



Appeal Decision

Site visit made on 4 January 2023

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th February 2023

Appeal Ref: APP/A0665/W/22/3306557

Greenslade Farm, Norley Road, Norley, Cheshire West and Chester, Northwich WA6 6LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990, against a refusal to grant planning permission under section 73 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 Gareth Jamieson against the decision of Cheshire West and Chester Council.
 - The application Ref 22/01244/S73, dated 31 March 2022, was refused by notice dated 19 July 2022.
 - The application sought planning permission for conversion and extension of existing barn to form 5 dwellings and creation of new access track, without complying with a condition attached to planning permission Ref 16/03416/FUL, dated 03 March 2017.
 - The condition in dispute is No. 3 which states that: The materials to be used in the construction of the external surfaces of the conversion hereby permitted shall be as specified on the application form. The materials to be used in the closure of the existing access shall be as described on the approved plan ref 0004.P.07 Rev b. The materials to be used in the creation of the access track shall be formed of loose chippings. The first 6m of the access, from the edge of the carriageway of Norley Road, must be formed in a bound material.
 - The reasons given for the condition are: To ensure that the external appearance of the development is appropriate to its surroundings and in the interest of highway safety.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission was granted for application Ref 16/03416/FUL on 03 March 2017 for conversion and extension of existing barn to form 5 dwellings and creation of new access track.
3. The Council subsequently approved a s73¹ application, Ref 20/01769/S73, on 18 November 2020, for what was described as "*variation of condition 2 of 16/03416/FUL (to enable re-alignment of the internal access to safeguard the existing hedgerow, in the interests of landscape character and its importance for ecological value)*". This created a new planning permission. The Decision Notice included condition 3 of approved application 16/03416/FUL, but it was now listed as condition 2.
4. The Council subsequently approved a further s73 application, Ref 20/02154/S73, on 25 November 2020, for what was described "*as variation*

¹ Section 73 of the Town and Country Planning Act 1990

of condition 2 (plans) and condition 10 (bat mitigation) of planning permission 16/03416/FUL." Again, this created a new planning permission and the Decision Notice also included condition 3 of approved application 16/03416/FUL listed as condition 2.

5. The appellant's statement confirms that he has implemented development as approved under application Ref 20/02154/S73. The application form for application Ref 22/01244/S73 confirms that the development had started before the application date of 31 March 2022. The covering letter submitted with the application states that it seeks to gain planning consent retrospectively. Consequently, I conclude that development has been implemented in breach of condition 2 of application Ref 22/02154/S73.
6. Although the application the subject of this appeal was submitted, and dealt with by the Council, as a s73 application seeking to vary or remove condition 3 of application Ref 16/03416/FUL, for the reasons outlined above the application should have been dealt with as a s73A application. Also, the condition the appellant sought to remove or vary should have been condition 2 of application 22/02154/S73. For accuracy, I have dealt with the appeal on this basis, notwithstanding the reference to s73 in the header above. I consider no one would be prejudiced by this. Furthermore, this technicality does not alter the way I have appraised the appeal or the Decision I have reached.
7. During the appeal process I requested clarification regarding: i) the proposed availability of a sample timber window frame, ii) submission of a Statement of Common Ground (SoCG), and iii) how the Council envisaged enforcing the relevant condition. It was confirmed that a sample frame would not be available and that a SoCG would not be submitted. The Council did not explain how it intended to enforce the condition but noted that it would consider taking appropriate enforcement action if required. The appellant suggests that the condition is not enforceable. I have taken account of the comments received in reaching my Decision. I note, however, that I cannot be certain of the details the Council holds regarding the matter and therefore I cannot be certain of whether it could or could not enforce the condition.

Main Issue

8. The main issue is the effect on the character and appearance of the area of retaining the development as carried out, specifically with regard to the doors and windows installed.

