



Appeal Decision

Hearing held on 27 October 2010

Site visit made on 27 October 2010

by R J Marshall LLB Dip TP MRTPI

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

Decision date: 23 November 2010

Appeal Ref: APP/Y3940/A/10/2129919

Common Farmhouse, Quemerford, Calne, Wiltshire, SN11 8UB

- 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 Julian Miller against the decision of Wiltshire Council.
 - The application Ref N/09/01926/FUL, dated 26 October 2009, was refused by notice dated 14 December 2009.
 - The development proposed is described as "Conversion of Barn 3 to form single dwelling including partial reconstruction (retrospective)".
-

Application for costs

1. At the Hearing an application for costs was made by Julian Miller against Wiltshire Council. This application is the subject of a separate Decision.

Decision

2. I dismiss the appeal.

Background

3. The development for which permission is sought has been largely undertaken. I have taken the application description given in the bullet points above from the planning application forms. However, the key matter in dispute between the parties is whether what has been undertaken is only a partial reconstruction and in accordance with development plan Policies on the re-use of rural buildings, or whether it is in effect a new house in the countryside. This is reflected in the main issue and reasoning below.
4. The application description solely relates to the barn. On site it was clear that other works such as extensive hardsurfacing and the erection of walls had also taken place. Some of these works, but far from all of them, are shown on the application plans. I shall, for the avoidance of doubt, deal with this appeal on the basis that these features, whether built and/or shown on the application plans, do not form part of the proposal. Both parties agreed that this was the approach that should be adopted.

Main Issue

5. The main issue in this appeal is whether the development for which permission is sought complies with development plan Policies on the re-use of rural buildings and if not whether there are other material considerations sufficient to lead to a conclusion contrary to the development plan.

Reasons

Policy background

6. Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7) says that new building in the open countryside away from existing settlements should be strictly controlled. It does, however, support the re-use of appropriately located and suitably constructed existing buildings in the countryside. This is an approach followed in the North Wiltshire Local Plan 2011. Policy BD6 of that Plan says that in the countryside the re-use of buildings will be permitted provided, amongst other things, the proposed use will be contained within the building and does not require extensive alterations, rebuilding and or extension. Whilst the preference is for a commercial re-use residential re-uses are permitted. Otherwise, under Local Plan Policy H4, residential development in the countryside is limited to houses required for agricultural purposes or replacement dwellings.
7. If the development for which permission is sought complies with Policy BD6 it may be regarded as a barn conversion acceptable in Policy terms. If it is a new-build, as the Council allege, it is effectively a new house in the countryside for which there is no justification under Local Plan Policy H4.

Reconstruction or new build

8. The appeal building is within a complex of 5 equestrian outbuildings and stables. In 2006 planning permission was granted for their conversion to residential units. When inspecting the site in relation to barns 4 and 5 the Council became concerned at the extent of works being carried out on the appeal building, barn 3. This led to the submission of the application before me.
9. As the appeal building is not far off being capable of residential occupation I have assessed whether what has applied for complies with Policy BD6 having regard to the submitted plans, evidence given at the hearing and what I saw.
10. I turn first to the roof. The application plans refer to the roof structure being replaced. The appellant confirmed that the roof had been taken off and re-built utilising mostly new wood. Very little of the old timberwork remains although some roof trusses have been repaired. The roof had initially been covered in triple Roman tiles. They have been replaced by stone tiles.
11. Turning to the remainder of the building a lean-to has been removed together with 2 bays at the southern end of the building. As for the external walls it was said that they are all of new construction, albeit in cases with a mix of old and new materials in a proportion of 60%/40% respectively. The lengthy western wall of the barn was demolished and re-built on new foundations slightly beyond the line of the original wall. A new southern gable has been constructed following the demolition of the 2 southern-most bays. The main east elevation wall is a re-construction. The north elevation wall has been re-built. An eastern gable wall has been re-built. There is a notable uniformity in the appearance of the stonework walls.
12. As the appellant pointed out, Policy BD6 does not, unlike the Policies of some authorities, specify precisely what constitutes extensive alteration or re-building. In my view it needs to be judged as a matter of fact and degree. There may be cases where the judgment to be made is a fine one. However, the extent of works referred to above is so great that it can only on any

common sense interpretation be regarded as extensive alteration and re-building. The fact that works of demolition are said to have occurred in stages, rather than all in one go, does not alter my judgment on this.

13. I conclude that the development for which permission is sought does not comply with development plan Policies on the re-use of rural buildings and is more akin to the construction of a new dwelling.

