



## Appeal Decision

Site visit made on 1 April 2025

by **C Walker BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23<sup>rd</sup> April 2025

**Appeal Ref: APP/K2420/W/24/3357989**

**Pond Barn, Cold Comfort Farm, Rogues Lane, Stoke Golding, Hinckley, Leicestershire LE10 3DX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Christopher McManus against the decision of Hinckley and Bosworth Borough Council.
- The application Ref is 24/00551/FUL.
- The development proposed is Change of use and conversion of existing redundant rural building to a single family dwelling house, landscaping, and external works within proposed domestic curtilage.

### Decision

1. The appeal is allowed, and planning permission is granted for the change of use and conversion of existing redundant rural building to a single family dwelling house, landscaping, and external works within proposed domestic curtilage in accordance with the terms of the application, Ref 24/00551/FUL, and the plans submitted with it, subject to the conditions in the schedule at the end of this decision.

### Preliminary Matters

2. The application form did not include a full site address for the development. Therefore, I have taken the missing information from the appeal form, which reflects the site location plan and correlates to what I observed on site.
3. It is not clear that the change to the description of development by the Council was agreed by the appellant. Therefore, I have used the description as set out in the application form in my decision.
4. Due to their age, the appellant suggests that policies contained within the Local Plan 2006-2026: Site Allocation and Development Management Policies DPD (2016) (Local Plan) are out-of-date, a matter acknowledged by the Council. Paragraph 232 of the National Planning Policy Framework (the Framework) confirms that existing policies should not be considered out-of-date simply because they were adopted or made prior to the Framework. Due weight should be given to them according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). Accordingly, I have considered the policies within the Local Plan and their consistency with the Framework under the main issues.

## Main Issues

5. The main issues in determining this appeal are:
  - 1) whether the location is suitable for the proposed development, having regard to local and national planning policies;
  - 2) the effect of the proposed development on the character and appearance of the area; and
  - 3) whether the proposed development could provide biodiversity net gain (BNG).

## Reasons

### *Location*

6. The appeal site comprises a modern steel framed barn, clad in dark green profiled metal sheeting that was approved for agricultural storage purposes. The site lies within the countryside, surrounded by open fields. Accessed off a private road from Rogues Lane, the site is located to the north of Cold Comfort Farm, which is also within the ownership of the appellant. Part of the land immediately adjacent to the barn was recently enclosed with close boarded timber fencing and an area of hardcore lies adjacent, along with two modest sized storage containers.
7. Policy DM4 of the Local Plan seeks to protect the countryside, including its open character and landscape, from unsustainable development. It goes on to specify certain types of development that are deemed sustainable, including criterion (b) where it involves the change of use, re-use or an extension of an existing building which leads to the enhancement of the immediate setting.
8. Furthermore, Policy DM15 of the Local Plan provides support, subject to a number of criteria, for the re-use and/or adaptation of redundant or disused rural buildings outside of settlement boundaries. Amongst other things, those criteria include the need to demonstrate the building is no longer viable in its current use, and an enhancement of the immediate setting.
9. These policies are broadly consistent with the Framework, noting that Paragraph 84 states that planning decisions should avoid isolated homes in the countryside unless one of a list of exceptional circumstances applies. One of these, (c) is that the development would re-use redundant or disused buildings and enhance its immediate setting. However, the Local Plan requirement to demonstrate the current use is no longer viable is notably absent from the Framework.
10. I am mindful that the description of development, even as amended by the Council, refers to the barn as being redundant. However, the Council also assert that the building is not redundant or disused. They attest that this is a position of the appellants own making, through serving a notice to quit on the previous occupants. Be that as it may, I observed on site that the barn is now empty and not in active use. To my mind, the building is therefore disused. Both Policy DM15 and the Framework support conversions of disused buildings as a matter of principle.
11. There is nothing in Paragraph 84(c) that requires a building in the countryside to be agricultural in either origin or use, for it to apply. Concerns are raised by the Council that the building could be required for agricultural use in the future. However, there is nothing before me to indicate that this is a policy test.

12. There is conflict between Policy DM17 and the proposal insofar as the development would rely on the use of the private car. This is because there is not a convenient and safe access for walking and cycling to services and due to the lack of public transport serving the site. However, I am also mindful that the authorised dog day care use would have attracted regular vehicle movements.
13. There is inevitably some tension between the reuse of existing buildings and environmental and sustainability objectives, such as limiting reliance on the private car as the main source of transportation. This is the case with the objectives of Policy DM17 of the Local Plan which supports development where the need to travel will be minimised and Policy DM15 which deals with the reuse of rural buildings. However, the re-use of existing buildings is inherently accepted by local plan policies and those in the Framework, noting that Paragraph 161 also sets out the planning system should encourage the reuse of existing resources including the conversion of existing buildings.
14. Nevertheless, for the reasons I have set out, I find there is some conflict between the development and the Local Plan which needs to be considered further in the planning balance.