Reasons

9. As can be seen above, condition 2 of application 22/02154/S73 deals with several aspects. The aspect that is of concern here is *"the materials to be used in the construction of the external surfaces of the conversion hereby permitted shall be as specified on the application form"*, and the relevant part of the reasons given for the condition is *"to ensure that the external appearance of the development is appropriate to its surroundings."*
10. The application form referred to in the condition is that submitted with application Ref 16/03416/FUL, which states that the proposed materials and finishes for the doors will be *"timber doors to match existing in appearance"*,

and the proposed materials and finishes of the windows² will be "*timber windows to be painted white to match existing.*"

11. The subject building is a two-storey large 'L' shaped converted agricultural barn(s), which is positioned to the side and rear of the associated farmhouse. The southern gable end of the building is located adjacent to Norley Road, and the building's southern, western, and eastern facing elevations are clearly visible from the road. Except for the southern gable end, all elevations of the building have doors and windows inserted in them, and there are many, around 80 in total. Consequently, the fenestration forms a significant part of the building's character and appearance.
12. The material of the doors and windows installed are described by the appellant as being plastic/upvc and their colour is referred to as dark grey. Hence, they are neither timber nor white, as required by condition 2. That said, the Council's statement confirms that the colour of the doors and windows is not of concern. I note also that the Council has not raised any concerns regarding their design and/or profile. I have therefore focussed my appraisal, and based my Decision, on the material used.
13. The site is located within the countryside, within an evidently rural setting. There are a handful of dwellings within proximity of the site. The appellant points out, which I acknowledge, that several of these residential properties, including the associated farmhouse, have upvc windows. For this reason, the appellant asserts that the upvc doors and windows that have been installed in the appeal building are not out of keeping with the surrounding area.
14. I disagree with this conclusion. As the appellant notes, the properties referred to are not barn-conversions, and they likely have different permitted development rights. Indeed, they are buildings designed as dwellings from the outset, without the need or desire therefore to retain the agricultural character and/or appearance of an agricultural barn being converted to dwellings. I consider different buildings within the surrounding area make different contributions to its character and appearance. Furthermore, due to the size of the appeal building and its prominence within the landscape, its character and appearance significantly contribute to the overall character and appearance of the immediate area. Hence, just because there are plastic windows in several of the dwellings in proximity of the site does not logically lead to concluding that they would be acceptable in the barn-conversion.
15. The appellant contends that the windows and doors that have been installed are of a high quality and are not discernible as plastic, unless viewed from very close range. Again, I disagree with this view. As noted, the associated farmhouse has upvc windows installed. During my visit I observed that the dwelling also has a timber porch, door, and fascia boards, painted sage green. The difference between the painted timber aspects and the white plastic window frames was clearly discernible to me. Moreover, the material used for the windows and doors in the appeal building was also discernible to me as plastic, due to factors such as the finish of the surfaces, the nature and quality of the joints and some of the plastic caps in the ends of the cills hanging out.

² It is understood that the reference to windows relates to window frames

16. In my opinion the painted timber aspects on the associated farmhouse gave the property more of a traditional, rural character and appearance, in contrast to the suburban character and appearance created by the plastic windows.
17. From my observations, the nearest building to the site that is comparable to the appeal building in size and original use, is a building used for equine purposes located north-west of the site. From what I was able to see of this building from the road, ie the south-eastern and north-eastern facing elevations, most of the windows were painted white and were discernible as timber. Additionally, the use of timber contributed to the overall character and appearance of the building, ie a building located in the countryside used for rural enterprise purposes.
18. The appellant refers to the use of plastic doors and windows in other properties further from the site. However, I consider the nature of the properties referred to and their settings to be very different to the appeal building and its setting. As such, I consider them not to be comparable examples.
19. I accept that both timber and upvc materials are used in a range of buildings across the country, including agricultural buildings, and that it may be possible to create non-wooden frames that are almost indiscernible from timber. However, I consider the doors and windows installed in the appeal building are not of that standard.
20. I accept that conversion of the agricultural barn(s) to dwellings inevitably resulted in some compromise between retaining the character and appearance of the original building and enabling the conversion to be suitable for residential use. However, in my opinion, the installation of the extensive number of plastic doors and windows has substantially eroded the character and appearance of the original building. The result being a conversion that is suitable for residential use but significantly harmful to the character and appearance of the building, and consequently the character and appearance of the surrounding area.
21. Bearing in mind that the buildings is divided into 5 separate residential units, the appellant contends that future occupiers of the dwellings could insert a range of windows and doors, provided they were timber and painted white, which could result in the building having a non-uniform set of windows and doors within it. Additionally, it is asserted that there is no guarantee that future occupiers would maintain the doors and windows in a uniform manner, and a lack of uniformity could be harmful to the character and appearance of the building.
22. However, I note that condition 3 on planning permission Ref 20/02154/S73 removes the facility for future occupiers to be able to make alterations to windows, among other things, without the grant of planning permission from the local planning authority. Also, the situation as regards non-uniform maintenance would be the same regardless of what materials were used.
23. For the above reasons, I conclude that varying or removing condition 2 of application Ref 20/02154/S73, to allow the plastic windows and doors installed to be retained, would have a detrimental impact on the character and appearance of the original agricultural building. Consequently, this would significantly harm the character and appearance of the surrounding area. I have not been provided with a suitably worded condition that would lead me to