Other material considerations

Consistency of Council approach given 2006 decision on conversion of the buildings in the farm complex

14. The 2006 permission regarding the re-use of all the buildings in the complex was described as "Conversion of equestrian outbuildings and stables to ... residential units". A box on the application form was ticked to show that the proposal involved alteration/extension to buildings. However, a letter accompanying the application said, "The only alterations will be the necessary repair work and the work to convert the buildings into a residential use. These works will be mainly internal". The letter went on to say "The buildings already exist on site and no major building works will be required".
15. The application plans show the removal of the lean-to on barn 3 but do not otherwise show works that could be construed as major alterations. A surveyors report accompanied the application with the remit of assessing the present condition of the buildings and their suitability for residential conversion. On barn 3 it indicated that the east facing gable and associated roof would need to be re-built. However, whilst works would be required to the main roof, and not all of the roof may have been accessible for the purposes of the survey, there is no indication that the entire roof structure would need to be removed and replaced. It was assumed that the roof would be re-tiled using existing suitable sound tiles. Other than the east facing gable it was said that the walls were generally satisfactory and no indication was given that they needed extensive re-building.
16. In permitting the application the Council imposed no condition requiring further details be provided of the conversion and repair works. However, it did add the following informative "The applicant should note that this permission is for the conversion of the existing barn (*sic*) in accordance with the permission granted and the approved drawings. Any demolition or rebuilding of the existing structures on the site will negate the permission hereby granted".
17. Given the above the Council cannot be said to have previously permitted works of an extent that implies a lack of consistency with the approach adopted in the application before me.
18. In arriving at this view I have also had regard to the fact that in later permitting a revised proposal for units 4 and 5 the Council approved a revised access that could only be utilised with the demolition of a small length of the southern section of barn 3. However, barn 3 was not within the application site boundary and I do not see the revised scheme for units 4 and 5 as permitting the partial demolition of barn 3. In any event, taken in isolation, demolition of that part of the appeal building would not constitute extensive alterations.

Consistency of Council approach given permissions relating to conversion of other barns in the farm complex

19. Following the 2006 grant of planning permission relating to all the barns in the complex further applications for the conversion of the buildings deviating from the original permission were submitted. Some were permitted and others refused.
20. In January 2008 permission was granted for the residential conversion of barns 4 and 5. This permitted an increase in width of a lengthy central section to the building and raising the roof height of this section to allow the roof span to cover it. It also permitted windows of a different size to those originally permitted. A covering letter with the application said that walls would largely be "existing retained". In my view these changes are more significant than the Council suggests. At best they are on the borderline of falling within the requirements of Policy BD6 in terms of the extent of re-build and alterations. However, walls are said largely to be retained and there is no evidence before me that the alterations proposed to the roof went beyond the central section. Moreover, the proposed use of triple roman clay tiles corresponds with the original roof covering. As such the permitted degree of re-build and alterations is less than in the case before me.
21. Permission was later sought for a conversion scheme for barns 4 and 5 proposing more window openings. This was refused on the basis that it would be too extensive an alteration and as such out of keeping with the character and appearance of the building.
22. In April 2008 planning permission was granted for the conversion of barn 2 to a dwelling. This is an L shaped building. The older northern section was a traditional stone barn. A more recent southern addition was a smaller asbestos building of poor construction. The April 2008 permission allowed for the rebuilding of this smaller building, albeit to a somewhat greater height. In a Design and Access statement there was no suggestion that substantial works were required to the main northern section of the building. Indeed, it says that, "the minimal alterations proposed are not significant". The appellant confirmed that northern part of the building remains largely intact. Regarding barn 2 the Council has not permitted works as extensive as those in the case before me. This application had been preceded by one for more extensive conversion works. It had been refused on grounds of harm to the character and appearance of the building.
23. Permission was later sought for the conversion of barns 2 and 3 to one unit. These works in part required a partial demolition of barn 3. Council officers had given an in principle view that development of this kind would not be objected to. However, an application submitted for this was refused on the grounds that the proposal required extensive alteration and extension.
24. In 2009 planning permission, in relation to barn 1, was applied for what was described as change of outbuildings to a residential unit (including some reconstruction) and erection a double garage. Prior to determination of the application a site visit by Council officers indicated that work already undertaken on the building had left only the northern gable and part of the rear wall and associated roof intact. Officers recommended that permission be refused on the grounds that what was proposed constituted a significant rebuild and/or extension. Concern was also expressed about the fact that a garage was proposed. However, Members granted planning permission. It is not

entirely clear why this decision was made, though it was suggested that the Committee considered sufficient of the original building remained and that there were personal circumstances. In my view what was permitted, given what had occurred to the building, amounted to an extensive re-building. It is arguable though that a slightly lesser element of reconstruction may have been involved than the case in barn 3 and the roof materials proposed appear to accord more with those of the original building.

25. Drawing together my views on the above, individuals have a right to a planning service that is, amongst other things, consistent. The degree of works that were permitted to barn 1 makes it difficult to distinguish greatly between that proposal and the case before me in a way that supports the Council taking a different stance between them. This seems to have been acknowledged by the case officer who on this ground alone may initially have been favourably disposed towards the current proposal. However, in the wider context of the other decisions referred to, the Council has sought to limit the amount of work proposed on the barns. Even in the case of barns 4 and 5 the permitted extent of re-build and alterations has not been shown to be as great as in the proposal before me. Taken as a whole the Council's approach has been more consistent than the appellant alleges.

