report, the appellant has produced a Justification and Building Methodology Statement. This statement sets out the building works required. Parts of the existing building are to be retained including, the steel frame, ground slab and footings. There is no substantive evidence before me to demonstrate that the building works cannot be implemented as described in the statement.
14. The provision of a replacement cladding system and roof covering would be reasonably necessary given their current condition. Furthermore, to provide an acceptable standard of accommodation, the provision of windows, doors and a new slab poured on top of the existing slab are also reasonably necessary. Similarly, the provision of access and parking are reasonably necessary to enable the proposed use to function.
15. The proposed works are undoubtedly extensive but given the condition of the existing building they are not excessive in order to enable the change of use of the building. There is no robust evidence before me to demonstrate that the parts of the building to be maintained are not capable of being retained and used. It is clear that the appellant's intention is to maintain the core structure of the existing building and the proposed works are not superfluous or consciously designed to replace already sound elements. Thus, the scheme does not propose to entirely demolish the existing building and erect a new building.
16. I accept that the full extent of the works is not certain, nor can it ever be (as construction inevitably involves encountering and resolving previously unidentified issues). Nevertheless, summarising my reasoning above, the evidence before me indicates that structural elements of the building would remain, be reused, and that proposed works are reasonably necessary to facilitate the change of use (rather than resulting in an intrinsically new building). I would also note that, if it was found that the proposed building works go beyond those set out by the appellant in practice, and therefore would have the effect of neutralising the change of use as set out in paragraph 10 of this decision, then that would be a matter to be addressed between the main parties (potentially through a further application or considering enforcement action).
17. My attention has been drawn to legal judgements⁵ as well as Class Q of the GPDO, including the Hibbitt case⁶ and the Planning Practice Guidance (PPG). Whilst the scheme may go beyond that allowed under Class Q, the wording of the GPDO differs between Class Q and Class R. There is nothing to suggest that those circumstances also apply to Class R, notwithstanding the use of similar

⁵ Jennings Motors Ltd v SSE & New Forest DC [1982] 2 WLR 131; [1982] JPL 181

⁶ Hibbitt v SSCLG [2016] EWHC 2853

wording. Thus, Class Q, along with the associated legal judgements and PPG, do not alter my findings above. Whilst arrived at independently, I note my logic in that respect is consistent with that of the Inspector who dealt with another appeal brought to my attention by the appellant⁷.

18. For the reasons given above, the proposed associated operational development is reasonably necessary so that the building and the appeal site can be used for the use granted under Class R.

Location

19. The appeal site is located within the open countryside. Nonetheless, the principle of changing the use of the building has been established through the Class R approval. Therefore, given my findings in the previous section, only policies relating to the proposed operational development are relevant rather than policies relating to the principle of development.
20. Policy STRAT9 of the LPPO sets out circumstances where development in the countryside may be permitted and the development must be of an appropriate scale and design to not harm the character of the countryside. Policy ECON 3 of the LPPO relates to the visitor economy. It states that smaller scale development will preferably be located in urban areas, key service centres or local service centres or in the countryside where proposals are of a suitable scale, type and protect the character of the countryside and sets out development will be assessed against a listed criteria.
21. Policy DM 9 of the Cheshire West and Chester Council Local Plan: Part Two: Land Allocations and Detailed Policies (2019) (LPPT) states that proposals for the development of visitor accommodation will be supported where they meet the requirements of Policy ECON 3. Furthermore, in the countryside, proposals for all types of visitor accommodation should meet the requirements of STRAT 9 and utilise existing buildings.
22. These policies relate to the principal of whether a certain type of development proposal is of an appropriate scale, design and type for its location. The local planning policies relating to the location of the appeal site are therefore not directly relevant to the appeal scheme which is an application for operational development only with the principle of the use been established by legislation.
23. The Council's delegated report raises concerns over effects on character and appearance. Notwithstanding that the Council's decision notice does not expressly refer to adverse landscape effects, ensuring that all development is suitably located and integrates appropriately with its surroundings are dual aims underlying policies ECON3, SRAT9 and DM9. Through that lens, I have addressed acceptability of location above (principally via the previous prior approval consent).
24. In terms of character and appearance, I accept that the proposed building works would change the nature of the barn as it stands. However, the overall form, scale and massing of the building would be maintained. Materials sensitive to its agricultural origins and surrounding could legitimately be secured by condition. Any alternative use here would inherently result in some change to local character, and therefore acceptable to some extent given the provisions of legislation. Moreover, the site is generally well screened, not

⁷ APP/F1610/W/17/3188502

prominent in the topography, and the landscape here is not formally protected on account of its character. Some controls, such as in respect of external lighting, could be secured via appropriately worded conditions.

