



Appeal Decisions

Site visit made on 31 October 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2023

Appeal Ref: APP/Y1138/W/23/3328520

Gilberts Lodge, Road From Hayne Cross To St Georges Church, Morebath, Devon EX16 9DB

- 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 without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Andrew Moore against the decision of Mid Devon District Council.
- The application Ref 23/00893/FULL, dated 4 June 2023, was refused by notice dated 21 July 2023.
- The application sought planning permission for “renewal of planning permission reference number 4/36/96/252/R, for the formation of a one acre lake and conversion of redundant agricultural building to angling and wildlife lodge and construction of vehicular access” without complying with a condition attached to planning permission Ref 20/00111/FUL, dated 23 June 2020.
- The condition in dispute is No 1 which states that: *Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no development of the types referred to in Classes A, B, C, D or E of Part 1 of Schedule 2 relating to alterations or additions to the building or its roof or to buildings and structures within the site, shall be undertaken within the application site without the Local Planning Authority first granting planning permission.*
- The reason given for the condition is: *To protect the character and appearance of the original barn conversion and the visual amenities of the rural area in accordance with policies COR2 of the Mid Devon Core Strategy, DM2 of the Local Plan Part 3 (Development Management Policies), and the aims and objectives of the National Planning Policy Framework.*

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have also dealt with another appeal¹ on this site. That appeal is the subject of a separate decision.
3. Since the Council made its decision, on 5 September 2023, a revised version of the National Planning Policy Framework (the Framework) has been issued. However, the only substantive revisions relate to national policy for onshore wind development in England, and the changes to national planning policy do not materially affect this appeal. I have taken the Framework into account in reaching my decision.

¹ APP/Y1138/W/23/3319964

4. Following the judgement in *Finney*², the description of development in an existing planning permission cannot be amended as part of a s73 planning application or appeal. The original description of development from the original planning permission Ref 00/01534/FULL, dated 7 December 2000, is "renewal of planning permission reference number 4/36/96/252/R, for the formation of a one acre lake and conversion of redundant agricultural building to angling and wildlife lodge and construction of vehicular access". I have therefore adopted this description for the appeal proposal.
5. Previous s73 planning permissions have been granted. Planning permission, Ref 20/00111/FUL, dated 23 June 2020, had the effect of permitting the unrestricted occupation of the dwelling and is subject of a condition (No 1) that restricted certain permitted development rights. This is a new, freestanding permission. The original permission remains extant and unaltered, along with the conditions attached to it. The s73 planning application that is subject of this appeal relates to a later s73 permission, not the original planning permission. It is proposed to remove the condition (No 1) with the effect that the dwelling would be able to carry out development of the types referred to in Classes A, B, C, D or E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Main Issue

6. Having regard to the above, the main issue is whether the condition is necessary and reasonable in the interests of protecting the character and appearance of the original building and the surrounding area.

Reasons

7. The appeal site is an attractive former agricultural building. It is constructed from stone with a slate roof and has an unadorned appearance. It is a remote building set within an expansive landscape of undulating farmland of fields, hedges and trees contributing to a prevailing sense of separation from other built form and to the rural character of the locality. The site lies within a garden enclosed with stock fencing and reads on the ground as part of the countryside setting.
8. The simple appearance and character of the original agricultural barn remains clearly legible. The relative scale, traditional materials, form and unadorned appearance of the building, lack of outbuildings and uncluttered appearance contribute positively to its character and appearance, as well as the predominately open, undeveloped and spacious character and appearance of the surrounding area.
9. Policy DM9 of the Mid Devon Local Plan 2013-2033 adopted 2020 (the LP) details the parameters for which proposals for the conversion of rural buildings should be considered. The policy permits the conversion of redundant and disused rural buildings of substantial and permanent construction. It requires, amongst other things, that the building can be converted without significant alteration, extension or rebuilding, and that the design retains the original character of the building and its surroundings.
10. The text supporting LP Policy DM9 says that the building should retain its original character in order that the converted building continues to positively

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

contribute to the area's rural character. It also says that a planning condition may be imposed which resists permitted development rights for subsequent extensions and alterations.

11. Although the policy relates primarily to the conversion of rural buildings, it would be irrational that the policy provisions to retain the building's original character would suddenly no longer be a concern through its subsequent alteration or extension.
12. The Planning Practice Guidance (PPG) provides that, amongst other things, it is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls³, and that area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity⁴. Nevertheless, the GPDO does not confer absolute rights. Planning law allows these rights to be withdrawn, where justified by the circumstances.
13. The existing agricultural building has been successfully converted to a dwelling and it sits pleasantly within its rural setting. Whilst I accept that the appellant would want to carry out any extension sympathetically, I have no details to demonstrate this. The removal of condition No 1 would facilitate a substantial increase to the appeal building. If allowed, and in line with restrictions contained within the GPDO, the proposal would therefore enable certain increases in size and significant changes to the appearance of the dwelling to be made; buildings incidental to the enjoyment of the dwelling; and alterations to the roof. Individually and cumulatively, these operations could lead to a significant increase to the size of the dwelling and significant alterations to its character and appearance, which could seriously alter and diminish the original character of the building. The relative modesty of the building scale and its appearance would be lost from the site.
14. Moreover, within the predominately verdant and spacious countryside setting, these factors would run the risk that sizeable extensions and alterations could emphasise the dwelling's presence and provide a conspicuous built form. This would erode the area's predominately verdant, open and spacious rural landscape character.
15. Even though there is a hedge boundary alongside the public road, I noticed during my site visit that views of the appeal site can be achieved. The extent of the visibility of the building from the wider setting would also fluctuate on account of seasonal leaf fall. The fact that the building is not a listed building, and the site is not within a special landscape designation does not undermine the value of the character and appearance of the building and the surrounding area.
16. I have carefully considered the appeal examples provided by the appellant. However, in the appeal before me, the site-specific circumstances are highly relevant to my determination. Additionally, whilst the full details of the cases are not before me, from the evidence available the cases at 41 Fen Road, 2 Wakefield Cottages Bath Road, and Summer Hill House did not relate to

³ Paragraph 21a-001-20140306

⁴ Paragraph 21a-017-20190723

converted rural buildings. In the case relating to Mickering Cottage, the Inspector noted that the site sat within a generous plot among a cluster of similar properties and the case relating to Betteridges Barn was located with a small node of development around a road junction. As such, I have afforded limited weight to these.

17. For these reasons, I find clear justification for the use of condition No 1 to restrict permitted development rights at the property. As such there is a clear justification for its retention, in accordance with the objectives of paragraph 54 of the Framework.
18. Thus, taking account of both the PPG and paragraphs 54 and 56 of the Framework, I therefore find that the disputed condition is reasonable and necessary in the interests of protecting the character and appearance of the original building and the surrounding area. Consequently, the proposal to remove the disputed condition is contrary to Policies DM1, DM9 and DM11 of the LP, which together amongst other things, seek to retain the original character of the building, its wider context and the surrounding area.

Conclusion

19. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations identified, I conclude that the appeal should be dismissed.

J White

INSPECTOR