



Appeal Decision

Site visit made on 19 January 2022

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04/02/2022

Appeal Ref: APP/R0660/W/21/3283590

Sudlow Farm, Sudlow Lane, Tabley WA16 0TN

- 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 (the Act) 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 Tim Hatton - Modern Unique Developments (MUD) Ltd against the decision of Cheshire East Council.
 - The application Ref 20/5331M, dated 24 November 2020, was refused by notice dated 18 May 2021.
 - The application sought planning permission for 'Variation of condition 2 on approval 16/4086M for demolition of agricultural buildings, conversion and extension of two barns into 7 dwellings with garages' without complying with a condition attached to planning permission Ref 16/6071M, dated 1 March 2017.
 - The condition in dispute is No 2 which states that: *'The development hereby approved shall be carried out in total accordance with the approved plans numbered: Landscape Plan, Facing Materials, Bin Stores, Gates and Ecology Drwg ref. C255 Drwg no. 5 dated 14-12-16 and planting specification and notes (received on 16/12/2016) Units 5 & 6 - Plans and Elevations Drwg ref. C255 Drwg no. 11R3 dated 07-10-16 (received on 08-11-2016) Units 1, 2, 3, 4 & 5 Ground Floor Plan Drwg ref. C255 Drwg no. 15 dated 11-08-16 Units 1, 2, 3, 4 & 5 First Floor Plan Drwg ref. C255 Drwg no. 16 dated 09-08-16 Units 1, 2, 3, 4 & 5 Elevations Drwg ref. C255 Drwg no. 14 dated 11-08-16 Window Section Drwg ref. C255 Drwg no. 14 date 10-11-15 Door Section Drwg ref. C255 Drwg no. 16 Window Section Drwg ref. C255 Drwg no. 15 Proposed garage to units 6 & 7 Drwg ref. C255 Drwg no. 14-12-16 Drwg no 6 (received 16/12/2016) Proposed garage to unit 4 & 5 Drwg C255 Drwg no.18 dated 11-08-16 Site plan Drwg ref. C255 Drwg no. 2 received by the Local Planning Authority on 19/08/2016 unless otherwise stated.'*
 - The reason given for the condition is: *'For the avoidance of doubt and to specify the plans to which the permission/consent relates'.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposed development has been screened in accordance with the Environmental Impact Assessment (EIA) Regulations 2017. It has been concluded that the development would not be of a scale and nature likely to result in a significant environmental impact and EIA is therefore not required.

Background and Main Issue

3. Planning permission was previously granted on the site for 'demolition of agricultural buildings, conversion and extension of two barns into 7 dwellings with garages'. This development has been substantially implemented. However, the agricultural buildings which were to be demolished have only been partly demolished thereby creating two detached barns. The appeal follows the Council's decision to refuse an application seeking to vary the approved drawings in order to retain these barns.
4. Taking into account the reason that the Council refused the application, the main issue is whether an application seeking to vary or remove a condition under Section 73A of the Act is the appropriate mechanism in which to consider the proposal and, if so, whether the proposal would comply with the development plan for the area.

Reasons

5. My attention is drawn to a High Court judgement¹ which at Paragraph 15 states amongst other things that '*...the grant identifies what can be done – what is permitted – so far as use of land is concerned, whereas conditions identify what cannot be done – what is forbidden*'. Later in the same paragraph the judgment continues '*...generally, the only things which are effectively prohibited by a grant of planning permission are those things that are the subject of a condition, a breach of condition being an enforceable breach of planning control*'.
6. The description on the planning permission is explicit that the development involves '*demolition*' of agricultural buildings. I accept that descriptions of planning proposals cannot be expected to be so precise or detailed to cover every single aspect of a development proposal. However, the buildings now sought for retention are not shown on the approved landscape drawing listed under Condition 2 of the planning permission. Given these buildings were shown to be removed in their entirety, the clear and unambiguous reference to demolition within the description of the proposal was appropriate. The demolition of these buildings in their entirety would also have been material to the Council's overall assessment of the impact of the development.
7. Had there been any intention to retain parts of the agricultural buildings, it would have been reasonable to expect that the description of the development would include a reference to their '*partial retention*' or '*partial demolition*'. This is particularly so for the buildings sought for retention given their substantial scale and their position close to both the road and the residential element of the scheme. Furthermore, operational works have been undertaken to facilitate their retention and tree planting which formed part of the approved landscape drawing, but which sits within the footprint of the retained barn closest to Sudlow Lane, cannot be undertaken. Therefore, varying Condition 2 of the planning permission to allow for the remaining agricultural buildings to be retained would fundamentally alter the development that was considered by the Council when it granted planning permission.
8. In addition, the retained structures would have a very different effect on the surroundings compared with the comprehensive demolition scheme that was

¹ Cotswold Grange Country Park LLP v Secretary of State for CLG & Tewkesbury BC [2014] EWHC 1138 (Admin)

considered by the Council when it granted planning permission. It would require a fresh assessment of the development including in terms of the overall relationship of the scheme with the openness of the Green Belt, the character and appearance of the area including how the retained buildings would be finished off, as well as the compatibility of these agricultural buildings with the residential element of the scheme.

9. The appellant contends that the buildings have been in use for agricultural storage purposes with no enforcement action taken. They also point out that the approved landscape plan did not indicate through a broken line or similar the footprint of the existing buildings to be demolished and that there was no reference on the plan or specific condition attached to the planning permission requiring the demolition of the agricultural buildings in accordance with a specific trigger point. Even so, the extent of demolition works would have been clear to the Council by a comparison between the existing and proposed drawings. The landscape drawing listed under condition 2 includes the post development footprint of buildings. Therefore, the fact remains that the situation on the ground does not reflect what was considered and approved as part of the original planning permission.
10. Having regard to the above matters, amending the condition would result in conflict between it and the description of development and would fundamentally alter the original planning proposal. It would necessitate an alteration to the description of the development to refer to say '*partial demolition or partial retention of agricultural buildings*'. This goes beyond the powers conferred by S73 of the Act as held in the Finney judgement².
11. I therefore conclude that the proposal to vary Condition 2 under S73 of the Act is not the appropriate mechanism in which to consider the proposal. It would be necessary for the appellant to submit an application for a new full planning permission and this is a matter that could be discussed further with the local planning authority. Given this conclusion, it is not possible for me to consider the proposal in terms of whether it would comply with the development plan for the area.

Conclusion

12. For the reasons set out, the appeal is dismissed.

M Russell

INSPECTOR

² Finney v Welsh Ministers & Others [2019] EWCA Civ 1868