*Character and appearance*

15. The extent of the proposed domestic curtilage would be larger than the outdoor area associated with the previously approved use<sup>1</sup>. However, the fencing that enclosed the former dog exercise area is a stark urbanising feature. I note that this was explicitly approved as part of the change of use application. In contrast, the appeal scheme proposes low post and rail fencing alongside soft landscaping to form the garden boundaries. Despite its enlarged size, in my view this would still represent an enhancement to the setting of the building, as required by Policy DM4.
16. The existing storage containers would be capable of providing for the domestic storage needs of occupants, reducing the need for additional outbuildings, which in any event is unlikely given the curtilage is drawn tightly to the barn. Domestication of the site through associated paraphernalia, would be somewhat inevitable. However, the site is not highly prominent, the garden area would be modest yet proportionate to the size of the dwelling, and soft landscaping would assist in offering both privacy screening and mitigation to the limited wider character impacts. Moreover, when comparing the proposed urbanising effects of the appeal scheme with the previously authorised dog day care centre use, I find that the appeal scheme would offer a betterment, subject to reasonable controls.
17. Therefore, in respect of the effect of the proposed development on the character and appearance of the area, I find it would accord with Policy DM4. In addition to offering an enhancement to the building's immediate setting, there would be no significant adverse effects on, and as such would protect the intrinsic value, beauty, open character or landscape character of the countryside, nor would it undermine the open character between settlements. Therefore, I also find no conflict with Policy DM10 which expects a high standard of design and development that complements or enhances the character of the surrounding area. Insofar as relevant to this main issue, both policies DM4 and DM10 are consistent with the Framework.

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<sup>1</sup> Planning application 18/00353/FUL – Change of use to a dog day care centre (retrospective) approved 2018.

### *Biodiversity Net Gain*

18. No evidence is before me in respect of the biodiversity or ecological value of the appeal site.
19. The appellant asserts that the development is exempt from mandatory biodiversity net gain requirements<sup>2</sup> as it would be a self-build development. However, to qualify for such an exemption, the relevant legislation<sup>3</sup> requires that the primary purpose of the build must be for personal occupancy and that ownership must initially be retained by the self-builder. So as not to undermine the aims of the legislation, this is a matter that reasonably needs to be controlled.
20. The appellant refers to a reference to 'self-build' being within the description of development, which they assert limits the development to self-build. However, this reference was not contained on the original application form. Even if it were, this alone would be unlikely to secure the objectives I have set out above.
21. In my view, a condition to require occupation of the dwelling by the person who built it would not pass the enforceability test set out within the Framework. This is a view also shared by another Inspector in a decision<sup>4</sup> which the Council has provided in evidence. No planning obligation<sup>5</sup> is before me and there is no means of securing the self-build status. Whilst it is not for me to ascertain whether the proposal would qualify for an exemption, I cannot be certain that it would.
22. Therefore, it follows that in allowing this appeal, the proposal would be subject to the statutory pre-commencement biodiversity gain condition ('the condition') as set out in Schedule 7A to the Town and Country Planning Act 1990 (as amended) (the Act) that applies to such a grant of planning permission. In this scenario, I am mindful of the guidance contained in the National Planning Policy Guidance (NPPG) which states that it would generally be inappropriate, when determining a planning application for a development subject to biodiversity net gain, to be refused on the grounds that the biodiversity gain objective will not be met.
23. However, the NPPG advises that more broadly, consideration may be required as to whether 'the condition' is capable of being successfully discharged. Both parties have been given the opportunity to comment on this matter. Whilst the Council have made no comment, the appellant has confirmed they would accept the statutory obligations, noting that the BNG metric would need to be undertaken to determine if the net gains could be provided on site, off-site or through the purchase of biodiversity credits as a last resort. It would be for the Council to consider the Biodiversity Gain Plan and development may not begin until this is approved. As such, I am as satisfied as I can be, that 'the condition' is capable of being discharged.
24. Therefore, the effect of the development is that the scheme is capable of meeting the mandatory requirements for a minimum of 10% biodiversity net gain, in accordance with the statutory framework. I therefore find that it would not conflict with the requirements of the Act.

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<sup>2</sup> As introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021).

<sup>3</sup> The Self-Build and Custom Housebuilding Act 2015

<sup>4</sup> APP/F2415/W/24/3338486 – Appendix E of Council statement

<sup>5</sup> Under section 106 of the Town and Country Planning Act 1990

25. I am also mindful of the requirements of Policy DM6 of the Local Plan which seeks to ensure that existing features of nature conservation and geological value are conserved and enhanced, amongst other things. This broadly aligns with the Framework. No parties have suggested there may be conflict with this policy and I see no reason to find otherwise on the information provided.

