



## Appeal Decision

Site visit made on 15 August 2023

**by A Veevers BA(Hons) DipBCon MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5 October 2023**

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**Appeal Ref: APP/P1045/W/23/3317085**

**Brunswood Barns, Brunswood Lane, Hulland Ward, Derbyshire DE6 3EN**

- 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 Mr and Ms Mellor and Frodsham against the decision of Derbyshire Dales District Council.
  - The application Ref 22/00304/FUL, dated 14 March 2022, was refused by notice dated 26 January 2023.
  - The development proposed is conversion of barns to dwelling.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The address on the Council's decision notice and statement more accurately reflects the location of the appeal site than that on the application form as it includes a postcode and I note that it has been used in the appeal form. I have therefore used it in the banner heading above.
3. I have taken the description of development from the application form. Although different to that on the decision notice, no confirmation that a change was agreed has been provided.

### Main Issues

4. The main issues are:
  - the effect of the proposal on the character and appearance of the host buildings and area; and
  - whether the development would accord with local policies, national guidance and legislation with regard to protected species, namely bats.

### Reasons

#### *Character and appearance*

5. The appeal site is located in undulating open countryside characterised by pastureland, hedgerows and wooded areas, scattered farmsteads and localised clusters of buildings. It comprises a cluster of former farm buildings enclosed in part by a post and rail fence and remnants of a stone wall. The buildings are not located close to an associated farmhouse. The site includes a two storey brick barn with clay tile roof and an attached single storey brick and blockwork barn with a fibre cement sheet roof. An array of other corrugated sheet and timber agricultural buildings are both attached to, and surround, these barns

- and are in a poor state of repair. Due to the close grouping of the buildings, the overall form of built development on the site is relatively compact.
6. The site is accessed off Brunswood Lane, through a metal bar gate and includes a grass track, which is also a Public Right of Way. Due to the topography of the area, I saw at my site visit that the appeal site is clearly visible from Brunswood Lane and the surrounding countryside.
  7. Policy HC8 of the Derbyshire Dales Local Plan (2017) (DDLPL) is supportive of the conversion and/or re-use of existing buildings to residential use outside defined settlement limits, subject to four criteria. The Council's Conversion of Farm Buildings Supplementary Planning Document (January 2019) (SPD) provides further guidance. It seeks to ensure, amongst other things, that any alternative use of farm buildings is sympathetic to their character, appearance and surrounding landscape.
  8. Both the two storey brick barn and the attached single storey brick and blockwork barn (the host buildings) would be retained and converted to a three bedroom dwelling. Irrespective of which of the host buildings is the 'principal' barn, both parties agree that the main brick and blockwork elements of the barns are structurally sound and suitable for residential conversion. Their conversion to a dwelling therefore meets criterion a) of Policy HC8 of the DDLPL.
  9. In terms of criterion b) of Policy HC8, the host buildings make a positive contribution to the character and appearance of the countryside surroundings. However, Policy HC8 is clear that the like for like replacement of other buildings or extensions on the site that do not make a positive contribution to the character and appearance of the area would not be acceptable.
  10. The replacement of the existing lean-to addition to the east elevation of the host buildings and the northern corrugated open shed with a modern timber clad extension and car port respectively would replicate the scale and form of the existing structures. Nevertheless, even though these structures appear to have been in existence for a considerable period of time, they do not make a positive contribution to the character and appearance of the surroundings and do not meet criterion b). As such, the proposed replacement structures would be considered to be extensions.
  11. Criterion c) of Policy HC8 requires that buildings can be converted without extensive alteration, rebuilding or extension. In the context of the scale of the host buildings, the proposed lean-to addition to the east elevation and the proposed detached car port would be more than modest additions to the scheme. Moreover, the existing blockwork barn is currently lower in height than the two storey brick barn, reinforcing its subordinate relationship. The proposed increased height of this building to accommodate a first floor would be a substantial alteration and addition to the scheme. Taken cumulatively, the proposed rebuilding and extensions would be significant, in conflict with criterion c).
  12. In terms of criterion d), this seeks to ensure that a conversion does not have a detrimental impact on the character and appearance of the building or group of buildings and its surroundings. The increased height of the blockwork barn would result in the loss of the former subordinate relationship to the two storey brick barn. This would be accentuated by the proposed flue and the limited difference in height between the two roofs, which would be barely discernible in

views towards the site. Notwithstanding the different roof materials, the proposed building would be seen as one larger building which would give the proposal a heavy and bulky appearance.

