



Appeal Decision

Site visit made on 28 February 2017

by **D. M. Young BSc (Hons) MA MRTPI MIHE**

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

Decision date: 29th March 2017

Appeal Ref: APP/V2255/W/16/3164817

Owens Court Farm, Owens Court Road, Selling, Kent ME13 9QN.

- 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 FW Mansfield & Son against the decision of Swale Borough Council.
 - The application Ref 16/504494/FULL, dated 24 May 2016, was refused by notice dated 21 September 2016.
 - The development proposed is the erection of a cold store.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a cold store at Owens Court Farm, Owens Court Road, Selling, Kent ME13 9QN in accordance with the terms of the application, Ref 16/504494/FULL, dated 24 May 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2259/105/241215, 2259/105/190516, 609.8/1rev C and ELG00-1-01 rev E.
 - 3) No development above slab level shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 - 4) Construction works shall take place only between 0730-1900 hours Monday to Friday and 0730-1300 hours on Saturday and not at any time on Sundays or on Bank or Public Holidays.
 - 5) Development shall not be brought into use, until drainage works for surface and foul water from the site have been carried out in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.
 - 6) The building hereby permitted shall only be used for the chilling and storage of cherries grown at Owens Court Farm.

Application for costs

2. An application for costs was made by FW Mansfield & Son against Swale Borough Council. This application is the subject of a separate decision.
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Main Issues

3. The main issues are firstly, whether there is an agricultural need for the proposed building and secondly, the effect of the proposed building on the character and appearance of the area.

Reasons

Agricultural need

4. The appeal site comprises a strip of open land to the north of a farmstead known as Owens Court Farm. The scheme seeks permission for a modular barn measuring approximately 20m (width) x 15m (depth) x 6.3m (ridge height). The road facing (south-east) elevation would contain 3 large roller shutter doors. According to the appellant, the building is required to provide a cold storage facility to cool and store cherries which are grown on the surrounding agricultural land.
5. I note the Council's view that there is no justification for the building. However, section 9 of the submitted Design and Access Statement (D&AS) contains a detailed justification for the building based on the appellant's extensive knowledge and understanding of the fruit growing business. It is significant that the need for the building has been accepted by the Council's rural planning consultant.
6. In coming to a different view to its specialist advisor, the Council's submissions are unconvincing and appear to rest in large part on the views of local residents. I have noted the historical use of a mobile chiller unit. However, the D&AS clearly sets out a cogent environmental and economic case for the building.
7. Given the Council's failure to adduce any evidence to support its view, I conclude that there is an agricultural need for the proposed development and find no conflict in this respect with the first criterion of Policy E6 of the "Swale Borough Local Plan 2008" (the LP).

Character and appearance

8. Despite the presence of residential properties in the vicinity, the surrounding area is lightly settled and unmistakably rural. Although I have not been supplied with a landscape character assessment, from what I saw when I visited the area, it is a working agricultural landscape consisting of a patchwork of medium-sized arable fields. As a consequence agricultural buildings and other paraphernalia are inherent features of the area.
 9. The topography of the area is fairly flat and consequently the mature hedging that lines Owens Court Road would severely limit views of the building from public vantages. I accept that there would be more exposure of the building from Owens Court Road in the winter months but even then the building would be set back some distance from the road and would simply be seen alongside the existing buildings at Owens Court Farm.
 10. I acknowledge the store would be located outside the existing yard and encroach slightly into the surrounding countryside. However, the degree of encroachment would be small and the building would be sited close to the existing group. Its scale and footprint would be within the range of existing
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buildings and would not be unduly excessive. Although its design would differ to those existing buildings, these differences would not be substantial and the colour of the cladding could be controlled by a planning condition. Therefore seen in its context, the proposed building would not appear obtrusive or out of place, and given its relatively modest scale and siting immediately adjacent to a compact group of farm buildings, it would have no significant adverse effect on its surroundings.

