



Appeal Decision

Site visit made on 23 November 2021

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2022

Appeal Ref: APP/G2713/W/21/3280837

Sowerby Under Cotcliffe, Northallerton DL6 3RE

- 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 and Mrs Atkinson against the decision of Hambleton District Council.
 - The application Ref 20/01294/FUL, dated 19 June 2020, was refused by notice dated 17 February 2021.
 - The development proposed is described as 'conversion of agricultural buildings into 3 residential dwellings with associated landscaping, including gravel drive, access lighting, planting, parking, bin storage. Unit 1 - 5 bedrooms – 249m²; Unit 2 - 3 bedrooms – 130m²; Unit 3 - 2 bedrooms – 110m²'.
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Decision

1. The appeal is allowed and planning permission is granted for alterations and extensions of agricultural buildings (Units 1, 2 & 3) to form 3no residential dwellings, includes link extension to unit 2 (linking to existing building) and staircase to create 1st floor accommodation and side extension to east elevation of unit 3 and associated landscaping, driveway with access lighting, associated parking and bin storage at Sowerby Under Cotcliffe, Northallerton DL6 3RE in accordance with the terms of the application, Ref 20/01294/FUL, dated 19 June 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development used in the banner heading is taken from the application form. The description used by the Council on its decision notice and on the appeal form is 'revised application for alterations and extensions of agricultural buildings (Units 1, 2 & 3) to form 3no residential dwellings, includes link extension to unit 2 (linking to existing building) and staircase to create 1st floor accommodation and side extension to east elevation of unit 3 and associated landscaping, driveway with access lighting, associated parking and bin storage'. This more accurately describes the proposed development, and it is the description that I have used in my decision but have omitted reference to 'revised application for' as that is not a description of the development.

Main Issues

3. The main issues are:
 - whether the proposed development would provide acceptable living conditions for future occupiers with regard to noise, odour and flies; and

- the effect of the proposed development on the operation of Chester House Farm.

Reasons

4. The appeal site is located within a small group of buildings surrounded by open countryside. Chester House Farm (the Farm), a pig farm, is approximately 70m to the north west. To the east and south are residential properties. Agricultural fields lie to the west. The site comprises a number of redundant farm buildings. The proposed development would involve the alteration and extension of these into three dwellings with associated landscaping and parking and a new drive to provide access from the highway.

Living Conditions

5. An Odour and Flies Risk Assessment and a Noise Assessment have been prepared by the appellant to support the proposal.
6. The Noise Assessment was undertaken with reference to BS8233:2014 and BS4142:2014+A1:2019. Measurements were continuously taken over a six day period in late April at two locations to the north and south of the site. The noise assessment identified that the acoustic environment is primarily characterised by birdsong, distant road traffic movements and infrequent military jet flyovers with occasional farm noises including the manoeuvring of vehicles and noise from livestock. Other than the military jet flyovers, this tallies with my observations, with bird noise being particularly noticeable, demonstrating that birds are likely to be vocal throughout the year. Intermittent noise generated by the nearby livestock was also audible.
7. On removing the dawn chorus noise and noise from military aircraft, the results of the noise monitoring were found to regularly reside at or below 50dB LAeq, 16h during the daytime, and 45dB LAeq, 8h during the night-time. The Noise Assessment and the appellant's subsequent Odour and Noise Statement considered these results against the noise exposure hierarchy in the Planning Practice Guidance (the PPG), the explanatory note in the Noise Policy Statement for England 2010 (the NPSE) and guidance within the document "Professional Practice Guidance on Planning & Noise, New Residential Development" (Pro-PG).
8. The Noise Assessment concluded that noise from the Farm may at times be audible and may slightly affect the acoustic character of the area but should not be at a level, frequency or character that is likely to result in an adverse impact or result in a change to quality of life. As such, the impact would likely reside between the 'No Observed Effect Level' (NOEL) and the 'Lowest Observed Adverse Effect Level' (LOAEL) as set out in the NPSE. The Odour and Noise Statement concluded that the typical noise levels observed at the site were found to correspond with the 'negligible' to 'low' classifications of the Pro-PG, which suggests that any impact is likely to reside at or below the LOAEL.
9. The PPG advises that for noise levels at NOEL there would be no effect. The PPG also identifies a 'No Observed Adverse Effect Level' (NOAEL). Noise at this level would not cause any change in behaviour, attitude or other physiological response and although it can slightly affect the acoustic character of the area, this would not change the quality of life. For noise levels at LOAEL, the PPG advises that there would be small changes in behaviour, attitude or other

physiological response such as turning up television volume, there is the potential for some reported sleep disturbance, and the acoustic character of the area would be changed such that there is a small actual or perceived change in the quality of life. At this level, the noise starts to have an adverse effect and consideration needs to be given to mitigating and minimising those effects.

