



Appeal Decision

Site visit made on 11 February 2025

by **F Wilkinson BSc (Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4th March 2025

Appeal Ref: APP/U2750/W/24/3355721

Green Lane, Great Ayton TS9 6JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Ben Flintoft against the decision of North Yorkshire Council.
 - The application reference is ZB24/00125/FUL.
 - The development proposed is conversion of redundant building to a residential dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the submission of the appeal a revised National Planning Policy Framework (the Framework) was published in December 2024. I am satisfied that the substance of the Framework in regard to the main issues of the case have not changed. I have taken the revised Framework into account, and I am satisfied that this has not prejudiced any party.

Main Issues

3. The main issues are:
 - whether the proposal would constitute an acceptable form of development, having regard to the development strategy for the area; and
 - the effect of the proposal on the character and appearance of the area.

Reasons

Development Strategy

4. The appeal site comprises a green corrugated metal building located within a parcel of land described by the Council as mixed use and forestry land. The site lies to the east of Ayton Firs Hall and its outbuildings which have predominantly been converted to residential use. The site is partly surrounded by trees and a hedgerow, which contribute to the wooded appearance of the area when viewed from the public right of way (PRoW) that runs to the south along the private road. Although there is some built development nearby, the appeal site has a distinctly rural character and is set within an open rural landscape.
5. Based on the definition in Policy S5 of the 2022 adopted Hambleton Local Plan (the Local Plan), the site is in the countryside. The policy only supports the conversion of an existing building in the countryside where it can be demonstrated

that the building is redundant or disused, is of permanent and substantial construction, would not require significant reconstruction and is structurally capable of being converted. There appears to be no dispute between the main parties that the building would satisfy these requirements.

6. Policy S5 also requires proposals for conversion to enhance the immediate setting, which is consistent with paragraph 84 c) of the Framework, and that any extension or alteration would not adversely affect the form, scale, massing or proportion of the building.
7. The building has a simple form and utilitarian appearance in line with its function. It sits relatively unobtrusively in its rural countryside setting and is not an alien feature. I noted from my site visit that the building does not appear dilapidated, nor does it harm the character and appearance of the surrounding area.
8. The works to convert the building would involve the application of vertical timber boarding, described in the appellant's evidence as British Larch, to the walls and corrugated metal cladding to the roof. These are features not untypical of buildings in the countryside. There are three openings across the front of the building with metal shutter doors. Windows would be inserted into these, with smaller windows added to the rear and one of the side elevations. No extensions are proposed, and the overall proportions of the building would remain the same. The changes proposed to facilitate a residential use, particularly those which would be visible from nearby public routes, would not adversely affect the form, scale, massing or proportion of the building.
9. The terms 'enhance' and 'immediate setting' are not described or defined within Policy S5 or its supporting text. Using their ordinary meaning, it could reasonably be concluded that they refer to some degree of physical and/or visual improvement in the quality, value, or extent of the area which is adjacent to the building in question.
10. There would be some biodiversity net gain within the appeal site, including an additional 97 metres of native hedgerow, an enhancement of an area of modified grassland, and 16 small moderate condition trees¹. The biodiversity enhancement would equate to a 10.29% increase in habitat units and a 75.16% increase in hedgerow units. I appreciate that the biodiversity net gain would be within an established woodland. Nonetheless, it would still represent an enhancement to the biodiversity value of the appeal site.
11. Reference is also made to measures to enhance the surrounding woodland. It is unclear from the submitted evidence as to whether this is referring to woodland within the appeal site or the wider area beyond the site boundary. In the latter case, while noting the current ownership links between the appeal site and the wider woodland, the submitted plans do not show this area to be within the appellant's control.
12. The Planning Practice Guidance advises that conditions requiring works on land that is not controlled by the applicant often fail the tests of reasonableness and enforceability. It goes on to advise that *'it may be possible to achieve a similar result using a condition worded in a negative form, (a Grampian condition) – ie prohibiting development authorised by the planning permission or other aspects*

¹ Biodiversity Net Gain Assessment, Ecus Ltd, December 2023

linked to the planning permission (eg occupation of premises) until a specified action has been taken (such as the provision of supporting infrastructure)'.

13. The appellant has suggested wording for a condition to secure the offsite works. The suggested wording would require the submission and approval of a woodland management plan prior to the occupation of the dwelling that would be created, and its implementation within three months of occupation. From the evidence before me, it would be difficult to conclude that there would be no prospect at all of the enhancement measures being implemented within the time-limit imposed by the permission, should the proposal be permitted. However, what is less certain is the ability to secure the identified ongoing measures over the longer term, such as ecological monitoring, tree management, and monitoring of invasive species, in the absence of a legal agreement. This is because a legal agreement would run with the land and place the obligations on successors in title should the land be sold. I am not therefore satisfied that the condition suggested by the appellant would be an appropriate mechanism to secure the offsite enhancement measures.
14. Additionally, the policy requirement is for enhancement to the immediate setting of the building. No plans have been submitted to indicate which area would be the subject of the proposed measures. I am not therefore able to conclude that this would be the case here.
15. Pulling these points together, the proposal would involve the conversion of a building that is redundant or disused, is of permanent or substantial construction, would not require significant reconstruction and is structurally capable of being converted to residential use. The proposed alterations would not adversely affect the form, scale, massing or proportion of the building. In my judgement, the proposal would provide some enhancement to the immediate setting of the building through the biodiversity net gain measures within the appeal site. Consequently, the proposal would accord with the requirements of parts f and g of Policy S5 of the Local Plan. I also find no conflict with the sustainable development principles in Local Plan Policy S1 or the Framework relevant to the re-use of a building. In these respects, I conclude that the proposal would constitute an acceptable form of development, having regard to the development strategy for the area.
16. Policy S5 also seeks to ensure that development recognises the character and distinctiveness of the countryside, which is similar to one of the sustainable development principles in Policy S1. I turn to this matter below.

