



## Appeal Decision

Hearing held on 5 May 2016 and 28 June 2016

Site visit made on 28 June 2016

**by J Dowling BA(Hons) MPhil MRTPI**

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

**Decision date: 27 September 2016**

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**Appeal Ref: APP/X1925/W/15/3132907**

**Fairhaven Farm, Slip Lane, Old Knebworth, Herts SG3 6QG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr and Mrs Kevin and Linda Smith against the decision of North Hertfordshire District Council.
  - The application Ref 15/01449/1, dated 23 May 2015, was approved on 31 July 2015 and planning permission was granted subject to conditions.
  - The development permitted is removal of condition 3 of appeal decision APP/X1925/C/03/1121079 dated 21 April 2004.
  - The conditions in dispute are Nos 1 and 2 which state that:
    1. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended no development as set out in Class Q of Part 3 of Schedule 2 to the Order, (or any subsequent Statutory Instruments which revokes, amends and/or replaces those provisions) shall be carried out without first obtaining a specific planning permission from the Local Planning Authority.
    2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, Class R of Part 3 of Schedule 2 to the Order, (or any subsequent Statutory Instrument which revokes, amends and/or replaces those provisions), the barn, the subject of this application shall not be used for hotel accommodation without first obtaining a specific planning permission from the Local Planning Authority, nor shall it be used for the accommodation of livestock other than in the circumstances set out in paragraph D.1(3) of Part 6 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order with or without modification).
  - The reason given for both these conditions is: Given the nature of the development, the Local Planning Authority considers that development which would normally be "permitted development" should be retained within planning control in the interests of the character and amenities of the area.
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### Decision

1. This appeal is allowed and planning permission Ref 15/01449/1 for removal of condition 3 of appeal decision APP/X1925/C/03/1121079 dated 21 April 2004 granted on 31 July 2015 by North Hertfordshire District Council is varied by deleting condition 1 and for the avoidance of doubt condition 2 is retained.
  2. In addition I attach the following further condition:
    - 1) Prior to the commencement of development, the landowners must serve notice on the local planning authority confirming that they are commencing development.
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### **Procedural Matters**

3. The appeal form (section H) stated that condition 1 was the subject of this appeal. However, the statement of case dated 30 December 2015 referred to both condition 1 and condition 2. At the Hearing the appellant confirmed he was appealing both conditions and I have considered the appeal on this basis.
4. The appellants name and the address of the appeal site varied between the application form and the appeal documentation. At the Hearing the appellant confirmed that the name of the appellant was Mr and Mrs Kevin and Linda Smith and that the site address was Fairhaven Farm, Slip Lane, Old Knebworth, Herts SG3 6QG. The banner heading has been amended accordingly.
5. At the Hearing there was a discussion about whether a fallback position existed and if the Prior Approval<sup>1</sup> for the barn to change to A1/B1 use was capable of implementation. The appellant stated that they had structural drawings showing that the barn was capable of conversion and it was agreed by all the parties that these could be submitted on a for information basis after the Hearing closed.

### **Application for costs**

6. Prior to the Hearing an application for costs was made by North Hertfordshire District Council against Mr and Mrs Kevin and Linda Smith. At the Hearing an application for costs was made by Mr and Mrs Kevin and Linda Smith against North Hertfordshire District Council. These applications are the subject of a separate Decision.

### **Main Issue**

7. The main issue is whether conditions 1 and 2 meet the test for conditions as specified in paragraph 206 of the National Planning Policy Framework (the Framework) namely that they are necessary; relevant to planning and the development permitted; enforceable; precise and reasonable in all other respects having regard to the character and amenity of the area.

### **Reasons**

8. The Planning Practice Guidance (the PPG) advocates that conditions that remove permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances<sup>2</sup>. The Council acknowledged that they did not explicitly refer to exceptional circumstances when determining the planning application or in their appeal documentation. However, the reason provided for attaching the conditions was in the interest of the character and amenity of the area.
9. At the Hearing the Council clarified that the reason that they considered the conditions necessary was due to a number of site specific circumstances including the prominent location of the barn immediately adjacent to and visible from Slip Lane; the very open nature of the countryside at this point which resulted in long distance views of the site; a number of other barns and agricultural buildings at the site already having Prior Approval to be used for non-agricultural purposes and a concern that the further conversion of agricultural buildings would change the character of the site to the detriment of

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<sup>1</sup> LPA reference; 15/01423/1PN

<sup>2</sup> Ref: ID 21a-017-20140306

the character and amenity of the area. Of particular concern to the Council was the introduction of external paraphernalia and 24 hour activity that could result from either a residential or hotel use. As a result at the Hearing the Council advocated that whilst they had not previously explicitly referred to it as such, the exceptional circumstances needed by the PPG did exist and the imposition of the conditions therefore did meet the test of necessity as set out in both the PPG and paragraph 206 of the Framework.