Other appeal decisions

26. The appellant referred to 3 appeal decisions. The first relates to appeals APP/J3910/C/05/2003132-4 and APP/J3910/A/05/1180003, 5 & 6. In this decision the inspector quashed an enforcement notice and allowed the conversion of a barn even though it conflicted with Policy. However, whilst there are similarities between that case and the one before me the inspector found that the Council had granted permission for a building about which it had serious reservations concerning soundness and yet had not sought a structural survey from the appellant. When the Council permitted the conversion of barn 3 at the current appeal site in 2006, as part of the change of use of the farm complex, it had no such reservations and was in receipt of a structural report, albeit one containing the kind of caveats not unusual in such documents.
27. The second appeal referred to was a Secretary of State decision APP/C0603/V/1068930. In this case planning permission was granted for the change of use of an agricultural building to a dwelling, even though the building had been taken down and rebuilt. However, that decision turned substantially on a conclusion that, having regard to the Human Rights Act, a refusal of planning permission would place a disproportionate burden on the appellant because of the imminent risk of demolition due to enforcement action. She would lose her home and have no other recourse to re-house herself. No similar argument has been made in this case.
28. The final appeal referred to is a Scottish decision on an enforcement case of an unknown reference. Here it was found that a barn conversion had been undertaken with such substantial demolition that it did not accord with Council policies on such development. However, the appeal was upheld and planning permission granted to retain the building. The reason given for this was that there would be insufficient harm to the character and appearance of the area through the retention of the building. Moreover, demolition would give rise to greater harm to amenity in the absence of any indication of how the resulting site would be used and maintained.

29. There are similarities between the above decision and the case before me. The appearance of the converted building is satisfactory and this, together with the fact that it is well screened from surrounding areas, means that its retention would not be detrimental to the character and appearance of the area. However, unlike in the appeal referred to above I consider that greater weight should be given to the breach of Policy. Arguments that a replacement building was of a satisfactory design could be used too frequently to justify development contrary to the development plan. It would undermine the distinction between the Council's policies on new build housing and the conversion of buildings. In a case such as this, involving development of a kind frequently sought in rural areas, such concerns go beyond a mere fear or generalised concern that it may make similar development difficult to refuse.
30. As for the implications of any potential enforcement action that may arise, it is too early to give that much weight in my decision. I have not been informed of the precise terms of any enforcement notice that the Council may seek to serve in the event of this appeal being dismissed. The precise impact on the character and appearance of the area is thus uncertain. I have, moreover, been given no substantial evidence to suggest that Unit 3 is such an integral part of the original complex that this in itself would justify its retention.

Other Material Considerations

31. The appellant initially claimed that barns 4 and 5 in the complex had been completely demolished and rebuilt and that the Council had acted inconsistently in not pursuing this matter. Photographs were submitted to the Council on this. However, this matter, albeit maybe rather belatedly, is now under investigation by the Council. Moreover, following my site visit, the appellant correctly conceded that there had not been a complete demolition and rebuilding of these barns.
32. The site is in a reasonably sustainable location in relation to the nearby settlement. However, in itself that does not justify the proposal.
33. The appellant alleges, by reference to appeal decision APP/Y3940/A/09/2108716, that the Council does not have a 5-year land supply and that there is therefore a presumption in favour of granting planning permission in this case. The Council disputes whether there is now such a shortage. I have insufficient evidence to come to a conclusion one way or the other. In any event, even if the appellant is correct the provision of one additional house in this case would not outweigh the harm identified. In arriving at this view I do not read paragraph 71 of Planning Policy Statement 3: Housing (PPS3) as meaning, in the absence of any reference to minimum thresholds, that planning permission must be granted for all new housing in the event of an absence of a 5 year land supply.
34. The appellant alleges that the Council has a bias against him generally. However, such matters are beyond the scope of this hearing. I have come to this case afresh and this appeal decision is made on an objective assessment of the merits of the parties' cases.

Conclusion on main issue

35. In light of the above I conclude that the development for which permission is sought does not comply with development plan Policies on the re-use of rural

buildings and that there are no other material considerations sufficient to lead to a conclusion contrary to the development plan.

Conclusion

36. For the reasons given above I conclude that the appeal should be dismissed.

RJ Marshall

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Marc D. Willis BTP MRTPI MBIAC	Of Willis and Co.
Mr and Mrs Miller	Appellant and appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

Mrs T Smith MRTPI	Area Team Leader
-------------------	------------------

INTERESTED PERSONS:

Mr and Mrs Baber	Neighbours
------------------	------------

DOCUMENTS

- 1 Letter of notification of hearing and those notified.
- 2 Letter of 2 October 2010 from Paul Mayo.
- 3 Council document on 5 year land supply.
- 4 Property valuation from Allen and Harris.
- 5 Appellant's photographs of appeal property taken on day of hearing.
- 6 Appellant's cost claim and extract from *Poundstretcher Ltd v SSE*.
- 7 Council response to above claim.