25. Accordingly, given my findings in the first main issue, the location of the site would be appropriate for the proposed development, having regard to local planning policy. Consequently, the scheme would not conflict with Policies STRAT9 and ECON3 of the LPPO and DM9 of the LPPT. These policies seek, amongst other matters, to protect the intrinsic character and beauty of the countryside and support new tourism facilities where appropriate. The proposal would also not conflict with the National Planning Policy Framework (the 'Framework') which recognises the intrinsic character and beauty of the countryside and states planning decisions should enable sustainable rural tourism and leisure developments which respect the character of the countryside.
26. Even if I found in the previous section that the development comprised a new building and therefore Class R was neutralised, Policy STRAT9 states that within the countryside replacement buildings will be permitted. It does not elaborate on the requirements for a replacement building, for example the need to be structurally sound. Thus, purely in terms of location and character, even if the proposed works before me go beyond that which is 'reasonably necessary' within the terms of Class R of the GPDO, a conflict with policy STRAT9 would not inherently arise. Again, it is important to note that when comparing findings of the previous appeal decision to the proposed development there are fundamental differences which have been discussed in the previous section.

Other matters

27. The proposed internal layout of the building is similar to a C3 use. In this regard the appellant has drawn my attention to an appeal decision⁸. I am also aware that there have been previous applications for a dwelling on the site. Nonetheless, the appellant has clearly applied for a C1 use. Should the building be used for a different use then this could result in enforcement action and a new planning permission would be required to change the use of the building from C1 to C3. Local residents have suggested conditions to prevent the building being used as a permanent residential dwelling and this is dealt with in the following section. Similarly, the suggested condition in respect of cycle storage is considered in the next section (as are comments relating to drainage, lighting, protected species and hedgerows which can be controlled by planning conditions).
28. Local residents have raised concerns with regards to highway safety, including traffic, access and the boundary wall at 1 The Knowl, noise, flood risk and contamination. The proposed development includes on-site parking and proposes to use the existing overgrown access. These considerations were assessed within the previous Class R application and are not matters which relate to the associated operational development. Based on the evidence submitted, there has been no significant change in circumstances concerning those matters since the prior approval application was granted. Thus, the scheme is acceptable in terms of highway safety, noise, flood risk and contamination. Furthermore, any damage resulting from construction, if that

⁸ APP/Q0505/C/18/3193261

were to occur, is essentially a private matter and there is no evidence that the proposal would intrinsically result in adverse effects in this regard subject to an appropriate approach to construction.

29. I understand the concerns about establishing a precedent. However, each development proposal must be determined on its own merits. As I have found this scheme to be acceptable it does not follow that further schemes would be permitted.
30. In terms of building regulations, I have found that the development is acceptable in planning terms and my decision does not obviate the need to comply with building regulations.
31. Residents are concerned that the scheme would impact public footpaths. Based on the evidence submitted, I see no reason to reach a different view to the Council in that public footpaths would be unaffected by the development.
32. Local residents have also suggested that the Council should enforce the Building Act (1984) which empowers Council's to deal with a building or structure which is in a dangerous condition. There is no substantive evidence before me to demonstrate that the building is a potential danger, and the evidence above regarding its structural condition points in a different direction.
33. I note the Council's delegated report explains that the site falls some 250 metres away from the Churton Conservation Area (CCA). That is a significant separation distance, and I saw on my site visit how the site contributes little to the surroundings in which the CCA is experienced. Consequently, and as the proposal would integrate appropriately with local character as set out above, the scheme would have a neutral effect on the setting of the CCA.

Conditions

34. I have assessed the Council's suggested conditions in light of guidance found in the Planning Practice Guidance and where necessary the wording has been amended for clarity and precision.
35. It is necessary to attach a condition specifying the approved plans as this provides certainty. Conditions relating to the external materials and boundary treatment are also necessary in order to preserve the character and appearance of the area.
36. The Ecological Assessment highlights that there is evidence of a badger outlier sett beneath the floor of the building with badgers accessing the sett via three entrances at the buildings south facing wall. Thus, as badgers are a protected species, it is reasonable and necessary to attach a condition relating to the recommendations set out in the report, relating to badgers, and that a badger disturbance licence is required. In addition, given the findings of the Ecological Assessment it is also reasonable and necessary to attach a condition relating to bird and bat boxes to enhance the biodiversity value of the site and a landscape plan.
37. A condition regarding external lighting is also necessary given the open countryside location and to minimise any impacts on bats. In addition, to ensure satisfactory drainage of the site a condition relating to foul water, surface water and land drainage is necessary. This is a pre-commencement condition agreed by the appellant.