*Condition 1*

10. Condition 1 removes the ability of the appellant to apply for Prior Approval to convert the barn to a dwelling. The Council considered this necessary as under the Prior Approvals process the effect of the change of use on the character and appearance of the area would not be a matter that they could consider. In particular the Council consider that the need for the control arose from concerns about the introduction of external paraphernalia associated with a residential use such as a garden, sheds, garages, washing lines, storage of waste bins etc. Which if introduced, they consider, would erode the open and rural character of the surrounding area and as a consequence would adversely affect the Green Belt.
11. Whilst the site is located within the Green Belt the Council confirmed at the Hearing that it has no specific landscape designation or protection in adopted planning policy terms. However, a lack of formal designation or protection does not necessarily mean that the site's landscape is without worth or value.
12. From my site visit I observed that although the site has a pleasant rural aspect other than its boundary hedges it has few features. To a large extent, therefore, its value stems from the fact that it is open and relatively undeveloped and from the evidence given at the Hearing its open undeveloped nature is clearly appreciated and valued by those who live in and travel around the area. However, I agree with the appellant that the site does not amount to a *valued landscape* within the meaning of paragraph 109 of the Framework.
13. Class Q of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) permits subject to a number of caveats and conditions the change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses).
14. Paragraph X of Schedule 2, Part 3 of the GPDO states that the 'curtilage' for the purpose of Class Q means either (a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building or (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building whichever is the lesser.
15. When I visited the site I noted that unlike other buildings at the site which are located centrally within the open field, the barn is located adjacent to the boundary with Slip Lane. Whilst I agree with the Council that due to its bulk and mass the barn itself is visually prominent from Slip Lane, there is a mature tree and a hedge along the boundary which provides some screening of the area immediately around the barn. Furthermore, there is already a small memorial garden located to the south eastern side of the barn which is domestic in its appearance.

16. The barn itself has a fairly modest footprint and as a consequence the 'curtilage' around the barn for the purposes of Class Q would be very limited. Therefore, depending on the viewpoint any external paraphernalia associated with a residential use would either be partially screened by the boundary hedge or viewed against the backdrop of the barn and hedge.
17. Consequently I consider that given the restricted nature of the curtilage of the site, were Prior Approval to be sought, that opportunities for domestic clutter would be limited. Furthermore, given the location of the barn the effect of such paraphernalia on the openness of the site and the character and appearance of the countryside would be limited.
18. Class Q.1. (b) and (c) limit the amount of floorspace that can be converted and the number of dwellinghouses that can be created through the Prior Approval process on one site. As a result although a number of other buildings at the site have Prior Approval to be used for non-agricultural purposes I consider that the cumulative impact would be limited.
19. Furthermore, under paragraph W(13) of Schedule 2, Part 3 of the GPDO, the Council have the ability to grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. As a consequence, the Council could, should they at some point in the future consider an application for Prior Approval, impose conditions limiting the more visually dominant clutter such as sheds, garages and storage for waste bins etc. from being erected within the curtilage subject to such conditions meeting the tests set out in paragraph 206 of the Framework.
20. Finally, The appellant advocates that the imposition of the condition is unreasonable as the existing Prior Approval<sup>3</sup> to change the use of the Barn under Class R to part A1/B1 use would have a greater effect on the amenity of the area than a dwelling house which would have lower levels of activity.
21. In order to establish the validity of a fallback position it is necessary to firstly establish that there is a greater than theoretical possibility that the fallback position might take place. From the evidence before me I am satisfied that the barn is capable of conversion and that the necessary works could be undertaken within the timeframe set out in the Councils decision. As a consequence the fallback position advanced by the appellant is realistic and a material consideration and as such I agree with the appellant that the level of activity associated with a dwelling house would be less than for a commercial use.
22. Therefore, I conclude that the effect of activities associated with a dwelling house on the amenity of the area would be acceptable given the fallback position and that the effect of external paraphernalia at the site on the Green Belt could be retained within the control of the Council through the use of conditions should an application for prior approval be submitted. As a result the exceptional circumstances needed by the PPG for the imposition of a condition removing permitted development rights do not exist and the imposition of such a condition would not meet the test for conditions set out in paragraph 206 of the Framework.

