
Appeal Decision

Site visit made on 21 December 2021

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2022

Appeal Ref: APP/V2635/W/20/3265349

White Dyke Farm, Black Dyke Road, Hockwold cum Wilton IP26 4JW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr J. Scott against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref: 19/02105/F, dated 27 November 2019, was refused by notice dated 17 June 2020.
 - The application sought planning permission for proposed new cattery building to facilitate the relocation and expansion of the existing cattery business, re-siting of existing cattery pens and provision of car parking and revised access as allowed on appeal following variation of conditions 5 and 6 of application 14/0265/F without complying with condition attached to planning permission Ref: 17/02156/F, dated 28 May 2019.
 - The conditions in dispute are Nos. 2 and 7 which state that:
 - (2) The development hereby permitted shall be carried out in accordance with the following approved plans: drawing nos. 101 rev D; 111 rev F; 112 rev B; 113 rev F; 122 rev F; 131 rev C; 141 rev B and 171 rev A received by the Local Planning Authority on 16 May 2014; and
 - (7) The cattery building hereby permitted shall be, at all times, held, owned and occupied in conjunction with the associated dwelling (known as Whitedyke Farmhouse) at White Dyke Farm, Black Dyke Road, Hockwold as shown outlined in blue on the submitted site plan and location plan (drawing nos. 101 rev. D received by the Local Planning Authority on 16 May 2014 and 001 rev. B received on 20 February 2014) and neither the cattery nor the dwelling shall be sold off or sub-let separately.
 - The reasons given for the conditions are:
 - (2) For the avoidance of doubt and in the interests of proper planning; and
 - (7) To safeguard the amenities of this rural locality and ensure the existing residential accommodation remains associated and available to the owners/occupiers of the cattery.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have had regard to the outcome of the case of *Finney v. Welsh Ministers* (2019) EWCA CIV 1268. In this case (which I have referred to as *Finney* hereafter), the Court held that it was beyond the powers of the decision maker under Section 73 of the Planning Act to alter the description of development, as this is the operative part of the permission.
3. Furthermore, Section 73(2) of the Planning Act says that the planning authority must consider only the question of the conditions. It follows from *Finney* that where amending a condition would result in a conflict between the new

condition and the description of development, the amendment is beyond the powers of Section 73 and cannot be made under this process. An amendment can only be made provided the new condition does not fundamentally alter the proposal originally approved.

4. I have sought comments from the main parties and have taken the responses into consideration. I am also mindful that the Finney judgement post-dates previous appeal decisions on this site.

Background and Main Issues

5. The appeal site includes a dwelling (known as the farmhouse), an annexe and a building in use as a cattery. The cattery was permitted under reference 14/00265 (the original permission), subject to several conditions. Of these, one pertained to the set of plans that the development should be carried out in accordance with, and a separate condition required that the cattery operates in tandem with the previously constructed farmhouse.
6. In May 2019, an appeal covering several matters was considered and, in part, was allowed. This created the amended permission (reference 17/02156/F). Of relevance to the current appeal, the amended permission approved alterations to the site's access arrangements. Therefore, whilst this new planning permission did not amend the permitted plans, Condition 7 prevents the sale or subletting of the farmhouse by the operators of the cattery. This creates a link between the two buildings.
7. In consequence, it is the conditions imposed as part of the amended permission that are the subject of the appeal before me. However, Conditions 2 (the approved plans) and 7 (the link between cattery and farmhouse) are consistent with the original permission.
8. Accordingly, the main issues relevant to this appeal are:
 - whether the proposed amendment falls within the scope of the previously approved development;
 - whether the proposal would be unacceptable without a plans condition; and
 - whether it is necessary and reasonable to limit the occupation and ownership of the cattery and the ability to sell and/or let the main farmhouse.

Reasons

Whether the proposed amendment falls within the scope of the previously approved development

9. The proposed amendments would result in the introduction of a new dwelling into the cattery. In result, although associated with one another, the use of the building as a whole would change.
10. Although described as residential accommodation, the scale and layout of the proposal would be to create a dwelling. Owing to the nature of a dwelling, there is a likelihood that it could be occupied by people that do not play a functional role in the operation of a cattery (such as due to age or having a different occupation) or that activities may take place within the accommodation that

are unrelated to the operation of the cattery. Therefore, notwithstanding the physical links between the cattery and the proposed residential accommodation, the latter would not be incidental or ancillary to the cattery and would therefore constitute a separate dwelling.

11. In result, this would change the description of the previously permitted development. The description of development either within the original permission or the amended permission pertained to a cattery only and did not contain references to a new dwelling, or any residential accommodation within the same building.
12. This means that the revisions would amend the operative part of the permission. In consequence, the proposed creation of a dwelling within the cattery building falls outside of the parameters of the previously approved development. In particular, the submitted revised drawings are inappropriate because they go beyond what was previously approved and expressed in the description of the development.
13. I therefore conclude that the proposed amendment to create a dwelling falls outside of the scope of the previously approved development and the powers contained in Section 73 of the Planning Act and therefore it is not something I can consider.

Whether the proposal would be unacceptable without a plans condition

14. Condition 2 of the amended planning permission specifies the plans previously approved. As I have established, Condition 2 cannot be varied through in the way proposed because the consequence would be to create a new dwelling.
15. Therefore, I need to consider whether the condition, as currently drafted and specifies the previously approved plans, is necessary and reasonable.
16. In this case, a set of specified drawings is necessary to define the previously permitted development and the extent of commercial activity that can take place within the appeal site. This ensures that there is certainty regarding the permitted appearance of the building and the scale of business activities that can take place within it. In this respect, there is certainty the development, which was found to adhere to the development plan, could only be delivered in its approved form.
17. The condition, as currently drafted, also ensures that the permitted development is precisely defined. It also allows for some flexibility, such as by providing a mechanism through which Minor Material Amendments can be considered. Removing this condition, would prevent this from occurring if needs require. The Planning Practice Guidance specifies that minor material amendments to a planning permission can only be granted in instances where there is a condition that specifies the list of approved plans (Paragraph: 018, Reference ID: 17a-018-20140306).
18. I have also had regard to the National Planning Policy Framework (the Framework), and, specifically, Paragraph 56. Owing to the need to define the previously approved development, including its scale, the condition is necessary and relevant to the planning process. Furthermore, the condition is also precise in that the plans are clearly prescribed. This means that the condition is enforceable and reasonable.

