The Planning Inspectorate

Appeals Decision

Site visit made on 22 February 2022

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 March 2022

Appeal A - Ref: APP/X1355/C/21/3283584
Fernleigh, 5 Front Street, Frosterley, Bishop Auckland DL13 2QW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr David Richardson against an enforcement notice issued by Durham County Council.
  - The enforcement notice, numbered EN/20/00392, was issued on 24 August 2021.
  - The breach of planning control as alleged in the notice is: Construction of a hardstanding and erection of a timber stable and feed store building.
  - The requirements of the notice are as follows:
    1. Dismantle in its entirety the stable/feed store building and concrete hardstanding and remove from the land all building debris and materials. The hardstanding is to be dismantled by hand and no mechanical equipment and no further excavation undertaken to comply with this requirement.
    2. Remove from the land the waste and manure heap.
    3. Reinstate the land with an application of top-soil and grass seed to enable the land to re-cultivate to pasture land.
  - The period for compliance with the requirements is 4 weeks.
  - The appeal is proceeding on ground (a) only as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

Appeal B - Ref: APP/X1355/W/21/3281190
Fernleigh, 5 Front Street, Frosterley, Bishop Auckland DL13 2QW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr David Richardson against a decision issued by Durham County Council.
- The application, Ref DM/20/01997/FPA, dated 23 July 2020, was refused by notice dated 26 February 2021
- The development proposed was as follows: Construction of timber stable/feed store stable to be used for the shelter of rescue donkeys, goats and some bird cases.

Decisions

1. Both appeals are dismissed. See formal decisions below.

Matter of clarification

2. The National Planning Policy Framework (NPPF) was revised in July 2021. Where references have been made to paragraphs within the NPPF, I have considered them on the basis of the respective re-numbered paragraphs accordingly. There are no

fundamental differences between the latest and the previous versions of the NPPF with regard to the various paragraphs and sections referred to in this case.

Background information

The appeals site, the building and its immediate surroundings

3. The appeals site is located to the rear of Nos 7 to 9 Front Street, adjacent to the appellant's land behind his house at No 5. The terraced properties have rear yards which are accessed by a back lane from the west. There are garages and small gardens to the north of the lane. The appeal site is located on the boundary between the gardens and the field which slopes up to the north. There is a duck pond in the field to the west. Within the field and mainly to the north of the site is a scheduled ancient monument (SAM) - see below. There are residential dwellings located to the north and east of the field and to the west is an access track with garages beyond. To the south are other mainly terraced dwellings on Front Street, with a public car park to the south-east. The site lies within the Frosterley Conservation Area (FCA).

4. The unauthorised development was constructed over 2 years ago and comprises a hardstanding and timber stable and feed store building. It is located on the southern edge of the appellant's field, to the north of Nos 7-9 Front Street. The stable unit backs immediately onto the Nos 7 and 9 rear boundaries. At the time of my visit there were around 20 goats and 4 donkeys at the site. The appeal building is also stated to be used for the keeping of caged birds, food storage and shelter for the goats and the donkeys. However, there is another shed/stable which houses the goats in the north-western part of the field.

5. The 3 cell, timber stable block is 9.28m long, 3.3m width, 1.88m to the eaves height and 2.6 m to the ridge. As indicated above, it is sited immediately to the north of the boundary of the site with the two neighbours' gardens and garaging. The appellant's garden is to the south-west of the stable. The Council has acknowledged that the appellant's land has been in use for the keeping of animals for private use for a period of over 10 years.

Relevant Planning History

6. The stable building was erected without the benefit of planning permission. On the 26 August 2020 a retrospective planning application (ref: DM/20/01997/FPA) was validated by Durham County Council for the retention of the timber stable/feedstore for the shelter of rescue donkeys, goats and birds in cages. The application was refused on 26 February 2021 and is now the subject of Appeal B. The LPA then considered it expedient to issue the enforcement notice which is the subject of Appeal A. The LPA refused the retrospective application for the following reason:

> *'The close proximity of the development to neighbouring dwellings and amenity areas is considered to adversely affect the living conditions of residents due to the impacts arising from odour, noise and drainage, contrary to Policies 6, 13, 29 and 31 of the County Durham Plan and Paragraphs 127 and 180 of the National Planning Policy Framework.'*

