
Appeal Decision

Site visit made on 24 November 2015

by David Walker MA MRTPI

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

Decision date: 13 January 2016

Appeal Ref: APP/R3325/W/15/3128926

The Old Milking Parlour and Calf Pens, Allowenshay, Hinton St George, Somerset

- 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 Messrs Rutter Bros against the decision of South Somerset District Council.
 - The application Ref 14/01289/FUL, dated 4 March 2014, was refused by notice dated 10 December 2014.
 - The development proposed is conversion of outbuildings into two dwellings, demolition of outbuilding and construction of garages.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Subsequent to the Council's decision on the planning application, the South Somerset Local Plan 2006-2028 (March 2015) (the Local Plan) has been adopted and I have determined the appeal in the light of the policies of this plan.
3. An undertaking under section 106 of the Town and Country Planning Act 1990 has been submitted by the appellants to address the main areas of concern of the Council. I return to the adequacy of this below.

Main Issue

4. The main issue in the appeal is the effect of the proposal on the living conditions of future occupants having regard to the proximity of the farmyard and the risks presented by noise, pests and odours.

Reasons

5. The Council's sole reason for refusal surrounds the risks presented to the living conditions of the future occupants of the proposal as a result of the close proximity of livestock in the adjoining farmyard and associated buildings. The technical evidence of the Environmental Protection Officer (the EPO) indicates that the concentration of animals in close quarters could lead to complaints over noise, odours and pests.
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6. I have no reason to doubt the EPO's technical evidence. The appellants' Fly, Noise and Odour Impact Statement does not substantively question the validity of the Council's position and concludes that the submitted undertaking would result in an acceptable standard of residential amenity. Accordingly, there would appear to be common ground between the parties that mitigation is required in respect of this matter.
7. In principle, I therefore agree that adequate mitigation is required to ensure compliance with Policy EQ2 of the recently adopted Local Plan and which seeks to ensure the creation of quality places and that site specific considerations are taken into account. Moreover, the National Planning Policy Framework (the Framework), to which the Council also refers, states at paragraph 17 the core planning principle to 'always seek to ensure high quality design and a good standard of amenity for all existing and future occupants of land and buildings'.
8. Nevertheless, the Council considers that the submitted planning obligation would be ineffective and unenforceable. I share some of these concerns. In the absence of full title information, it cannot be determined that all persons with an interest in the land are a party to the undertaking. The Second Schedule is lacking in necessary precision as there would be nothing to prevent the signatories from allowing others to keep livestock at the farmyard. I also agree with the Council that the obligation as drafted would not be sufficient to prevent other types of animals being kept that might not qualify as livestock but that could give rise to similar problems.
9. Having regard to the detailed advice contained within Annexe N to the Procedural Guide - Planning Appeals - England (April 2015) I find that the submitted undertaking would not be effective and that it cannot be relied upon to provide the mitigation required to bring the proposal into compliance with the policy requirements of the Local Plan and Framework.
10. In the absence of a robust scheme that would secure appropriate mitigation, I therefore conclude that the proposal would cause unacceptable harm to the living conditions of future occupants by reason of noise, pests and odours associated with the existing use of the adjoining farmyard, giving rise to conflict with Policy EQ2 of the Local Plan and paragraph 17 of the Framework.

Conclusion

11. For the reasons given above, and having regard to all other matters raised including the support for the proposal provided by other parties, I conclude that the appeal should be dismissed.

David Walker

INSPECTOR