19. I therefore conclude that the proposal would be unacceptable without a plans condition. This is because its retention is necessary to provide all parties with certainty regarding the extent of the previously permitted development, that there is clarity regarding the permitted type and scale of activity and to provide flexibility for future minor material changes, if needed.

Whether it is necessary and reasonable to limit the occupation and ownership of the cattery and the ability to sell and/or let the main farmhouse.

20. The evidence before me indicates that for operational reasons, a dwelling on the site is a necessity given that access to the cattery is likely to be required on a frequent basis. There are two dwellings on site in the farmhouse and the building referred to as the annexe, which can be used as a self-contained dwelling. There is no proposal before me to link the annexe and the cattery.
21. A dwelling on site reduces the need for journeys by private car by staff. In addition, it allows for workers in the cattery to operate the business. In considering this appeal, I have been directed towards Policy CS01 of the King's Lynn and West Norfolk Core Strategy (2011) and Policy DM6 of the Site Allocations and Development Management Policies Plan (2016). Amongst other matters, these seek to ensure that developments improve accessibility to employment; and will be retained unless there is no longer a need for the dwelling by those working.
22. Given that I have previously established that I am unable to consider the provision of a dwelling within the cattery building as part of this appeal, I am therefore unable to consider a variation of condition 7 to change the associated dwelling from the existing farmhouse. Nonetheless whether or not Condition 7 is required to be retained in its current form is still a matter before me.
23. The purpose of Condition 7 is to ensure that a dwelling is provided within the confines of the appeal site for the benefit of the operators of the cattery and to safeguard the amenities of the rural locality.
24. The evidence submitted with the appeal indicates that, for operational reasons, members of staff are required to have access to the cattery building at all times in order to undertake routine tasks and respond to unscheduled events. Therefore, the retention of the condition is necessary to ensure that the operational needs of the cattery are met with minimal travel. This is consistent with previous appeal decisions at this site.
25. The existing dwelling is located a relatively short distance away from the cattery building. The appellant has raised some concerns regarding this separation distance, owing to the fact that this might prevent occupiers of the dwelling from responding to unforeseen events within the cattery.
26. However, if I were minded to allow this appeal and remove the contested condition, it would potentially allow for the operation of the cattery without there being an associated dwelling on site. Therefore, the retention of the condition is necessary in order to secure an effective business that does not encourage an excessive amount of vehicle movements.
27. The existing farmhouse is relatively large and potentially, if marketed alongside the cattery might command a higher purchase price. Whilst this might require a prospective purchaser to require a larger mortgage, the alternative option to me is to remove the condition. Given that it has been established that there is

an operational need for the operators of the cattery to reside on site, this would not be desirable.

28. In addition, the appellant has highlighted the financial returns from operating the cattery. However, the information submitted does not detail the number of hours worked to receive this return and the capacity of the cattery during these timeframes. In result, it has not been satisfactorily demonstrated that it is not financially viable for the operator of the cattery to simultaneously fund a residence within the farmhouse.
29. Therefore, without this information, it is not possible to conclude that the continued requirement to reside at the farmhouse, whilst operating the cattery renders it unlikely that a future operator could be found. As it has been established that there is an operational need for a dwelling on site for the operators of the cattery, the lack of a satisfactory alternative proposal before me that can be considered as part of the confines of these appeal proceedings means that the link between the cattery and the farmhouse should be retained.
30. The appeal site contains a building that was originally constructed as an annexe. However, it appears that this can now be used as a self-contained dwelling. However, I do not have a proposal before me to tie the use of the annexe and the cattery together. In consequence, I am unable to give this matter further consideration.
31. Therefore, even if I were to conclude that the farmhouse was too large to be funded by the cattery, I could not secure the provision of a smaller dwelling through these appeal proceedings.
32. The appellant has suggested an alternative condition that might be imposed if I were minded to allow this appeal. In summary, the suggested condition would limit the occupiers of the proposed dwelling to the operators of the cattery and their dependents.
33. However, as I have determined that it is not possible to consider whether a dwelling can be provided within the cattery building as part of these appeal proceedings, I would not be able to impose such a condition. Therefore, this suggestion does not overcome my previous concerns.
34. I therefore conclude that the condition is necessary and reasonable. Its removal would conflict with the requirements of Policy CS01 of the Core Strategy and Policy DM6 of the Site Allocations and Development Management Policies Plan (2016). Amongst other matters, these seek to ensure that developments improve accessibility to employment; and will be retained unless there is no longer a need for the dwelling by those working.

Other Matter

35. The appeal site is near to a listed building. I am required to have regard to the preservation of the setting of this. However, given that I am dismissing the appeal, the proposed amendments would not result in changes to the way in which these heritage assets are experienced. Therefore, I do not need to give this matter further consideration.

Conclusion

36. I have found that the disputed conditions are necessary and reasonable. In addition, their imposition ensures that the development complies with the Development Plan. There are no material considerations that indicate that a decision should be made other than in accordance with the Development Plan. Therefore, for the preceding reasons, the appeal should be dismissed.

Benjamin Clarke

INSPECTOR