11. The site is outside but adjacent to the Kent Downs Area of Outstanding Natural Beauty (AONB). The Council have not drawn my attention to any locations within the AONB from where the building would be visible and I note there was no objection to the proposal from the AONB Management Unit.
12. For the reasons set out above, I conclude that the development would not harm the character and appearance of the countryside. It would thus accord with Policies E1, E6 and E9 of the LP. Collectively these seek to strictly control development in the countryside and preserve the quality of the borough's landscape.

Other Matters

13. I appreciate that there is considerable local opposition to the scheme. However, to carry weight, opposition to a proposal should be founded on valid planning reasons, which are supported by appropriate evidence.
14. Due to the ability to store larger volumes of fruit on site, the Transport Statement submitted with the application forecasts that there would be a reduction in vehicle movements to/from the site. I have noted opposing views from local residents and the substandard nature of Owens Farm Road. However, there has been no objection from the Highway Authority and there is no evidence before me to substantiate the claim that there would be an increase in vehicle movements to/from the site. Consequently, I concur with the appellants that there would be no adverse impact on highway safety.
15. In terms of noise disturbance, the Council's Environmental Protection Officer has not objected to the scheme and again no substantive evidence has been adduced which would lead me to a different conclusion on these matters. As I have already commented, it is likely there would be a reduction in vehicular trips. It therefore follows that there would not be an increase in vehicular noise.
16. When I conducted my site visit, I was able to view the site from the rear of 2 Owens Court Cottages. I accept that there would be some change in the outlook from the rear of this property. However, the building would be some distance away and only visible in oblique views. I am not therefore persuaded that occupiers of the property would be subjected to an unreasonable level of enclosure or overbearing elements in views from windows in the rear elevation or from the garden. Whilst there would be a change in view, this is not a material consideration to which I can ascribe significant weight.

Conditions

17. The Council has suggested 11 planning conditions. I have considered these in relation to the advice in the "Planning Practice Guidance" (PPG). In some instances I have amended the conditions in the interests of brevity.

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18. I have imposed the standard implementation condition as well as a condition to ensure that the development is carried out in accordance with the approved plans, as these provide certainty. A condition relating to external facing materials is necessary to ensure the satisfactory appearance of the development. A condition restricting the hours of construction activity is necessary to protect the living conditions of neighbouring occupiers. However, a separate condition relating specifically to pile driving is unnecessary in light of the hours restriction. A drainage condition is necessary in the interests of flood prevention. A condition restricting the use of the building to the storage of cherries grown on Owens Court Farm is necessary to ensure a different use does not give rise to a more intensive logistical operation.
19. The construction of an agricultural building does not strike me as an operation that this likely to lead to excessive amounts of dust. Moreover, given the distance and orientation of the nearest residential properties I am not persuaded the living conditions of local residents would be undermined by external lighting. Consequently, I am not persuaded that these conditions would meet the requisite regulatory tests and I have omitted them accordingly.
20. Finally, the Council has suggested a condition which would restrict the use of the building outside the hours of 0500 to 2200. I acknowledge local concerns about the noise from the plant but this would be housed internally and there has been no recommendation from the Council's Environmental Protection Officer's for a restriction on hours. In terms of the plant, the D&AS states this would be a low noise condenser unit. With the nearest residential properties being located approximately 50m away, it is suggested that any noise would be 'imperceptible'. It is also pertinent that the building would be adjacent to a working farm where noise from a range of other sources is inevitably. Taking all these considerations in the round and bearing in mind the Council has failed to submit any justification, technical or otherwise, for the condition, I cannot be sure the condition is necessary to make the development acceptable. I have omitted it accordingly.

Conclusion

21. For the reasons given above and taking account of all other matters raised, I conclude that the appeal should succeed.