The Scheduled Ancient Monument

7. The Scheduled Ancient Monument (SAM) within the field is 'St Botolph's Chapel' and is described as being 280m north-east of Frosterley Bridge' (National Heritage List for England HA 1016466). The north, mounded section of the field houses the main body of the monument and thus lies within very close proximity to the

hardstanding and stable. It is stated by Historic England (HE) that it survives well as an earthwork and retains significant below ground features and deposits. It is said to be of particular importance as it is the most northerly church dedicated to St Botolph and is a rare example of its type. Excavations carried out around 2013 have shown that the site has Anglo-Saxon origins c. late 6th to mid-7th century AD.

8. Geophysical and excavation results have shown that there are stone features extending south from the chapel site to the east side of the appeal site. Another linear stone feature (unexcavated), possibly a boundary wall, extends from the south-west corner of the chapel to the location of the stable building. HE do not consider that there has been any significant change to the setting of the SAM. However, HE does have concerns about the changes to the management of the field for the housing of the donkeys and in particular the significant poaching (damage from hooves around feeders) near to the stable which is in the lowest part of the field. At the time of my visit I noted that the poaching was at its most extensive immediately adjacent to the building and the hardstanding.

Appeal A on ground (a) and Appeal B

The main issues in both appeals

9. Although the reason for refusal of the retrospective application only refers to the effect of the development on the living conditions of those living close to the stable building, it is clear from all of the submissions, including those referred to by HE and the Durham County Archaeologist team, that there are still issues around the impact of the works on the SAM.

10. I consider, therefore, that the main issues in both appeals are as follows:

- The effect of the stable/feed store building on the living conditions of those living in close proximity to the site and,
- The effect of the works on the Scheduled Ancient Monument (SAM).

Relevant Policy

11. Section 38(6) of the Planning and Compulsory Purchase Act states that, for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan, unless material considerations indicate otherwise.

12. The most relevant development plan policies in these appeals are contained within the adopted County Durham Plan 2020 (CDP). These are as follows: Policy 31 (Amenity and Pollution); Policy 35 (Water Management); Policy 44 (Historic Environment); Policy 06 (Development on Unallocated Sites); Policy 13 (Equestrian Development) and Policy 29 (Sustainable Design)

13. The NPPF is a major material consideration. It seeks to achieve sustainable development and the sections which are most relevant in this case are: 2 (Achieving sustainable development); 8 (Promoting healthy and safe communities); 12 (Achieving well-designed places); 14 (Meeting the challenge of climate change, flooding and coastal change; 15 (Conserving and enhancing the natural environment) and 16 (Conserving and enhancing the historic environment).

The effect on living conditions

14. Having seen the location of the stable building I share the Council's concerns regarding its proximity to the neighbouring properties. The unit backs directly onto the neighbouring gardens of Nos 7 and 9 and is only around 12m away from the

windows to the dwellings. During my site visit I did not note large quantities of animal waste but, as the appellant indicates, this is removed on a daily basis.

15. However, despite very windy weather at the time of my site visit, animal waste odours, as well as the distinct odour associated with goats, were particularly noticeable in the rear back lane adjacent to the dwellings and from the public car park. In my view, the simple fact is that the stable building is much too close to the residential uses along the Terrace. I do not consider that the issue relating to unacceptable odours could be mitigated in any other way than by moving the stable building much further away from the rear of the terraced dwellings.

16. I acknowledge that this could be an issue with regard to the effect on the SAM and I have noted the appellant's reasoning for siting the building on this lower part of the field. However, as well as resulting in odour issues, this siting has caused drainage issues which have affected the neighbours' properties. It is clear that the drainage issues have been exacerbated by the diversion of water from another neighbour's development onto the appellant's field. However, even without this excess water, it seems to me that due to the lie of the land, the area around the building is bound to remain wet and muddy, particularly in the winter and as it was during my site visit.

17. I have noted the history of the complaints to the Council and that Environmental Health issues were also raised. I accept that some specific issues have seemingly been resolved informally and that the appellant has carried out various works to mitigate matters. These include amendments to drainage and the installation of a gutter system, collection vessels for the rainwater and the establishment and implementation of a waste plan.