38. Conditions restricting the use of the building, occupancy of the building and also a management condition to require the owner of the property to maintain a register of those who reside in the holiday let have been suggested. I have considered the legal judgements⁹ highlighted in this regard. Notwithstanding the provisions of Class R and the standard condition contained within the GPDO, to secure the use of the scheme as proposed, it is legitimate and necessary to attach a condition restricting the building's use. This is to ensure that the building is not occupied as a person's sole or main place of residence.
39. It is not necessary to include the highway access condition as this was attached to the Class R approval and it is not necessary to duplicate the condition. For the same reason, as transport and highways impacts are prior approval matters, it is unnecessary to secure via condition the provision of cycle storage.
40. The appellant has suggested a condition requiring details to be submitted and agreed to ensure that the works undertaken remain within the confines of what is 'reasonably necessary' and in accordance with the schedule of works. Such a condition is not necessary and, as highlighted by the Council, would not meet the six tests¹⁰.

Conclusion

41. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and having regard to all other matters raised, I conclude that the appeal is allowed subject to the attached conditions.

L M Wilson

INSPECTOR

⁹ Including *Winchester CC v SSCLG* [2013] EWHC 101 (Admin) and [2015] EWCA Civ 563, *n I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107 and *Cotswold Grange Country Park LLP v SSCLG* [2014] EWHC 1138 (Admin)

¹⁰ Paragraph 56 of the Framework

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 462-PL-01 Rev A (Site Location and Site Layout Plan) and 462-PL-04 Rev A (Barn One, Proposed plans and elevations).
- 3) Prior to the first use of each material listed below, details or samples of the materials to be used in the construction of external surfaces of the development hereby permitted shall be submitted to and approved in writing by the local planning authority.
 - Weatherboarding;
 - Roofing;
 - Windows and doors;
 - Heads, cills and set backs;
 - Eaves, verge and ridge; and
 - Rainwater goods.The development shall be carried out in accordance with the approved details and samples.
- 4) The development hereby permitted shall not be occupied until details of the boundary treatment have been submitted to and approved in writing by the local planning authority. The boundary treatment shall be carried out in accordance with the approved details before the first occupation of the building and retained thereafter.
- 5) The development shall be carried out in accordance with the recommendations in section 4.2.3 of the Ecological Assessment Report (produced by Kingdom Ecology, dated 29 January 2019) in relation to the requirement for a badger disturbance licence.
- 6) The development shall be carried out in accordance with the recommendations in section 4.3 of the Ecological Assessment Report (produced by Kingdom Ecology, dated 29 January 2019) in relation to bird and bat boxes prior to the first occupation of the building and retained thereafter.
- 7) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before the first occupation of the building. The approved external lighting shall be carried out in accordance with the approved details before the first occupation of the building and thereafter retained.
- 8) Prior to the removal of vegetation, a landscape plan, which shall include details of the native habitat provision and retention with detailed species specification, including replacement of dense vegetation suitable for nesting birds to compensate for lost scrub habitat shall be submitted to and approved in writing by the local planning authority. The approved details shall be carried out in accordance with the approved details in the first available planting season following the occupation of the building or the completion of the development, whichever is the sooner, and thereafter retained.

- 9) The hereby approved development shall not commence until a drainage scheme for the site, showing details of how foul water, surface water and land drainage will be dealt with, has been submitted to and approved in writing by the local planning authority. No part of the development shall be brought into use until the approved drainage scheme has been constructed and completed. Once completed, the approved drainage scheme shall thereafter be maintained in accordance with the approved details.
- 10) The hereby approved development shall be for a hotel only (currently Use Class C1) and shall not be occupied as a person's sole or main place of residence. It shall not be occupied for a period exceeding 6 weeks by the same household. The owners/operators shall maintain an up-to-date register of the names and main home addresses of all occupiers of the hotel and shall make this register available at all reasonable times to the local planning authority on written request.