D. M. Young

Inspector



Costs Decision

Site visit made on 28 February 2017

by **D. M. Young BSc (Hons) MA MRTPI MIHE**

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

Decision date: 29th March 2017

**Costs application in relation to Appeal Ref: APP/V2255/W/16/3164817
Owens Court Farm, Owens Court Road, Selling, Kent ME13 9QN.**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by FW Mansfield & Son for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a cold store.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The *Planning Practice Guidance* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process. The PPG states that vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis can constitute unreasonable behaviour.
 3. The appellant states that it should not have been necessary to submit an appeal against the Council's decision to refuse planning consent. Although the application was refused by Members contrary to the advice of its professional Officers, the Council is perfectly entitled to disagree with that advice, provided this is based on sound, substantive and defensible planning grounds. Similarly, whilst the views of local residents must be taken into account, the extent of local opposition is not in itself a reasonable ground for resisting development. To carry weight opposition should be founded on valid planning reasons and supported by appropriate evidence.
 4. Broadly speaking, the Council's reason for refusal raises three fundamental concerns; whether there is a need for the building, its visual impact on the countryside and the effect on local residents. The reason is somewhat vague and fails to clearly set out the harm that would be caused to the amenity of the area or the character of the countryside or exactly how the cited policies would be offended.
 5. In respect of need, the application was accompanied by a detailed business case setting out the putative reasons why the building was necessary. This was evidently scrutinised by the Council's Agricultural Consultant and found to be acceptable. The Council's response to these matters is limited to a short
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paragraph¹ which makes the case that the appellant's requirements could be met by a mobile chiller unit. Such a view is patently unsupported by objective analysis and relies in large part on the views of local residents. Moreover, the Council has failed to present any evidence to rebut the appellant's case set out in the Design and Access Statement.

6. In terms of its effect of on the character and appearance of the area, the Officer's Committee Report contains a fairly detailed analysis of the building, its location and effect on the area and the adjacent AONB. I appreciate Members visited the site and came to a different view. However, there is nothing in the Council's Appeal Statement or the Minutes of the Committee Meeting which explains how the building would harm the AONB or surrounding area.
7. Finally, the Council has raised various concerns under the umbrella of '*harm to amenities*'. However, no objections were raised from the Council's specialist consultees in these areas and it seems to me that these concerns rely exclusively on the extent of local opposition without the support of objective appraisal and substantial evidence. In particular, the lack of any detailed and specific technical evidence in relation to noise or highway matters, means that the Council is not able to substantiate its claim that there would be harm arising from increased activity at the site. Indeed the evidence in relation to highway matters clearly demonstrated that there would be a reduction in vehicular activity. The Council's stance is therefore illogical.
8. The Council also raised the prospect of the building being used for '*other purposes*'. It is not clear what specifically the Council is concerned about but in any event, these concerns could have been addressed by the imposition of a suitable planning condition.
9. The appellant's claim also alleges that the Council acted unreasonably by failing to explain to Members of the Planning Committee that an award of costs was likely to follow if they rejected the recommendation in the Officer's Committee Report. However, it is evident from the Minutes that there was a debate which followed a site visit by the Committee. Whilst there is nothing before me to indicate that Members were specifically advised of the likelihood of an appeal in this case, I find it unlikely that Members of a Planning Committee would not be conversant with the possible implications of refusing a planning application. Consequently, this failure in itself is not indicative of unreasonable behaviour.

Conclusion

10. Whilst the need for the building and its subsequent effect on the area are a matter of planning judgement, it is incumbent on the local planning authority to produce evidence to support its decision on appeal. However, in this case, the alleged lack of need and the effect on the AONB and living conditions of local residents is a matter of assertion, lacking in analysis and without sufficient regard to the views of the Council's specialist officers. As such, the Council's stance is vague and generalised and it has failed to demonstrate reasonable grounds for its decision.
11. For these reasons, I consider that the Council behaved unreasonably in respect of the substance of the case, which resulted in expenditure being incurred

¹ Paragraph 4.6 of the Council's Appeal Statement

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unnecessarily in pursuing the appeal. Accordingly, I conclude that a full award of costs is justified in this case.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Swale Borough Council shall pay FW Mansfield & Son the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to the Swale Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D. M. Young

Inspector