



Appeal Decision

Site visit made on 24 October 2022

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 30th November 2022

Appeal Ref: APP/H0928/W/22/3294580

Land at Midtown Farm, Brampton, Appleby CA16 6JS

- 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.
 - The appeal is made by Mr and Mrs C Kilmurry against Eden District Council.
 - The application Ref 21/1061, is dated 3 December 2021.
 - The development proposed is described as demolition of remaining barn structure, barn and shed, and the erection of a dwelling including associated operations.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of remaining barn structure, barn and shed, and erection of a dwelling including associated operations at land at Midtown Farm, Brampton, Appleby CA16 6JS in accordance with the terms of application, Ref 21/1061, dated 3 December 2021, subject to the conditions set out in the attached Schedule.

Preliminary Matters and Main Issue

2. The address on the Council's planning application acknowledgement has minor differences to the one on the application form. I see no reason to change the application form address and have used this in the banner heading above.
3. The appellants advise that through consultation with the Council they were advised that the proposal would not be supported, and it would be recommended for refusal. Details of the reason(s) for refusal have not been provided. Following the submission of the appeal against non-determination, the Council has not provided a statement of case. In support of the appeal, the appellants have advised that the appeal property benefits from an extant planning permission reference 20/0374 for 'change of use, demolition and extension to agricultural buildings to create a dwelling to include associated operations'. The layout of this proposal is shown on approved drawing ref 2004 PL220 Rev A. The officer report for the permission found the effects on local character, neighbouring amenity, natural environment, drainage and highways were acceptable, subject to conditions.
4. Although previously retained parts of the existing building would be demolished and re-built within the appeal proposal before me, the design would replicate their appearance. At first floor, a small window would be re-positioned, enlarged and recessed to incorporate a small balcony. This would be a relatively minor change which would complement the design of the proposal. Furthermore, with respect to its footprint, this would be slightly reduced by the removal of a bedroom and study. The proposal's appearance would therefore

be substantively the same as the permission and would not adversely affect the character and appearance of the building or area, retaining its general form and respecting the original function.

5. With the exception of the balcony, the proposed design would reduce the number and extent of windows. This would reduce its impact on neighbour's outlook, privacy and light when compared with the extant permission. Due to the size, orientation and separation from neighbouring properties and its enclosed nature, the small balcony would also have a minimal effect. In terms of future occupiers their living conditions would be equivalent to the extant permission. Based on the evidence presented and my observations on site, I find no reason to therefore question these aspects of the proposal. Furthermore, no concerns have been raised by interested parties to the proposal.
6. Consequently, I consider the main issue is whether the proposal is a suitable location for residential development, having regard to the local development plan for the area.

Reasons

7. Brampton is classed as a 'Smaller Village/ Hamlet' under Policy LS1 of the Eden Local Plan 2014-2032 (Local Plan). Policy HS2 of the Local Plan permits housing within smaller villages and hamlets where it would reuse previously-developed land, where it would be to an appropriate scale and reflect the built form of adjoining and neighbouring development and the service function of the settlement. The policy also requires housing to be infilling or rounding of the current village settlement pattern. Furthermore, it limits the gross internal floorspace to 150 square metres (m²).
8. The appeal property consists of an overgrown rear yard with a range of semi derelict barns which adjoin the farmhouse of Midtown Farm. The property fronts the unclassified road referenced C3065. The proposal would demolish the barns and on part of their footprint erect a dwelling with associated access, parking and gardens. External walls would be clad in stone/timber, including replication of the appearance of the external walls, their openings and features.
9. The proposal would meet all the criteria in policy HS2 with the exception of the second bullet point requiring the resultant dwelling does not contain more than 150m² gross internal floorspace. It would have a similar layout and scale to the existing barns and yard area and sit within the central part of the village close to the main road. It would therefore be proportionate to the scale and form of the site and the village. It would also fill the relatively small gap between Midtown Farm and the adjacent existing dwellings, representing infill development.
10. The appellants states that the gross internal floor space of the proposal would be 308m² which would be contrary to Policy HS2 and I have no reason to dispute this.
11. Notwithstanding this, the appeal site has benefit of an extant permission which could be fully implemented. This establishes the appeal site as being suitable for a dwelling and, based on the approved drawings which indicates that the floor area is similar if not larger than the proposal, it also confirms acceptance of a floor area greater than 150m². While the appellants raise cost viability of

implementing the permitted scheme, they also advise that they would still implement it to realise the significant asset and protect the amenity of the immediate area and setting of the village. It is clear there is a real prospect that the appellants would build out the extant permission. I therefore attribute significant weight to this fallback position.

