



Appeal Decision

Site visit made on 16 January 2024

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 26th February 2024

Appeal Ref: APP/U2750/W/23/3332520

Fox Inn Farm Barns, West Lane, Stillington

- 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 Fox Inn Farming against the decision of North Yorkshire Council.
 - The application Ref 22/02417/MBN, dated 18 October 2022, was refused by notice dated 3 May 2023.
 - The development proposed is the conversion of the existing barn as per the detailed plans attached. Natural light from existing and proposed openings as allowed under Class Q.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 1 April 2023 Hambleton District Council merged with a number of other Councils to form the new Unitary Authority of North Yorkshire Council. The decision notice for the proposal was issued by North Yorkshire Council and it is the Council referred to in this appeal. Development plans for the merged Councils remain in place for the area within the new Unitary Authority they relate to until such time as they are revoked or replaced.
3. The Government published a revised version of the National Planning Policy Framework (Framework) on 19 December 2023. Whilst I have had regard to the revised Framework, the issues most relevant to this appeal remain unaffected by the revisions. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that such a course of action would disadvantage no party. For correctness, I have used the 2023 Framework paragraph references.

Background and Main Issues

4. The appeal site is in an area of land just off West Lane and almost opposite Clover House, approximately 1.5 kilometres west of Stillington. There are two existing modern agricultural barns on the land. Barn 1 forms the appeal site and is the largest of the two barns. Barn 2 is an adjacent smaller barn and the appellant does not dispute that this has planning permission for use as a livestock building. On the opposite side of West Lane, there is a poultry business.
5. Under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) the appellant applied for the appeal building to be converted to a single dwelling.

6. Under Class Q of the GPDO, planning permission is granted for agricultural buildings to dwellinghouses, subject to limitations and conditions. It is common ground between the main parties that the proposed development meets the requirements of part Q.1 of Class Q, and I have no evidence to indicate otherwise.
7. For permitted development under Class Q, paragraph Q.2(1) of the GPDO requires prior approval of six matters. These are (a) the transport and highway impacts; (b) noise impacts; (c) contamination risks; (d) flooding risks; (e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) and (f) the design or external appearance of the building.
8. In considering these matters, the Framework and development plan policies can be considered relevant, but only insofar as they relate to the development and the prior approval matters and only as evidence to support the planning judgment to be made.
9. Within the Council's Officer Report, refusal of the prior approval application was indicated to be on two grounds relating to Class Q, paragraph Q.2(1)(e) of the GPDO. The first reason was related to odour from the nearby poultry business impacting the future occupants of the dwelling and the residential use prejudicing the business's future operation. The second reason was that the agricultural use of the nearby Barn 2 would cause an odour impact on the future occupants of the dwelling. The Council refers to both the Framework and Policy E2 of the Hambleton Local Plan (2022) (Local Plan) in the reasons for refusal. Notwithstanding, that paragraph 193 of the Framework should have been referred to by the Council in the reasons for refusal, both the Framework and the Local Plan policy are relevant to the planning judgement of the matters as they seek to ensure adverse impacts on future occupants and existing buildings are appropriately considered.
10. Based on the above, the main issues are:
 - whether or not the location or siting of the building would make it impractical for it to change to a dwellinghouse with particular regard to odour from the nearby poultry business affecting the living conditions of the future occupants of the proposed dwelling and, from an odour perspective, the proposed residential use prejudicing the business's future operation; and
 - whether or not the location or siting of the building would make it impractical for it to change to a dwellinghouse, with particular regard to odour from the nearby Barn 2 affecting the living conditions for future occupants of the proposed dwelling.

Reasons

Odour from the nearby poultry business

11. To address potential odour risk from the nearby poultry business, the appellant submitted two Odour Assessments dated January 2023 and April 2023 by Robert Burns Designs with the planning application. The assessments consisted of a number of field olfactometric odour surveys completed on different days and at different times. Each survey consisted typically of an assessment of

odour at five locations on the land between the poultry business and the appeal site.