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<sup>3</sup> LPA reference: 15/01423/1PN

*Condition 2*

23. Class R of the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) subject to certain caveats allows the change of use of an agricultural building to a flexible commercial use (Class A1, A2, A3, B1, B8, C1 or D2). Condition 2 as worded would withdraw the ability, subject to the caveats being met, to change the use of the barn to a hotel (Class C1) without first obtaining a specific planning permission from the Council. The Council at the Hearing advised that they considered this necessary because of the effect that external the paraphernalia and 24 hour activity associated with a hotel use would have on the character and amenity of the area.
24. The appellant advocates that the imposition of the condition is unreasonable as they have been advised that Prior Approval<sup>4</sup> is not required to change the use of the Barn under Class R to part A1/B1 use and the effect of these uses on the character and amenity of the area would be similar to a hotel use. For the reasons outlined previously I agree that the fallback position advanced by the appellant is realistic and a material consideration.
25. The current Prior Approval is unrestricted and whilst it would enable the A1/B1 use to operate on a 24 hour basis, 7 days a week, given the size of the barn and its location, I consider that this would be unlikely and the impacts would be limited. A hotel use however could include a wide variety of facilities including a restaurant and bar, banqueting and conferencing facilities all of which could result in higher levels of activity/trips than an office/retail use and would be more likely to operate on a 24 hour basis 7 days a week. Given the rural location of the barn I agree with the council that this could have an effect on the character and amenity of the area. Equally, I also acknowledge that a small family hotel with a limited number of rooms could result in lower levels of activity than the current Prior Approval.
26. As confirmed by the Council at the Hearing the removal of permitted development rights does not prevent the appellant from applying for planning permission for the use of the barn as a hotel. Given the range of impacts that could arise from a hotel use and the effect that these could have on the character and amenity of the area I consider that the exceptional circumstances needed by the PPG for the imposition of a condition removing permitted development rights exist and that it was therefore reasonable for the Council to impose such a condition. As a result I consider that the condition meets the test for conditions set out in paragraph 206 of the Framework.
27. I am aware from the planning history that there is already a deemed prior approval<sup>5</sup> for the use of another building at the site as a hotel. However, this building is in a different location and of a different size and would therefore be perceived in a different context. As a result it does not lead me to a different view on this case.
28. I have noted the appellant's comments advocating that there are no general exemptions, including an article 4 direction, of permitted development rights for buildings within the Green Belt and that the Council due to the original condition are treating this barn differently from other barns within the Green Belt. However, for the reasons I have outlined above I consider that there are

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<sup>4</sup> LPA reference: 15/01423/1PN

<sup>5</sup> LPA reference: 15/01478/1GEN

site specific circumstances that justify in the instance the need for the Council to retain control.

29. Neither party have disputed the restriction on the accommodation of livestock other than in the circumstances set out in paragraph D.1(3) of Part 6 of Schedule 2 to the GPDO. Consequently I have no evidence before me to disagree with the main parties that this part of the condition would not meet the test for conditions as set out in paragraph 206 of the Framework.

### **Conditions**

30. The site has a complex planning history and the appellant at the Hearing highlighted that if the appeal was allowed that confusion could arise in the future as effectively two similar planning permissions would exist. In order to provide clarity the appellant and the Council have agreed a suggested condition that would require prior to the commencement of development the landowner to serve notice on the council confirming that development would be commencing and thereby providing precision in the future as to which planning permission had been implemented. I consider that such a condition would meet the Framework tests and have imposed it accordingly.

### **Conclusion**

31. For the reasons above, and having regard to all other matters raised, the appeal should be allowed.

*Jo Dowling*

INSPECTOR

**APPEARANCES**

**FOR THE APPELLANT**

Trevor Ivory	Solicitor, DLA Piper
Kevin Smith	Appellant
Linda Smith	Appellant
Stephen Jane	Friend of Mr and Mrs Smith

**FOR THE LOCAL PLANNING AUTHORITY**

Kate Poyser	Senior Planning Officer, North Hertfordshire District Council
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**INTERESTED PARTIES**

Martin Quinlan	Resident of Rabley Heath
Caroline Tinner	Codicote Parish Council (Day 1)
Steve Hemmingway	Knebworth Parish Council (Day 2)

**DOCUMENTS SUBMITTED DURING THE HEARING**

**Document 1** Appellants cost application

**DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE HEARING**

**Document 1** Proposed Barn Conversion Structural Scheme plan ref: H10161/01 and covering email dated 28 June 2016

**Document 2** Email from Trevor Ivory dated 29 June 2016 detailing agreed wording for suggested condition