13. In addition, while the east elevation of the host buildings is partially obscured by an existing timber lean-to extension, which does not make a positive contribution to the character and appearance of the building or area, the proposed replacement extension would exacerbate the harm by the use of a more substantial construction material, albeit clad with timber. The proposed ink blue cladding and addition of a large floor to ceiling glazed window on the principal elevation of the building facing Brunswood Lane would be seen as a modern addition which would harm the building's traditional rural appearance. The proposal would not meet the aims of criterion d).
14. Whilst the proposed materials and minimal window and conservation rooflight openings in the host buildings would retain the former agricultural integrity as advocated in the SPD, and the catslide roof to the western elevation has been sensitively designed, these elements in themselves would fail to overcome the harm caused by the overall scale and design of the proposal, as noted above.
15. The existing detached corrugated sheet building lying between the host buildings and Brunswood Lane does not contribute positively to the character and appearance of the site or its surroundings and its removal would enhance the appearance of the site in views from the east and south. The removal of part of the open shed along the western boundary of the site would result in the remainder of the southern part of the shed appearing somewhat isolated within the group and would have a neutral effect on the appearance of the group. Overall, the removal of these buildings would not outweigh the harm I have found above.
16. For the reasons given above, the proposal would cause harm to the character and appearance of the host buildings and the area. The scheme fails to comply with Policies S4, HC8 and PD1 of the DDLP which, together, amongst other things, seek to ensure that development is of high quality design that respects the character, identity, context and appearance of the building or the surrounding area. It would also fail to respect guidelines in the SPD which seeks the aims already set out above.

### *Biodiversity*

17. The appeal documents include a Bat Activity Survey (September 2021) undertaken by Elite Ecology (BAS) which found evidence of 3 species of bat day roosts in the host buildings and evidence of commuting and foraging bat species in the area. Thus, there is credible evidence of a reasonable likelihood of protected species being affected. Indeed, as the bat roosts would be likely to be lost due to the proposed development, the BAS sets out that this would result in a high biodiversity impact as defined by the Bat Mitigation Guidelines (2004).
18. Evidence of nesting birds was also found at the site and the BAS established the proposal would result in a harmful effect on local bird populations, including swallow. However, the BAS also concluded that the proposal would have a negligible effect on potential foraging and commuting habitat.

19. Regulation 9 (3) of the Conservation of Habitats and Species Regulations 2017 (the Regulations) imposes a duty on me to have regard to the likelihood of bats, a European Protected Species (EPS), being present and affected by the proposed development. Furthermore, Circular 06/2005<sup>1</sup> states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat.
20. The BAS is a thorough appraisal that has been prepared by an appropriately qualified authority. However, while it is clearly apparent that the appeal site hosts bat roosts, only 2 out of 3 surveys were completed and the surveys are now just over 2 years old and were carried out towards the end of the optimal time of year for determination of summer roosts. No updated survey was submitted with the appeal. On the evidence provided by the Council's ecology advisor, the Derbyshire Wildlife Trust, further surveys would be required to inform a licence application, and they cannot now be carried out until the 2024 bat active season as confirmed by Natural England standing advice.
21. The appellant confirms that the proposed development would result in adverse effects on EPS without suitable compensatory measures. The proposed elevation plan J05-05C identifies the location and dimensions of a proposed bat loft and details of bat boxes have been provided, although locations of these are not given. Similarly, compensatory measures for swallow and other bird nesting cups and boxes on the site have been set out in the BAS.
22. Both parties agree that an EPS licence would be required from Natural England to carry out the works. Decisions about whether a licence can be granted are the responsibility of Natural England and are under a separate process. Nevertheless, as the appropriate decision-maker I am required by the Regulations to have regard to the requirements of the Habitats Directive in the determination of this appeal. In effect I am required to consider whether there would be a reasonable prospect of a licence being granted by applying the three derogation tests: (a) preserving public health or public safety or other imperative reasons of overriding public interest; (b) that there is no satisfactory alternative; and (c) that the action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range.
23. I recognise the surveys indicate bat roosts at the site. However, given that only 2 surveys were carried out towards the end of the optimal time of year and the age of the surveys, I am not certain that the information is sufficiently robust to fully assess impacts on bats and inform the mitigation proposals. Furthermore, even though the proposal would make a contribution to the supply of housing in an area which, on the evidence before me, has a shortfall in supply, I have found there would be harm to the character and appearance of the host buildings and the area. The modest scale of the development would not be sufficient to amount to an imperative reason of overriding public interest. Therefore, two of the derogation tests would be unlikely to be met.
24. In order for NE to issue a licence, all three of the tests must be met. On the basis of the information before me, I consider that there is insufficient evidence for me to deduce that there would be a reasonable prospect of a derogation licence being granted by NE.

