
Appeal Decision

Site visit made on 13 December 2023

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 February 2024

Appeal Ref: APP/X1355/C/23/3327596

Land at Biggin Farm, New Brancepeth, Durham, DH7 7HQ

- 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 Act).
 - The appeal is made by Mr M Westgarth against an enforcement notice issued by the Durham County Council.
 - The enforcement notice was issued on 17 July 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the operational development consisting of the unauthorised alteration of agricultural building, that being the installation of pre-cast concrete panels to infill between the steel frame supports.
 - The requirements of the notice are to permanently and completely remove all of pre-cast concrete panels to infill between the steel frame supports from the subject agricultural building.
 - The period for compliance with the requirements is 12 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Act. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeal on ground (c)

2. The ground of appeal is that the alleged matters do not constitute a breach of planning control.
3. A breach of planning control is defined (s171A(1) of the Act) to include the carrying out of "development" without planning permission, and "development" is defined at s55 of the Act to include "building operations", including "structural alterations of or additions to buildings".
4. In this legal ground of appeal the burden of proof rests with the appellant and the test of the evidence is made on the balance of probability.
5. The appeal building is a steel portal framed agricultural barn approximately 31.5m x 13.6m x 6.7m (height) located in the countryside within a complex of farm buildings at Biggin Farm. The works carried out comprise the installation of grey concrete sectional panels to infill most of the previously open sides of the barn, and are attached to the frame structure by means of metal plates and bolts.

6. Given the scale of the works carried out, together with their appearance and method of attachment to the building I am satisfied that they constitute both an addition to the building and an alteration to its structure and as such the works fall within the definition of “building operations”.
7. Taking the panels together as a whole, and having regard to long established case law¹, they are significant works which materially affect the external appearance of the building. As such, they are not excluded from constituting “development” by virtue of s55(2)(a) of the Act. The development carried out therefore requires planning permission.
8. Although the appellant does not seek to demonstrate differently I point out, for the avoidance of doubt, that planning permission known as “permitted development” within Article 3 and Schedule 2, Part 6, Classes A and B of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) exclude works to an agricultural building used or to be used for the accommodation of livestock where the building would be within 400 metres of the curtilage of a protected building². Class B additionally excludes the alteration of an agricultural building if the external appearance of the premises would be materially affected.
9. Consequently, since the development does not benefit from any planning permission it thereby constitutes a breach of planning control.
10. The appeal on ground (c) fails.

Appeal on ground(a)/deemed application for planning permission

11. The ground of appeal is that planning permission ought to be granted for the development carried out.

Main Issue

12. Having regard to the Council’s reasons for issuing the notice I consider the main issue is the effect on the living conditions of local residents with particular regard to noise and odour.

Reasons

13. The Council’s concerns do not relate to the operational development itself. Rather, they are concerned that the development would facilitate the use of the building for housing livestock and associated noise and odours that would likely result from such use. The same concerns are echoed in the detailed submissions received from local residents.
14. While the appellant acknowledges he operates a livestock business he argues³ that the future use of the building is not a relevant matter for consideration in this appeal, and hence has not submitted evidence in terms of numbers of livestock to be housed in the barn at any one time, or any quantitative or qualitative information for assessment in relation to expected levels of noise and odours.

¹ *Burroughs Day v Bristol CC* [1996] 1 PLR 78; 1 EGLR 167

² Protected building is defined (GPDO) as “any permanent building which is normally occupied by people or would be so occupied, if it were in use for purposes for which it is designed, but does not include (a) a building within the agricultural unit; or (b) a dwelling or other building on another agricultural unit which is used for or in connection with agriculture.

³ Appellant Statement of Case, para.3.11

15. However, it would clearly be inappropriate to grant planning permission for any new building, or for alterations to an existing building, without considering future uses that such works could facilitate and whether or not they would generate unacceptable impacts.
16. An obvious parallel of such a situation is found within the permission granted via Part 6 of the GPDO referred to previously. The GPDO permission allowing alterations to agricultural buildings would permit the operational development subject of this appeal, but excludes it if the relevant building is to be used for housing livestock and located within 400 metres of a protected building. The purpose of the limitation is to ensure that any potential impacts on occupiers of protected buildings are considered and assessed through a formal planning application process.
17. For these reasons I disagree with the appellant's view that the future use of the barn, even if it were a lawful use, is not a material consideration in deciding whether planning permission should be granted for the development subject of this appeal.
18. I acknowledge the appellant's 'fall-back' argument that if the appeal were to be dismissed the barn could nonetheless still be used for housing livestock. However, given the requirements of animal welfare regulations⁴, including the provision of dry bedding, there is no convincing evidence before me to demonstrate in that scenario the barn could be used as intensively or as effectively in the absence of the side wall panels, and consequently whether any impacts on local residents' amenity would be the same or worse. As such, I attach little weight to this 'fallback' argument.
19. References are made to officer comments within a planning committee report⁵ recommending approval for an application in respect of two barns, one of them being the subject of this appeal. However, the officer comments appear to relate to a test of whether or not there would be a statutory nuisance. In planning terms amenity impacts, such as noise and odours, might reasonably require mitigating even if they did not reach a level of a statutory nuisance.
20. The above aside, the "information submitted" referred to in the officer report with regard to thresholds, including a document referred to as a "TANS" has not been submitted for consideration in this appeal. Consequently, I am unable to make any thorough assessment of potential amenity impacts in relation to the deemed application before me in this appeal, and hence whether any conditions for mitigation may or may not be necessary. As such, the appellant has failed to demonstrate that noise and odour impacts would be at an acceptable level, either with or without mitigation.
21. For all the above reasons I find that the development carried out conflicts with the requirements of Policy 31 of the County Durham Plan (2020) which states that development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health living or working conditions. Additionally, it states that development which has the potential to lead to inappropriate odours or noise, either individually or cumulatively, will not be permitted including where any identified mitigation cannot reduce the impact to an acceptable level.

⁴ Paragraph 10 of Schedule 8 to the Welfare of Farmed Animals (England) Regulations 2007

⁵ Appellant's Appendix B, Environmental Health consultation response, para.23

22. The appeal on ground (a)/deemed application for planning permission therefore fails.

Thomas Shields

INSPECTOR