18. I also agree with the Council that a material planning impact on residential amenity is normally to be considered to be at a lower level than that defined as a statutory nuisance by Environmental Health Officers (EHOs). However, whilst the investigations have been resolved informally, I consider that the living conditions of residents will continue to be significantly harmed if the Stable remains in its current position. I do not consider that the works carried out by the appellant, however well resolved, can overcome the issue regarding the proximity of the stable to the dwellings and the natural odours produced by the animals.

19. In conclusion on this issue I find that the erection of the stable, in this particular location, is contrary to Policy 31 (Amenity and Pollution) of the CDP. This prohibits development which would lead to unacceptable levels of odour, noise or other sources of pollution where any identified mitigation cannot reduce the impact on the environment, amenity of people or human health to an acceptable level.

20. It follows that I also find it contrary to Sections 2 (Achieving sustainable development) and 8 (Promoting healthy and safe communities) of the NPPF. As indicated above, in my view, the only factor which could mitigate against the harm caused to the living conditions of occupants is to site the building much further away from the terraced dwellings. I do not consider that any planning conditions could overcome this issue.

The effect on the Scheduled Ancient Monument

21. I agree with the County Archaeologist's (CA) and Historic England's (HE) comments that the installation of the stable for rescue donkeys and other farm animals has changed the management of the field. It is evident from my visit that

this has led to significant poaching (damage from hooves) in various parts of the field but mainly around where the animals are housed and fed. There is clear poaching damage across the front of the stable unit and adjacent to the feeders.

22. The poaching is exacerbated due to the fact that this area is the at the lower level of the field and this has resulted in naturally draining water further softening the ground. Thus, given the sensitive historic nature of the site, coupled with the drainage issues, I agree with the Council that the impact of the siting in this particular location, and the intensification of use by heavy hooved animals has resulted in severe poaching damage that clearly has the potential to be further significantly damaging to the shallow historic remains of the SAM.

23. The NPPF requires local planning authorities to take account of *'the desirability of sustaining and enhancing the significance of heritage assets*' . The NPPF also makes clear that *'any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification'.* In this case HE accepts that the works as carried out have not affected the setting of the SAM and have not formally objected on Heritage grounds. I also agree that the harm can only be classified as being *'less than substantial'.*

24. In in such circumstances any harm should be weighed against any public benefits of the development. But, in this case, there are no public benefits of the development. In fact the positioning of the building can only be said to have resulted in public disbenefits through the introduction of unacceptable odours into this residential part of Frosterley.

25. The Council has indicated that if a full planning application had been made in the first instance an amended siting would most likely have had to have been negotiated/agreed with the assistance the DCC Archaeology Officers (AOs). This would have resulted in siting the building much further away from the dwellings along this part of Front Street. In my view, this must be the way forward if the appellant wishes to continue using the land to house the various animals and birds. It is also the case that, when the works are carried out to remove the building and its hardstanding, close liaison with the AOs will be necessary.

26. In conclusion, therefore, on this second issue I consider that siting of the stable building in this location is harmful to the SAM and is, therefore, contrary to Policy 44 (Historic Environment) of the CDP, as well as to Sections 15 (Conserving and enhancing the natural environment) and 16 (Conserving and enhancing the historic environment) of the NPPF.

Other matters and overall conclusion

27. I have noted and agree with the Council's conclusion that there are no issues relating to the design of the building. I find that this is typically in keeping with such a use on the appellant's land in this part of Frosterley. Having paid special attention to the requirements of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am also satisfied that a design of this type would preserve the character and appearance of the FCA.

28. However, the design is not an issue and for the reasons set out above I have found that the appeals must fail on both of the main issues. It follows, therefore, that the appeal on ground (a), in Appeal A, must fail and that planning permission should not be granted for the retention of the stable building in this particular location. Appeal B therefore also fails. There are no other material considerations

which indicate that the development should be considered other than in accordance with the development plan.

29. In reaching my conclusions I have taken into account all of the other matters raised by the parties. However, none of these carries sufficient weight to alter my conclusions on the main issues and nor is any other matter of such significance so as to change my decision that both appeals should be dismissed.

Formal Decisions

Appeal A

30. The appeal is dismissed and the enforcement notice is upheld. The application deemed to have been made under Section 177(5) of the Act is refused.

Appeal B

31. The appeal is dismissed.

Anthony J Wharton

Inspector