



Appeal Decision

Site visit made on 22 March 2018

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 April 2018

Appeal Ref: APP/Y1138/W/17/3190935

Land at NGR 306760 119767 (North of Wardmoor), Holcombe Rogus TA21 0NE

- 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 Ms F Gibbins against the decision of Mid Devon District Council.
 - The application Ref 17/01279/FULL, dated 31 July 2017, was refused by notice dated 27 September 2017.
 - The application sought planning permission for the erection of an agricultural building without complying with a condition attached to planning permission Ref 09/01028/FULL, dated 28 August 2009.
 - The condition in dispute is No 2 which states that: The building hereby approved, shall be used only for agricultural purposes. On its becoming redundant for such purposes, it shall be demolished, and all materials resulting from the demolition shall be removed from the site, within 3 years of the date this occurs.
 - The reason given for the condition is: To safeguard the rural character of the area.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of an agricultural building at land at NGR 306760 119767 (North of Wardmoor), Holcombe Rogus TA21 0NE in accordance with the application Ref 17/01279/FULL dated 27 September 2017, without compliance with condition No 2 previously imposed on planning permission Ref 09/01028/FULL dated 28 August 2009.

Preliminary Matters and Background

2. Section S73 applications are commonly said to be seeking to vary or remove conditions to which an existing permission is subject. However, that is not strictly the case. If such applications (or appeals against their refusal or non-determination) succeed, a completely new permission is created that stands alongside the original and the applicant or appellant is able to choose which is implemented. As the original planning permission was for the erection of an agricultural building I have used this description in the formal decision and banner heading.
3. An application for prior approval¹ required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) to change the use of the appeal building to a dwelling was

¹ 16/00061/PNCOU

made by the appellant in 2016. This application was refused and subsequently appealed². The Inspector found that the proposal was contrary to the condition in dispute in this appeal. However, he stated that the merits of the condition were not before him for consideration.

Main Issue

4. In light of the above and given the reason for the condition the main issue is whether or not the disputed condition is reasonable and necessary with regard to the effect of the development on the character and appearance of the area.

Reasons

5. The appeal site comprises an agricultural building and part of a field/paddock and access to it is from a narrow country lane. The building is constructed of rendered blockwork with timber boarding above and has a shallow pitch roof. The field was occupied by an appreciable number of sheep at the time of my visit. The appeal building is separate from the settlement of Holcombe Rogus and it can reasonably be described as being within the open countryside.
6. Whilst, the Council's reason for refusal does not cite any reference to development plan policies it is clear from the Planning Officer's Report that the application was considered against Policy COR18 of the Core Strategy (CS) and Policies DM2 and DM22 of the Local Plan Part 3 Development Management Policies (LP3).
7. CS Policy COR18 strictly controls development outside of defined settlements, to enhance the character, appearance and biodiversity of the countryside. It states that detailed development control policies will permit agricultural and other appropriate rural uses subject to a number of criteria. Agricultural buildings are contained within the criteria. LP3 Policy DM2 relates to high quality design and Policy DM22 sets out that, amongst other things, agricultural development should be sensitively located and reasonably necessary to support farming activity. The policies are consistent with the design objectives of the Framework and its intention that the intrinsic character and beauty of the countryside is recognised.
8. The appeal building does not form part of a wider group of farm buildings and it is surrounded by fields and paddocks. However, even though the building is of utilitarian design, in my experience, that design is reflective of many other modern agricultural buildings. It does not appear out of place when viewed from within the field against the backdrop of field boundary hedges and trees, surrounding fields and the wider landscape which includes other rural buildings. The materials and detailing are plain and restrained in colour and arrangement. While this does not neutralise the presence of the building, it lessens its bearing in the landscape. The hedges and trees that bound the narrow lanes close to the site serve to preclude the majority of long and medium distance views of the building.
9. The Council's Officer Report in relation to the original application states that the field boundaries will still offer a degree of screening of the site in the winter months, sufficient to soften the visual impact of the building and that the site is not in a particularly exposed area. Even though the hedges could be reduced in height the building does not appear out of place in the landscape. Taking

² APP/Y1138/W/16/3150911

- into account all of the above I consider that the appeal building has a minimal effect on the character and appearance of the area.
10. The Council have brought to my attention an appeal decision³ where the impact of the agricultural building was reduced due to its proximity to another agricultural building and pond. Even though the appeal building is not associated with other agricultural buildings I have found that its effect on the character and appearance of the area is minimal.
 11. At the time of the original application concerns were raised about the justification for the building and its potential for equestrian use/livery. The field adjacent to the appeal building and the building itself still appear to be in agricultural use. The description of the development on the original permission expressly specifies the intended use of the building. Section 75(2) Town and Country Planning Act 1990 as amended (the TCPA) sets out that *'where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used'*. As such, the first sentence of the condition is unnecessary.
 12. Section 72(1)(b) of the TCPA enables the imposition of conditions containing provisions similar to those in the second sentence of the disputed condition related to demolition and site restoration. It is also a condition on certain agricultural permitted development rights that buildings must be removed, and the land restored to its previous condition, if no alternative use is permitted within 3 years of the cessation of agricultural use.
 13. Nevertheless, CS Policy COR18 states that agricultural and other appropriate uses will be permitted and this includes the conversion of existing buildings. Whilst, Policy E14 of the Mid Devon Local Plan did state that *'In appropriate cases the Council will consider the need to require that the building be removed when it is no longer required for agricultural purposes, and the site reinstated to its former use'*. I have no evidence before me to indicate that this policy forms part of the existing development plan.
 14. Furthermore, since the original application was approved the Framework and PPG have been published. One of the core principles of the Framework relates to encouraging the reuse of existing resources including conversion of existing buildings. The PPG⁴ is clear that *'a condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness'*. Taking into account the materials used in the construction of the appeal building it is clearly intended to be permanent.
 15. While I understand the Council's and third parties' anxiety about what the building could be used for should the agricultural use cease planning permission or prior notification would be required for a different use. As such, there are adequate safeguards to prevent harm to the character and appearance of the area, the amenity of neighbouring occupiers and to enable the implications on highway safety to be considered should the building become redundant and a use for non-agricultural purposes be sought in the future.
 16. The removal of the condition would not lead to a development in conflict with CS Policy COR 18, LP3 Policies DM2 and DM22 or the Framework. There is no

³ APP/Y1138/W/17/3183837

⁴ Paragraph: 014 Reference ID: 21a-014-20140306 Revision date: 06 03 2014

policy requirement and no other factor to justify the demolition of the building in the event that its use ceases. Taking into account all of the above the disputed condition is not reasonable or necessary with regard to the character and appearance of the area.

Other matters

17. The appellant has raised additional concerns in terms of whether the identification of redundancy stated within the disputed condition would be enforceable. A condition should only be imposed if it satisfies all six tests set out in paragraph 206 of the Framework. In that respect, given my findings that the disputed condition is not reasonable or necessary to make the development acceptable it does not meet the requirements of paragraph 206 of the Framework. Consequently, it is not necessary to consider the other tests in so far as how the condition would be enforced.

Conditions

18. The original permission was only subject to one other condition relating to the commencement of development. As the building has been constructed it is not necessary to re-impose it.

Conclusion

19. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed and planning permission is granted for the erection of an agricultural building, without compliance with condition No 2 previously imposed on planning permission 09/01028/FULL.

D. Boffin

INSPECTOR