10. The Noise Assessment recommended that to ensure the Farm has no future restrictions placed on it, as a precautionary measure, all living rooms and bedrooms on the northern elevation of the proposed dwellings with full or partial line-of-sight to it be provided with an alternative means of acoustic background ventilation such as through frame trickle ventilators coupled with a basic thermal double glazing scheme.
11. Based on the noise levels recorded, the recommended noise levels for habitable rooms and gardens in BS8233:2014, and the guidance in the PPG, NPSE and the Pro-PG, I am satisfied that the appellant has demonstrated that the site would be acceptable from a noise perspective and that there would be no unacceptable effect on the living conditions for future occupiers due to noise levels from the Farm.
12. The Odour and Flies Risk Assessment (the Assessment) was undertaken with regard to the methodology provided within the Institute of Air Quality Management's "Guidance on the Assessment of Odour for Planning" (the IAQM Guidance). 'Sniff tests' were carried out at a number of locations around the Farm and the site on five days between late April and late May, with wind from different directions and mainly at lower speeds. The monitoring was not undertaken during the Summer period. However, I am conscious of the IAQM Guidance which advises, as an absolute minimum sampling on three separate days, provided the observed Pasquill stability categories (based on observed sunshine, cloud cover and wind) account for at least 70% of conditions typically experienced over the course of a year. A range of wind direction, humidity levels and temperature were observed during the five day monitoring period.
13. The sniff tests identified that an ammonia-type odour and hay/manure type odour from the Farm were detectable. Generally, persistent, high-intensity odours were detected at locations closest to the pig sheds, with the intensity and duration decreasing with distance from the Farm, as would be expected.
14. The IAQM Guidance provides an odour intensity scale ranging from 0 to 6 for the sniff test method. An intensity level of 1 is described as slight/very weak with probably some doubt as to whether the odour is actually present. An intensity level of 3 is described as distinct with the odour character being barely recognisable. An intensity level of 6 is extremely strong with the odour being offensive.
15. On one of the assessment days, the site was downwind of the Farm and strong manure type odour was detected in waves with a maximum intensity of 4 for a limited number of short durations and an average odour intensity of 0.7 to 1.3. When the site was not downwind, no odour was detected. An average intensity of a maximum of 3 was observed at downwind locations of up to 62m from the closest shed over the monitoring period. The Assessment considered this to be representative of the highest average intensity likely to be experienced at the site during downwind conditions.