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<sup>1</sup> Biodiversity and Geological Conservation – Statutory Obligations and their Impacts within the Planning System

25. Accordingly, I conclude that the evidence does not satisfactorily demonstrate that the scheme would have an acceptable effect on the biodiversity of the site, in particular in respect of bats. For this reason, the proposal would not accord with local policies, national guidance and legislation with regard to protected species, namely bats. It would therefore conflict with Policy PD3 of the DDLP which requires that development does not harm biodiversity interests. It would also conflict with paragraph 180 of the National Planning Policy Framework (the Framework) and the Regulations.

### **Other Matters**

26. I have had regard to the appellant's fallback position under Part Q of the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). For significant weight to be afforded to a fallback position, there needs not only to be a reasonable prospect of it being carried out, but it would also need to be more harmful than what would be allowed by the scheme for which permission is sought.

27. The footprint of the proposed development would not be dissimilar to that which could be constructed using permitted development rights under the GPDO, with the exception of the lean-to addition on the eastern elevation of the two storey barn. However, the proposed development would include the addition of a first floor above the blockwork barn, thereby extending the external dimensions of the existing building upwards. Therefore, even if it was a realistic alternative, the fallback position would not be more harmful than the proposal before me. In any event, no alternative schemes have been provided. I have therefore given no weight to the fallback position.

28. Both parties refer to an appeal<sup>2</sup> although I have not been provided with a copy of the decision. Nevertheless, it appears to relate to the character and appearance of a garden area which is not a reason for refusal in the appeal before me and is therefore materially different.

29. Although there is some support for the proposal from a neighbouring occupant, a lack of objection is not a reason to approve unacceptable development.

30. I have had regard to the appellant's personal circumstances and their wish to provide a family home. However, these private matters are not sufficient to outweigh the harm I have identified.

### **Planning Balance and Conclusion**

31. The most relevant policies are wholly consistent with the aims of the Framework regarding the need to achieve well designed places and to re-use redundant or disused buildings and enhance its immediate setting. I attach significant weight to the conflict with the development plan.

32. My attention has been drawn by the appellant to the Council's lack of a five-year supply of deliverable sites to meet housing needs. This has not been disputed by the Council. Therefore, paragraph 11d)ii) of the Framework falls to be considered.

33. The proposal would provide a dwelling that would contribute towards the district's housing supply and the Government's objective of significantly

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<sup>2</sup> APP/11860/VV/21/3282384

boosting the supply of new homes. It would contribute to the local economy during the course of construction, and occupation of the dwelling. Nonetheless, given the limited scale of the proposal, the benefits carry modest weight.

34. Against this benefit is the identified harm that would be caused to the character and appearance of the host buildings and area and to protected species, namely bats. As identified above, this conflicts with the development plan, the Regulations and the aims of paragraphs 130 and 180 of the Framework.
35. When the proposal is assessed against the policies in the Framework taken as a whole, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits.
36. For the reasons above, having regard to the development plan as a whole and all relevant material considerations, including the Framework, the appeal is dismissed.

*A Veevers*

INSPECTOR