12. The proposal would be substantively the same as the fallback and I have identified no adverse effects or harm compared to this.
13. Consequently, whilst the proposed development would conflict with Policy HS2 of the Local Plan, having regard to the significant weight I attach to the fallback, I conclude that the proposal would be a suitable location for residential development.

Other Matters

14. During the course of the appeal, Natural England issued updated guidance in relation to nutrient pollution. It issued a list of Local Planning Authorities that have European sites and catchments which have an unfavourable conservation status due to high levels of nutrients. Natural England advises that competent authorities should carefully consider the nutrient impacts of proposals on habitat sites, and whether those impacts may have an adverse effect on the integrity of such a site. Eden District Council is affected by this new guidance.
15. Regulation 63 of the Conservation of Habitats and Species Regulations 2017, states that 'a competent authority, before deciding to undertake, or give any consent, permission...must make an appropriate assessment'. I have sought to apply such a requirement reasonably and proportionately relative to the nature and context of the development proposed. The appellants advise that due to there being an extant planning permission for the same development at the site, the proposal would not increase nutrient burdens within the catchment area. They indicate that this is informed by and reflects Eden District Council's position on this matter related to other planning applications. The Council has not disputed this view. In the absence of any evidence before me to the contrary, I concur that nutrient neutrality would be achieved with the proposal compared to the extant permission. The development would therefore not result in adverse effects on the integrity of the European site by virtue of increased nutrient load and would therefore comply with the Conservation of Habitats and Species Regulations 2017.
16. I have had regard to the concerns raised in relation to land ownership however, this is not a matter for my consideration being a private matter between the relevant parties.

Conditions

17. For certainty I have included the standard time limit condition and a condition requiring the development to be carried out in accordance with the approved plan. In the interests of protecting habitat of protected species I have included a condition requiring implementation of the mitigation measures set out in the Survey for Bats, Barn Owls & Breeding Birds by Steve Wake. To ensure satisfactory appearance I have included a condition for the materials, windows and roof details to be provided and agreed. To protect neighbouring privacy, I have included a condition for roof terrace screening to be agreed and included. A drainage condition is required to ensure satisfactory drainage provision,

protection against flood risk and to prevent environmental harm. In the interest of highway safety, I have included a condition to ensure the access and parking is provided. As there is no history of any contaminative use on the site and no evidence to suggest it is necessary or reasonable to include a contamination watching brief, I have not imposed a condition in this regard.

Conclusion

18. For the reasons given above I conclude that the appeal should be allowed.

J Symmons

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby granted shall be carried out in accordance with the drawings hereby approved:
 - Context Plan Ref 2004 PL115 Rev A
 - Block Plan as Existing Ref 2004 PL210 Rev A
 - Site Plan as Proposed Ref 2004 PL220 Rev B
 - Ground Floor Plan as Proposed Ref 2004 PL320 Rev A
 - First Floor Plan as Proposed Ref 2004 PL321 Rev A
 - Roof Plan as Proposed Ref 2004 PL322 dated Rev A
 - Elevations as Existing Ref 2004 PL520
 - Elevations as Existing Ref 2004 PL521
 - Elevations as Proposed Ref 2004 PL522 Rev A
 - Elevations as Proposed Ref 2004 PL523
 - Storage Shed (Bat Mitigation) Ref 2004 PL910
- 3) During the conversion works the mitigation measures set out in Section F of the Survey for Bats, Barn Owls & Breeding Birds, Midtown Farm, Brampton, Cumbria, CA16 6JS conducted by Steve Wake shall be implemented in full. In particular, the storage shed incorporating loft space accessible to bats shall be erected and completed prior to any works to the roof of the byre. The mitigation measures shall remain in place following the conversion.
- 4) Roof windows shall be of a Conservation type and shall be fitted flush to the plane of the roof slope.
- 5) No above ground development shall commence until exact details and samples of materials to be used for the external walls, roofing materials and fenestration in the construction of the buildings hereby permitted shall have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 6) Prior to the occupation of the development hereby permitted, approved schemes for the discharge of foul water and surface water from the site shall

have been submitted to and approved in writing by the Local Planning Authority and implemented in accordance with the approved schemes.

- 7) Prior to the first use of the roof terrace hereby permitted, a scheme shall be submitted to and approved in writing by the Local Planning Authority to demonstrate how screening will be used to prevent overlooking. The scheme shall be implemented in full before the first use of the terrace and shall be retained as such thereafter.
- 8) Before the first occupation of the development hereby permitted, the access drive and parking and turning area shall be provided in full, and shall be retained as such thereafter.