16. Using the IAQM Guidance to establish odour exposure, odour potential, pathway effectiveness, receptor sensitivity and risk of odour exposure, the Assessment concluded that there would be a slight adverse effect for occupiers of the proposed development.
17. Based on local meteorological data between 2015 and 2019, the wind direction would be expected to be directly from the Farm to the site for around 14% of the time, or around 51 days per year, which is not an insignificant period of time. Worst case conditions, that is the site being downwind of the Farm when wind speeds are lower than 3ms^{-1} , would occur for 5.7% of the time, or around 21 days. However, even in the worst-case scenario, the effect of odour at the site would not be significant, when considered against the IAQM Guidance.
18. The Assessment is based on an average intensity and I acknowledge that stronger and unpleasant manure and ammonia-type odour would be likely to be detected at times at the site, as illustrated by the detailed odour observations in the Assessment. However, the intensity and duration of odours recorded would not be unreasonable in a rural area where some degree of tolerance of agricultural odour is to be expected.
19. Given the above, my view is that there would be no unacceptable effect on the living conditions for future occupiers due to odour levels from the Farm.
20. The Assessment also included observations about the potential for flies to give rise to amenity issues at the site. During the five monitoring days, no notable presence of flies was observed. The Assessment concluded that as the sheds and external areas were well maintained, the potential for flies to give rise to harm to amenity at the site is unlikely. I also observed the well maintained appearance of the sheds and farm yard and no obvious presence of flies.
21. Given the nature of the Farm, there is a risk of flies associated with its operation. However, no substantive evidence has been presented to suggest that this would give rise to unacceptable living conditions for future occupiers.
22. There are a number of existing residential properties within a similar distance to the Farm, including associated outdoor areas. Occupiers of these properties would be likely to experience a similar noise, odour and fly environment to the one that would be experienced by occupiers of the proposed development. No complaints appear to have been received about operations at the Farm. Whilst it may be that occupants put up with a level of lower amenity until conditions get to a point where they are unable to tolerate it any further and complaints are made, this has not yet been the case with the Farm despite it having had residential uses in relatively close proximity for several years. There is nothing before me to suggest that complaints from future occupiers would be more likely.
23. The Council considers that 400m is an advisable separation distance between housed livestock and dwelling houses to prevent odour nuisance and nuisance from flies and noise. This is based on guidance published by the former Ministry of Agriculture Fisheries and Food (MAFF) and the Environment Agency for intensive pig and poultry farms. However, the MAFF guidance no longer appears to be in place and the Farm operation falls below the threshold to be considered an intensive pig farm. Whilst acknowledging the Council's experience with farm operations, I can give only limited weight to this guidance.

24. Based on the appellant's evidence, and in the absence of substantive evidence to the contrary, I am satisfied that an acceptable environment for occupiers of the proposed development could be achieved with regards to noise, odours and flies and that it would therefore provide acceptable living conditions for future occupiers. Accordingly, the proposed development would accord with Policy DP1 of the Hambleton Local Development Framework Development Plan Document Development Policies, adopted 2008 (the DPD), which requires development proposals to protect amenity with regard to noise and odours, amongst other matters.
25. The Council has referred to Policy CP2 of the Hambleton Local Development Framework Development Plan Document Core Strategy, adopted 2007 (the CS) in its reason for refusal. Policy CP2 requires development and the provision of services to be located to minimise the need to travel. Consequently, I do not consider it relevant to this main issue, although this does not alter my findings.

Farm Operation

26. Paragraph 187 of the National Planning Policy Framework 2021 (the Framework) states that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business could have a significant adverse effect on new development in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.
27. The submitted evidence establishes that there have been no complaints from existing residents in the vicinity of the Farm. Occupiers of the proposed development would experience a similar environment in terms of noise, odours, and flies. I am satisfied that, based on the submitted evidence, it has been demonstrated that the site would provide an acceptable environment for future occupiers in terms of noise, odours and flies in the context of its rural location. As set out above, the Noise Assessment recommended mitigation measures as a means of addressing the agent of change principle, which could be secured through a condition.
28. The Farm may be extended in the future with the potential for its operations to fall within the remit of the Environmental Permitting Regulations. If this were to occur, it would have to meet specific permit conditions which may include certain measures to control emissions where there are sensitive receptors within 400m. There are already a number of dwellings within 400m. If it was to come within the definition of an intensive livestock farm in the future, these requirements would therefore apply irrespective of whether the proposed development was in place.
29. I am therefore satisfied that, with the recommended insulation measures, the proposed development would not have an unacceptable effect on the operation of the Farm now or in the event of any future expansion. Accordingly, it would comply with the agent of change principles set out in the Framework.

Conditions

30. I have considered the conditions suggested by the Council, having regard to the six tests set out in the Framework, and have amended the wording of certain conditions in that light (without altering their fundamental aims).

