



Appeal Decisions

Site visit made on 29 March 2023

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2023

Appeal A Ref: APP/X1355/W/22/3306183

1 The Pastures, Clough Dene, Tantobie, Stanley, Durham DH9 9PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mrs Gillian Reay against the decision of Durham County Council.
 - The application Ref DRC/21/00386, dated 2 December 2021, sought approval of details pursuant to conditions Nos 4 and 6 of a planning permission Ref DM/19/00091/FPA, granted on 11 March 2019.
 - The application was refused by notice dated 22 March 2022.
 - The development proposed is Change of use of stable building to residential development (use class C3) for one single storey dwelling with associated landscaping and access.
 - The details for which approval is sought are related to Land Contamination and access from the highway respectively.
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Appeal B Ref: APP/X1355/W/22/3306256

1 The Pastures, Clough Dene, Tantobie, Stanley, Durham DH9 9PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Gillian Reay against the decision of Durham County Council.
 - The application Ref DM/22/01336/FPA, dated 26 April 2022 was refused by notice dated 18 August 2022.
 - The development proposed is change the use of stable building to residential development.
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Decision

1. In respect of appeal A:

The appeal is allowed and the details submitted pursuant to condition Nos. 4 and 6 attached to planning permission DM/19/00091/FPA granted on 11 March 2019 in accordance with the application DRC/21/00386, dated 2 December 2021 and the plans submitted with it, are approved.

2. In respect of appeal B:

The appeal is dismissed.

Preliminary Matters and Main Issues

3. As set out above there are two appeals relating to this site. Appeal A relates to two conditions attached to an earlier planning permission and Appeal B seeks planning permission for a very similar scheme to that previously approved. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together.

4. With regards Appeal A, planning permission¹ was granted on 11 March 2019 for the development described as “Change of use of stable building to residential development (use class C3) for one single storey dwelling with associated landscaping and access” at the appeal site, subject to a number of conditions including that which limits the life of the permission to 3 years from the date of the permission. Consequently, this planning permission would expire after 11 March 2022 if not lawfully implemented before that date. Furthermore, a number of conditions required that they be discharged prior to the commencement of development, including the two conditions at dispute in this appeal.
5. The appellant has submitted images of works undertaken to the access to the site and to the foundations of the building, these images show a date prior to 11 March 2022 and I saw the extent of works at the site visit. Furthermore, paragraph 6.9 of the Council’s Statement of Case (SoC) concludes that “it appears from the evidence submitted that on the likelihood of probabilities that development had commenced that was in breach of Condition 4 and 6 of DM/19/00091/FPA” and based on the evidence presented, I see no substantive reason to reach a different conclusion.
6. The Council has referred to ‘the Whitley principle’ resulting from *Whitley & Sons v Secretary of State for Wales* [1992] 64 P&CR 296, which provides that where works undertaken contravene conditions precedent, such works cannot be taken as lawfully commencing development.
7. The appellant has referred to the exception established by the *Whitley* case whereby if the condition requires that a detail or design is approved before a given date, and the developer applies for that approval before that date, and the approval is subsequently given so that no enforcement action could be taken, work that is carried out before the deadline and in accordance with the ultimately approved scheme can amount to a lawful start to development.
8. I note that the appellant did submit an application to discharge conditions 4 and 6 but has submitted additional evidence relating to additional gas monitoring since the application was determined. This additional information is clearly linked to the details that were submitted prior to the expiry date of the planning permission and no reasons have been presented to the appeal detailing why these details should not be taken into account in the determination of this appeal. I am satisfied that all the parties have had the opportunity to comment on this additional information and that the interests of the parties would not be prejudiced by my consideration of this evidence.
9. Nonetheless, whether or not the planning permission has been lawfully implemented is not a matter for me to decide within the context of an appeal made under Section 78 of the Act.
10. The appropriate mechanism for establishing the lawfulness of an existing development would be to apply for a Certificate of Lawful Development under s191 of the Town and Country Planning Act 1990.
11. Appeal A is made in respect of the Council’s decision to refuse consent for the approval of details pursuant to conditions Nos 4 and 6 of planning permission DM/19/00091/FPA and I have determined Appeal A on that basis.

¹ DM/19/00091/FPA

12. As such, the main issues are:

Appeal A

- i. Whether or not the details submitted in respect of conditions 4 and 6 are sufficient to allow the conditions to be discharged

Appeal B

- i. The effect of the appeal scheme on the character and appearance of the area

Reasons

Appeal A

The submitted details

13. The Officer's report and the consultee responses raise no objection to the evidence submitted, specifically site investigations including a 'Phase 2 Site Investigation' report, save for the need for additional gas monitoring.
14. I note that the appellant has submitted a report, 'gas monitoring Addendum Report', that provides details of the 6 rounds of monitoring referred to in the 'Phase 2 Site Investigation' report. The addendum report concludes, in section 4, that "ground gas protection measures will not be required in the proposed structure". Furthermore, Annex S of the appellant's statement details that, based on the same reports submitted in respect of the application that resulted in Appeal B, the EHO was satisfied that no contaminated land condition as required, clearly indicating that the details are acceptable. On this basis I am satisfied that the submitted evidence is sufficient to discharge condition 4.
15. Turning to Condition 6, I note that no objection to the access arrangements show on the submitted plan were raised in the Decision Notice, Officer's report or consultee responses. Furthermore, in paragraph 6.2 of the Council's statement of case, it is accepted that the submitted information is satisfactory.
16. The plan shows visibility splays, driveway and turning area for cars. Based on the evidence before me and my observations at the site visit, I am satisfied that the access arrangements are acceptable and that condition 6 can be discharged on this basis.
17. To conclude this main issue, I am satisfied that the submitted details are sufficient to satisfy the conditions and that consequently, the details submitted pursuant to condition Nos. 4 and 6 can be approved.