### **Planning Balance**

26. In terms of the first main issue, I have found that there is conflict with the Local Plan Policy DM15. This is insofar as the requirement to demonstrate that the building is no longer viable in its current use. This is a matter that is not required by the Framework at Paragraph 84(c). In this circumstance where the older Local Plan policy is more onerous, I attribute greater weight to the more up-to-date Framework.
27. Whilst there is tension between the development and Policy DM17, the re-use of existing buildings is inherently accepted by local plan policies and those in the Framework, particularly at Paragraph 161. Securing the re-use of the building therefore attracts more weight in this set of circumstances.
28. Therefore, although I have found conflict with the development plan, the Framework is a material consideration which indicates planning permission should be granted in this particular instance, and my decision should be made other than in accordance with the development plan.

### **Conditions**

29. In addition to the standard time condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans for the avoidance of doubt and in the interests of certainty.
30. Condition 3 requires the parking and turning facilities to be provided on site prior to first occupation, which is necessary and reasonable in the interests of highway safety.
31. Condition 4 requires details of adequate waste and recycling storage to be approved, is reasonable and necessary in the interests of the character and appearance and to ensure living conditions are not adversely affected. The Council's suggested condition has been modified to meet the tests of the Framework.
32. A condition to require a Biodiversity Enhancement and Management Plan (BEMP) has been suggested by the Council 'to protect wildlife species and their habitats that are known to exist on the site'. No evidence of any wildlife or habitats on the site is before me. Such a condition would therefore be disproportionate for one dwelling in this particular location, especially in the context that a minimum of 10% BNG would still need to be provided through the statutory framework. Therefore, approval of a BEMP would not be reasonable, and I am satisfied that an appropriate soft landscaping scheme could bring about on-site enhancements as required by Policies DM4 and DM6 of the Local Plan. Condition 5 has been modified to avoid the pre-commencement requirement, in accordance with best practice.
33. The external facing materials are shown on the approved plans, and it is therefore unnecessary to impose a separate condition to control these.

34. Finally, the Council request the removal of permitted development rights in relation to certain classes of development. I am mindful that the NPPG advises that conditions restricting the future use of permitted development rights need to be precisely defined so that it is clear exactly which rights have been limited or withdrawn. Due to the confined extent of the site, there is limited scope to enlarge the dwelling with extensions, porches or erect outbuildings such that I do not consider it would be reasonable or necessary to control this. However owing to the countryside location and its character, I am satisfied that the removal of the right to extend the barn upwards with additional stories and to enlarge the roof, for example with dormer windows could be potentially harmful to the character and appearance of the barn and the wider area. Therefore, Condition 6 is imposed to prevent such works from being undertaken without the need for express planning permission.

## **Conclusion**

35. For the reasons given above, having had regard to the development plan as a whole, the Framework and all other matters raised, I conclude that the appeal should be allowed.

*C Walker*

INSPECTOR

### Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing numbers:  
8895-03-0200 Revision PL2 (Proposed Elevations)  
8895-03-0101 Revision PL2 (Proposed First Floor Plan)  
8895-03-0100 Revision PL2 (Proposed Ground Floor Plan)  
8895-03-0102 Revision PL2 (Proposed Roof Plan)  
8895-03-0002 Revision PL3 (Proposed Site Layout)  
8895-03-0001 Revision PL3 (Site Location Plan)
- 3) The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with drawing no. 8895-03-0002 Revision PL3 (Proposed Site Layout). Thereafter, the onsite parking provision shall be so maintained for the lifetime of the development.
- 4) Prior to first occupation, a scheme for the provision of waste and recycling storage and collection areas across the site shall be submitted to and be approved in writing by the Local Planning Authority. The scheme shall address accessibility to storage facilities and confirm adequate space is provided at the highway boundary to store and service wheeled containers. The development shall be implemented in accordance with the approved scheme prior to first occupation.
- 5) Prior to first occupation, details of hard and soft landscaping works, including boundary treatments, and an implementation scheme, shall be submitted to, and

be approved in writing by the Local Planning Authority. The development shall be carried out in full accordance with the approved details and scheme during the first planting season following the first occupation of the development.

Once implemented, the soft landscaping details hereby approved shall be retained and maintained for a period of at least five years from the date of planting. During this period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted, at which time shall be specified in writing to the Local Planning Authority.

- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement of the dwellinghouse by construction of additional stories and no additions to the roof of the dwellinghouse shall be undertaken, unless planning permission for such development has been granted by the Local Planning Authority.

END OF CONDITIONS