Character and Appearance

17. The establishment of a residential use into the site would inevitably result in the introduction of domestic and urban characteristics into the landscape here. This would arise from the illumination (even if a sensitive lighting scheme could be secured), vehicle parking, refuse storage, outdoor seating, the use and maintenance of the outdoor amenity area and other domestic paraphernalia. The result would be an encroaching urbanising effect that would be noticeably at odds with the site as it is at present, and with the prevailing open and rural character of the wider area.
18. The appellant has submitted a plan showing a 'proposed curtilage' for the dwelling which is markedly smaller than the appeal site. The appellant considers that

restricting the garden area would ensure that the surrounding open countryside would remain unaffected.

19. Curtilage is not a use of land, and the term is not defined in planning legislation. Insofar as it is referenced in the GPDO², it has a specific meaning relevant to certain classes of permitted development only. Although the appellant states that natural boundaries define the 'proposed curtilage' I did not observe this to be the case, and the wider appeal site does not appear as sitting within a separate enclosure. The proposal includes the planting of a species rich hedgerow along the western and northern boundaries of the appeal site. Given this context, in my judgement, it would be difficult to argue that the whole of the appeal site would not form part and parcel of the dwelling that would be created should planning permission be granted. Consequently, to my mind, the domestic and urban characteristics of a residential use would likely extend over an area considerably larger than the 'proposed curtilage'.
20. From certain vantage points along the PRoW to the south, some of the dwellings within the cluster at Ayton Firs Hall can be seen through the trees. However, the building is clearly separate from this relatively well contained cluster of dwellings, and as such has more of a visual relationship with the open countryside. Consequently, the encroachment of domestic and urban characteristics here would detract from the countryside setting.
21. The appellant identifies the permission³ granted for the conversion of the swimming pool building to a dwelling as a recent precedent for the appeal proposal. From the submitted evidence and what I observed at my site visit, this building sits within the cluster of buildings at Ayton Firs Hall including a number of dwellings. The encroachment of domestic and urban characteristics would not therefore extend into the open countryside to the same extent as the appeal proposal would. This example is not therefore directly analogous to the proposed development, which I have in any event, assessed on its own planning merits.
22. Consequently, I conclude that the proposal would result in harm to the character and appearance of the area and as such would conflict with Policies E1 and E7 of the Local Plan. Amongst other matters these policies seek to secure high quality design that integrates successfully with its surroundings and development that protects and enhances the distinctive landscape. Conflict would also occur with Local Plan Policies S1 and S5 where they seek to ensure that development recognises the character and distinctiveness of the countryside, and the objectives of the Framework for securing well-designed places.
23. The Council's third reason for refusal raises a concern that the size of the garden would be beyond that which might be acceptable for the size of dwelling proposed. Policy E2 of the Local Plan sets out several requirements to ensure a high standard of amenity for users and occupants of proposed development. This includes the adequate and convenient provision of private external amenity space. While the size of the garden contributes to my concerns about the effect of the proposal on the character and appearance of the area, it would not harm the amenity of future occupants. I therefore find no conflict with part g of Local Plan Policy E2.

² Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

³ Reference 22/01354/FUL

Other Matters

24. The appellant contends that the building was previously used for agricultural purposes and thus benefits from the permitted development rights conferred by Class Q of the GPDO. There is no compelling evidence to confirm that the building was part of an established agricultural unit within the time periods specified in the GPDO. I cannot therefore be certain that permitted development rights would be available to the building. Consequently, and bearing in mind the case law⁴ cited by the appellant, this is a factor which can only carry limited weight in my decision, and which is not sufficient to outweigh the harm I have identified.

Other Considerations – Effect on the Teesmouth and Cleveland Coast Special Protection Area (SPA) and Ramsar Site

25. The site lies within the catchment for the Teesmouth and Cleveland Coast SPA and Ramsar site. The submitted evidence confirms that this site is currently in an unfavourable condition due to nutrient enrichment, including pollution from nitrates.
26. The wastewater from additional new housing development has the potential to increase nitrate loads. There is no basis for me to dispute Natural England's position about the effect of such proposals on the qualifying features of the SPA/Ramsar site in view of its current condition and conservation objectives. Consequently, when considered in combination with other developments in the area, there would be a likely significant effect on the qualifying features of the SPA/Ramsar site from the proposal.
27. Natural England has put a mitigation strategy in place which is based on the purchase of Nutrient Credits. The appellant has a Provisional Nutrient Credit Certificate (the Certificate) which confirms the reservation of the required number of credits. However, it appears that the Certificate expires after 36 weeks from the start date. The start date given on the Certificate is 19/09/2023. There is nothing before me to suggest that an extension of the Certificate has been granted or that a Final Nutrient Credit Certificate has been completed.
28. If I were minded to allow this appeal, it would be necessary for me to carry out an Appropriate Assessment. However, given my overall conclusions on the appeal, it is not necessary for me to reach a finding on this matter.

Planning Balance and Conclusion

29. While I have not found conflict with certain aspects of the development strategy for the area, I have found that the proposal would harm the character and appearance of the area. This harm would be notable and long lasting. It would not be outweighed by the limited contribution that the proposal would make to the supply and mix of housing, or the biodiversity enhancement measures. To this extent, there would be conflict with the development plan when considered as a whole. There are no material considerations of sufficient weight that would indicate the decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

F Wilkinson

INSPECTOR

⁴ *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314