31. As well as the standard time condition, and for certainty, one is required to ensure that the development is carried out in accordance with the approved plans.
32. A condition requiring details of the construction phase is necessary to ensure that the impacts of construction on the living conditions of existing residents and highway safety are minimised. It is required prior to commencement of development to ensure that the measures are in place for the duration of the construction phase.
33. To ensure the works respect the character and appearance of the existing buildings, a condition is necessary to require details of the building conversion works required to implement the approved plans, in line with Policy CP16 of the CS and Policy DP28 of the DPD. It is required prior to commencement of development to ensure that the works are acceptable.
34. In the interests of the character and appearance of the area, details of external materials and landscaping are necessary. For the same reason a requirement for the replacement of planting is necessary.
35. To make sure that the development does not lead to an increased risk of flooding on the site or elsewhere, a condition is necessary to ensure that areas of hard surfacing are formed using porous materials or that surface water from such areas is allowed to drain away naturally within the curtilage of the development.
36. To ensure a satisfactory means of access to the site and that adequate provision is made for on-site parking, conditions requiring the construction of the site access to the Council's specification and the parking facilities shown on the approved plans are necessary. An existing telephone services pole would require relocation to create the access and a condition is necessary to secure this.
37. A condition is necessary to require that habitable rooms on the northern elevations with full or partial line-of-sight to the Farm are provided with appropriate noise mitigation measures in the interests of the living conditions of occupiers.

Conclusion

38. The proposed development would provide acceptable living conditions for future occupiers and would not have an unacceptable effect on the operation of the Farm. Therefore, for the reasons given above, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should succeed.

F Wilkinson

INSPECTOR

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: 1590-AD-00-00 rev B; 1590-AD-50-01 rev D; 1590-AD-50-02 rev A; 1590-AD-150-01 rev C; 1590-AD-150-02 rev C; 1590-AD-150-03 rev B; 1590-AD-250-01 rev C; 1590-AD-250-02 rev C; 1590-AD-350-01 rev D; and 1590-AD-350-02 rev D.
- 3) Development shall not commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall provide for:
 - i. details of any temporary construction access to the site including measures for removal following completion of construction works;
 - ii. wheel washing facilities;
 - iii. the parking of vehicles of site operatives and visitors;
 - iv. areas for storage of plant and materials used in constructing the development clear of the highway;
 - v. contact details for the responsible person (site manager/office) who can be contacted in the event of any issue related to the construction phase.

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

- 4) Development shall not commence until a written statement of works and annotated plan has been submitted to and approved in writing by the Local Planning Authority. The written statement of works shall identify the extent and sequence of works of conversion and the annotated plan shall show all areas of underpinning, demolition, re-facing, replacement and reconstruction of foundations, walls and roofs that are necessary to implement the details of approved plans 1590-AD-150-01 rev C; 1590-AD-150-02 rev C; 1590-AD-150-03 rev B; 1590-AD-250-01 rev C; 1590-AD-250-02 rev C; 1590-AD-350-01 rev D; and 1590-AD-350-02 rev D. The development hereby permitted shall be implemented in accordance with the approved written statement of works and annotated plan.
- 5) No above ground construction work shall be undertaken until details/samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with the approved details and retained thereafter.
- 6) No above ground construction work shall be undertaken until a landscaping scheme indicating the type, height, species and location of all new trees and shrubs, has been submitted to and approved in writing by the Local Planning Authority. The landscaping works shall be carried out in accordance with the approved scheme before any part of the development hereby permitted is first occupied. Any trees or plants which within a period of 5 years of planting die, are removed, or become seriously damaged or diseased, shall be replaced with others of similar size and species.

- 7) No above ground construction work shall be undertaken until details of acoustic background ventilation and window glazing standard has been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with the approved details and retained thereafter.
- 8) Prior to first occupation of the development hereby permitted, details of the relocation of the telephone services pole located at the entrance to the reinstated road shown on plan 1590-AD-50-01 rev D shall be submitted to and approved in writing by the Local Planning Authority. The telegraph services pole shall be relocated in accordance with the approved details prior to first occupation of the development hereby permitted.
- 9) Prior to first occupation of the development hereby permitted, the access to the site shall be set out and constructed in accordance with the 'Specification for Housing and Industrial Estate Roads and Private Street Works' published by the Local Highway Authority and the following requirements: the crossing of the highway verge must be constructed in accordance with the approved details and Standard Detail number E50. The access shall be retained as such thereafter.
- 10) The parking areas shown on approved plan 1590-AD-50-02 rev A shall be laid out on site prior to the first occupation of the development hereby permitted and retained thereafter for that purpose and clear of any obstructions.
- 11) Provision shall be made for the control of surface water run-off from all new, repaired or replaced areas of hard surfacing. This shall be through the use of porous materials or provision to drain water naturally into the ground within the curtilage of the development hereby permitted. The measures shall be retained thereafter.