



Appeal Decision

Site visit made on 10 January 2022

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2022

Appeal Ref: APP/W2845/W/21/3279899

Duston Mill, Duston Mill Lane, Northampton, NN5 4EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Willow Farm Holdings against West Northamptonshire Council.
 - The application Ref N/2020/1500 is dated 17 November 2020.
 - The application sought planning permission for the erection of storage building at Duston Mill without complying with a condition attached to planning permission Ref N/2015/1470, dated 16 February 2016.
 - The condition in dispute is No 5 which states that: Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 the development hereby permitted shall only be used for storage purposes associated with the use of the adjacent land (indicated in blue within the `Rural Payments Agency` plan submitted on 15th February 2016).
 - The reason given for the condition is: To ensure that the development take the form envisaged by the Local Planning Authority in the interest of the amenity of the area to accord with Policy S10 of the West Northamptonshire Joint Core Strategy.
-

Decision

1. The appeal is allowed, and planning permission is granted for the erection of storage building at Duston Mill, Northampton, NN5 4EG in accordance with the application Ref N/2020/1500 dated 17 November 2020, without compliance with condition number 5 and with conditions 1-4 being no longer relevant, that were previously imposed on planning permission Ref N/2015/1470 dated 16 February 2016 and subject to the following condition:
 - 1) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 the development hereby permitted shall only be used for storage purposes.

Applications for costs

2. A cost application has been submitted by Willow Farm Holdings against West Northamptonshire Council. This is the matter of a separate decision.

Background and Main Issue

3. The application was not determined by the Council within the statutorily prescribed 8-week timeframe. As such, following the submission of an appeal it falls to me to determine whether planning permission should be given without condition 5 and to add any further conditions deemed necessary in planning terms.

4. The main issue is whether condition 5 is reasonable and necessary having regard to local policies and the National Planning Policy Framework (The Framework).

Reasons

5. The site has been subject to a range of planning decisions in the past. This includes permission to use the surrounding blue lined site for outdoor commercial activities, including quad biking and clay pigeon shooting from 2007. The barn, the subject of this appeal, was approved in 2016 for agricultural storage use.
6. The Council's reason for imposing condition 5 relate to its concerns with respect to the amenity of the area and the safety of the access from Duston Mill Lane. The officer report explains that the condition was necessary to restrict the use of the barn, to the use of the adjacent land, to prevent overuse of the access. The condition was required to enable the proposal to satisfy the objectives of Policy S10 of the West Northamptonshire Joint Core Strategy (2014) (JCS), to protect, conserve and enhance the natural and built environment.
7. Condition 5 limits the storage use of the barn to storage purposes associated with the surrounding land identified by the 'Rural Payments Agency' Plan (The Plan). This plan, dated 15 February 2016, shows a blue line that encapsulates several fields adjacent to the barn. The function of this condition is to prevent storage of material within the barn from sources beyond the land defined by the Plan. To remove the condition would therefore allow it to be used for storage of materials from any source.
8. Since the barn was approved a new route, under agricultural prior notification, has been approved and constructed. This enables the barn to be accessed directly from Duston Way and bypasses the previously awkward access via Duston Mill Lane. The more recent route crosses a bridge and connects to the barn's forecourt in a relatively direct and simple fashion. The access, and route to the barn, has therefore been substantially improved from those details shown in support of the application in 2015.
9. The Council has not provided compelling evidence to illustrate why the improved access would not be suitable to serve the barn. The access from the highway, and on-site manoeuvring space, would allow vehicles to enter and exit in a safe manner. As such, I find that the barn could be suitably accessed from the highway without detriment to highway safety, a point corroborated by the Highway Authority. Furthermore, the Council's view, with respect to the amenity of the area and the visual impact of an unregulated storage use, are not disclosed. Nonetheless, the building is a substantial distance from the nearest residential property and storage within the barn would have no further impact on the appearance of the area than the barn itself.
10. Consequently, it is no longer necessary for the barn's storage purpose to be associated with the use of the adjacent land. Furthermore, the condition is no longer required in the interest of the amenity of the area for it to comply with Policy S10 of the JCS. As such, condition 5 is no longer a necessary or reasonable requirement to make the development acceptable in planning terms in its current form. Nevertheless, a condition is necessary to limit the barn to storage purposes as the new road has only removed the need to restrict where storage material can come from.

11. The root application was approved with four further conditions. These relate to the commencement of development, compliance with approved plans, compliance with the Flood Risk Assessment and details of floor levels. The Council has provided no indication that any matters relating to these conditions are outstanding or require ongoing control. Consequently, I see no clear reason to reimpose any of these conditions.

Other Matters

12. The appellant's suggested wording for a revised condition would enable activities other than storage to be carried out. This would alter the original permission. This is beyond the powers of a s73 application. The Courts¹ have held that an application under s73 may not be used to obtain permission that would require a variation to the terms of the "operative" part of the planning permission ie, the description of development for which planning permission had originally been granted.
13. The Highway Authority objected to the use of the barn as a wedding venue. However, as noted above this appeal is not concerned with the change of use of the barn and is not relevant to my consideration of this appeal.
14. Furthermore, whether an alternative use of the barn would result in flood or parking concerns is irrespective to the consideration of this appeal that seeks to test the need for condition 5.

Conclusion

15. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed with the attached condition.

B Plenty

INSPECTOR

¹ Finney vs Welsh Ministers & Other [2019] EWCA Civ 1868