12. The first three surveys of the January 2023 assessment were completed when the farm was not processing livestock. The subsequent surveys were completed when livestock were being processed at the farm.
13. The April 2023 surveys were completed during the period when the farm was emptying and cleaning out the poultry sheds. The appellant advises that the owner of the poultry business indicates that these activities occur typically once every 45-60 days and in some circumstances, it is carried out overnight.
14. The Environmental Health team were consulted and, while noting some minor points regarding the weather data used, did not raise any specific concerns with the assessors' methodology. The team did raise concerns regarding the closeness of the proposal to the poultry farm. It also noted that it was understood that the poultry business operated under an environmental permit and a poultry emptying cycle of approximately 40 days could apply.
15. The January 2023 assessment found that there was generally a mix of 'no odour' to an 'intermittent/constant' persistency of 'vegetation' or 'damp vegetation'. The odour strength was detailed as generally 'very weak/very faint' with a smaller number of locations noted as having 'no perceptible' or a 'slight/weak/faint' strength. In all the surveys, the odour strength at the appeal building was detailed as 'very weak/very faint'. The report indicated that a number of the surveys had wind conditions that would have blown any odorous emissions to the appeal site. The assessment concluded no odours related to the farm were detected at the appeal building. It was noted that odours from the poultry farm could impact sensitive receptors during unusual weather conditions, but these would be rare events.
16. The April 2023 assessment did identify 'animal feed' and/or 'animal' odour at the survey locations. There was also a general increase in odour from the January 2023 surveys with most being recorded as 'intermittent' persistency and 'slight/weak/faint' to 'distinct' strength. At the appeal building the general odour persistency was identified as 'very intermittent' to 'intermittent' and the odour strength was 'very weak/very faint' to 'slight/weak/faint'. This assessment also confirmed that some of the surveys had a wind direction towards the appeal building. The assessment was detailed as covering the worst-case situation at the appeal site.
17. Other than raising the concern that the January 2023 assessment did not consider the emptying and cleaning out of the poultry sheds, the Environmental Health team provided little evidence to dispute the findings. In relation to the April 2023 assessment, the team noted that the emptying process could occur more frequently if different sheds were emptied on different cycles. However, no compelling evidence to show the appellant's stated once every 45-60 days was incorrect was provided. Nor was it argued by either the Environmental Health team or the Council that the April 2023 assessment did not consider the worst-case odour scenario for the farm business.
18. With respect to the April 2023 assessment, as the odour was described as 'distinct' and recognisable as 'animal/animal feed' the Environmental Health team considered that this may indicate a higher odour strength should have been recorded. However, while most survey locations described the odour as

'animal feed' and/or 'animal', this appeared to be a general description rather than a specific reference to the odour intensity level. Little evidence is presented to demonstrate the odour intensity and strength levels recorded were not accurate. Moreover, none of the odour strengths at the appeal building were recorded as 'distinct' and none of the surveys across the site identified offensive odour.

19. Odour strengths may be affected by weather conditions such as the warmer summer months. However, the Environmental Health team provided little justification to show that these types of weather conditions could cause an unacceptable increase from the appeal site's recorded low odour strengths of 'very weak/very faint' or 'slight/weak/faint'.
20. Furthermore, the Council provide no convincing justification as to why the assessments show the proposal would restrict the operation of the farm.
21. Consequently, I am not persuaded that odour from the nearby poultry business would adversely affect the living conditions of the future occupants of the proposed dwelling. Nor am I persuaded that odour would cause the proposed residential use to prejudice the business's future operation. Accordingly, with respect to the nearby poultry business, the proposal would comply with the provisions of Schedule 2, Part 3, paragraph Q.2(1)(e) of the GPDO and would be in accordance with Policy E2 of the Local Plan and paragraph 193 of the Framework.

Odour from the nearby Barn 2

22. Due to the proximity of Barn 2 and its planning permission for use as a livestock building, the use of this building would in all likelihood adversely affect the living conditions of the future occupants of the proposed dwelling with respect to odour.
23. It is not disputed that Barn 2 has not been used for agricultural purposes for at least one year and before the submission of the original application all agricultural operations on the site were ceased. The appellant advises that there is no intention for agricultural use of Barn 2. However, there is nothing to prevent it from being used in the future. Despite the appellants' stated willingness to enter into an agreement to remove the agricultural use of the barn, no such agreement is before me. I do not consider that a condition would be appropriate to deal with this matter as it is related to a separate planning permission which is not part of the appeal.
24. While the appellant contends that the proposal would prevent the future agricultural use of Barn 2, the proposal's planning red line boundary does not include the main access into the site, and it maintains some separation and space between the proposal and the retained barn. The proposal would not prevent agricultural vehicles from entering and manoeuvring within the site or for Barn 2 to be used for agricultural/livestock purposes. Although the appellant's drawing reference CWL14 shows only access to the proposed building, it does not indicate any restricted access to Barn 2.
25. Consequently, odour from the nearby Barn 2's agricultural use would adversely affect the living conditions for future occupants of the proposed dwelling. The proposal would not comply with the provisions of Schedule 2, Part 3, paragraph

Q.2(1)(e) of the GPDO and would not be in accordance with Policy E2 of the Local Plan.

Other matters

26. To support the proposal, the appellant refers to several Framework paragraphs including paragraph 123 which promotes the effective use of land whilst making the best use of brownfield land and safeguarding the environment; paragraph 124(d) supporting the development of under-utilised land and buildings to meet housing needs; paragraph 88 to support a prosperous rural economy and diversification of agricultural businesses, and paragraph 191 to ensure that new development is in an appropriate location, taking into account the effects of pollution on health and living conditions. However, for the reasons set out, the proposal would have an unacceptable impact on the living conditions of future occupants of the proposed dwelling and, so far as it is a material consideration, the Framework supports refusal in this circumstance.

Conclusion

27. The odour from the nearby poultry business would not adversely affect the living conditions of the future occupants of the proposed dwelling. Nor would the proposed residential use from an odour perspective prejudice the poultry business's future operation. However, these do not outweigh the odour impacts the nearby Barn 2's agricultural use would have on the living conditions of future occupants of the proposed dwelling. For this reason, I conclude that the appeal should be dismissed.

J Symmons

INSPECTOR