Appeal B

18. I note that since planning permission DM/19/00091/FPA was granted consent, the County Durham Plan (CDP) has been adopted as the local plan, replacing the Derwentside District Local Plan against which that application was assessed. Therefore, while the development proposed appear largely similar, the policy context has changed since the determination of that earlier application.
19. Policy 10 of the CDP refers to development in the countryside and seeks to restrict development unless allowed for by specific policies of the CDP or the

- exceptions contained within the policy. Policy 29 of the CDP seeks to “achieve well designed buildings and places”.
20. Also referred to by the Council is paragraph 80 of the National Planning Policy Framework (the Framework) that states “Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply and refers, amongst other matters to “(c) the development would re-use redundant or disused buildings and enhance its immediate setting”
21. Policy 6 is referred to by the appellant. The Policy, as far as is relevant to the appeal scheme, permits development on unallocated sites that are outside the built-up area but well-related to a settlement subject to a number of criteria including not contributing to ribbon development and the coalescence of settlements. While Policy 6 is not referred to on the Decision Notice, the issues of ribbon development and the coalescence are specifically referred to.
22. The appeal site consists of an existing stable building, that appears to be of particularly robust construction, set within part of a large, grassed field. I saw at the site visit that the building stands close to the road but apart from the neighbouring settlement of Tantobie. The existing site, with the exclusion of the stable, appears as part of the wider countryside.
23. The stable is a prominent structure of an uncompromising utilitarian appearance with little aesthetic appeal, such that it does not make a positive contribution to the character and appearance of the area. Therefore, while the appeal property could be converted without “complete or substantial rebuilding, disproportionate extension or unsympathetic alterations” the absence of any existing positive contribution to the character and appearance of the area means that the appeal scheme is not supported by exemption h. 1 to Policy 10 of the CDP.
24. Furthermore, I have no substantive evidence before me to suggest that the appeal scheme, that would lead to the creation of a driveway and a significant area of private garden, with the associated domestic paraphernalia that inevitably results from residential occupation, in what is otherwise open countryside, would enhance the buildings immediate setting as required under exemption h. 2 of Policy 10 of the CDP.
25. I saw at the site visit that the space between the stable building and settlement consists of part of the grassed field of the appeal site and a single storey flat roofed brick building, identified by the parties as ‘Beacon of Lights Spiritualist Church’, set within an open and predominantly grassed site. This relationship has the effect of increasing the sense of separation of the appeal property from the built form of the settlement. As a result, I am satisfied that there is a clear separation between the appeal property and the settlement, such the appeal site is not well related to the settlement and the appeal scheme is not therefore supported by Policy 6.
26. While the appeal scheme principally relates to the conversion of the existing building on the site, it would as referred to previously also lead to the creation of a significant area of private garden, in what is otherwise open countryside between the settlements of Tantobie and Clough Dene. Therefore, albeit to a limited extent, the appeal scheme would reduce the separation of these

settlements and contribute to their coalescence and a form of ribbon development.

27. As such I am satisfied that the appeal scheme would harm the character and appearance of the area, contrary to Policies 6, 10 and 29 of the CDP and paragraph 80 of the Framework.

Other Matters

Appeal B

28. I am satisfied that the proposal is acceptable, or with suitably worded conditions could be made acceptable, with respect of highway safety and land contamination, I note the appellant's comments with regards the improvement of the existing access arrangements, but I have little evidence of any existing highway safety issue and as such afford this particular matter limited weight. Furthermore, the appellant states and the council do not dispute that the 'residential amenity' of existing neighbours to the appeal would not be adversely affected and a 'good standard of amenity' would be afforded to future residents of the appeal scheme. The absence of harm in this regard is noted but this does not weigh in favour of the appeal scheme.
29. The conversion of the stables to a single residential property would realise some limited economic and housing benefits. Furthermore, I note that there is some local support for the appeal scheme, detailed in 9 of the 10 consultation responses reported in the Officer's report as supporting the proposed development, referring variously to a number of matters including the tidying up of the site, prevention of fly tipping and anti-social behaviour. These are material considerations that weigh in favour of the appeal scheme I afford them some weight but they do not outweigh the harm I have previously identified.
30. I note that planning permission² has previously been granted for a very similar scheme and that the appellant contends that this amounts to a fallback position. To form a valid fallback position there should be a real prospect of the fallback development being implemented. In this instance there is a dispute between the parties as to whether or not the planning permission has previously lapsed. Whether or not the previous development has been lawfully implemented is not a matter for me to consider in the context of an application made under s78 of the Act and, I note that there is no Certificate of Lawful Development.
31. In any event, I am required to determine the proposal in accordance with the development plan. As noted, the planning policy position has changed since the previous scheme was approved and I have assessed the proposal against the policies of the currently adopted development plan.
32. The presence of a previous permission, lawful or otherwise, granted under a previous policy context does not justify a new grant of planning permission that would be contrary to those currently adopted policies in my view.

Conclusion

² DM/19/00091/FPA

33. In respect of appeal A: For the reasons given I conclude that the appeal should succeed.
34. In respect of appeal B: For the reasons given above I conclude that the appeal should be dismissed.

Mr M Brooker

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/X1355/W/22/3306183	Mrs Gillian Reay
Appeal B	APP/X1355/W/22/3306256	Mrs Gillian Reay