conclude that the condition could be varied in a manner that would protect the character and appearance of the area.

24. As such, the development does not accord with policies ENV6 of the Cheshire West and Chester Local Plan (Part 1): Strategic Policies, or DM3 and DM22 of the Cheshire West and Chester Local Plan (Part 2): Land Allocations and Detailed Policies. Collectively, and among other things, these policies require development to promote high quality design and construction which respects and protects the character and appearance of the local area, and to encourage local distinctiveness by, among other things, using appropriate materials. Conversion of buildings in the countryside to dwellings are only supported where specified criteria are met, including the conversion leading to an enhancement of its setting.
25. The appellant contends that there are no details in the policies, or any supplementary planning documents, regarding the materials that must be used for doors and windows in such developments. Consequently, it is suggested that the opinion reached by the Council is a subjective one. Additionally, the appellant asserts that the Council has not provided any details regarding how the windows and doors should look.
26. I accept that the policies referred to do not specify in detail materials that should be used for doors and windows in such developments, nor have any supplementary planning documents been referred to. However, such policies cannot be detailed to an extent that applies to the wide range of circumstances they potentially apply to. Consequently, the policies are worded broadly, and judgements must be made by the decision-maker regarding whether proposals accord with them as they are worded.

Other Considerations, Planning Balance & Conclusion

27. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise³.
28. The appellant contends that in addition to the matters dealt with above, there were several other reasons plastic was chosen rather than timber. Thus:
i) timber was difficult to get hold of and extremely expensive during the period when the majority of the conversion was undertaken, ie during the Covid 19 pandemic; ii) timber frames need a high level of maintenance; paint on timber can easily chip; if the required maintenance is not undertaken it can lead to buildings looking rundown and in disrepair; the plastic windows will need less maintenance and retain a smart appearance for the coming years, and iii) the windows installed provide greater thermal efficiency. The appellant also points out that the building is not listed nor is it located within a conservation area.
29. I appreciate the difficulties the appellant appears to have experienced sourcing timber doors and windows during the Covid 19 pandemic. I acknowledge that timber doors and windows are more expensive than plastic ones and that plastic needs less maintenance. However, such factors do not justify inserting the plastic doors and windows used. I therefore attach limited weight to them in support of the windows and doors installed.

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990; reiterated in paragraphs 2 and 47 of the National Planning Policy Framework

30. Additionally, I do not share the views that plastic doors and windows will inevitably retain a smart appearance for a longer period than timber; or that a building with poorly maintained painted timber windows and doors would appear any more rundown than a building with poorly maintained plastic windows. I therefore attach limited weight to these factors.
31. I have not been provided with any substantive evidence demonstrating that the doors and windows installed are thermally more efficient than doors and window frames constructed of timber of the same design and profile with the same glazing installed. I therefore attach little weight to this matter. I accept that the building is not listed or located within a conservation area. However, such factors are neutral in the planning balance.
32. I therefore conclude that the other considerations outlined, either individually or collectively, do not attract a degree of weight that would outweigh the significant harm I have found to the character and appearance of the area. Consequently, there are no other considerations that would lead me to conclude other than in accordance with the development plan. For the reasons outlined, I conclude that the appeal is dismissed.

J Williamson

INSPECTOR