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## Appeal Decisions

Site visit made on 23 October 2018

**by Roy Merrett BSc(Hons) DipTP MRTPI**

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

**Decision date: 15 November 2018**

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### **Appeal A: APP/H0738/C/18/3203448**

#### **Millstone Cottage, West End Farm, Mill Lane, Long Newton, Stockton-on-Tees TS21 1DQ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr John Henry Medd Taylor against an enforcement notice issued by Stockton-on-Tees Borough Council.
- The enforcement notice was issued on 25 April 2018.
- The breach of planning control as alleged in the notice is "A change of use of the Land from a stable block and horsiculture / agricultural use to a residential dwelling and curtilage (use class: C3(a) – Dwellinghouses) without planning permission."
- The requirements of the notice are (i) Cease using the stable block and Land for residential purposes; (ii) Remove from the stable block and Land all residential paraphernalia, fixtures and fittings associated with the residential use; (iii) Restore the stable block and Land back to the condition it was in prior to the breach taking place.
- The period for compliance with the requirements is 8 (eight) months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction.**

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### **Appeal B: APP/H0738/W/18/3206787**

#### **Millstone Cottage, West End Farm, Mill Lane, Long Newton, Stockton-on-Tees TS21 1DQ**

- 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 Henry Taylor against the decision of Stockton-on-Tees Borough Council.
- The application Ref 18/0865/REV, dated 18 April 2018, was refused by notice dated 13 June 2018.
- The development proposed is Retrospective application (revised) for the conversion of a stable block into a single dwelling with associated car parking.

**Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out below in the Formal Decision.**

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## Appeal A

### Preliminary Matter

1. The alleged breach of planning control refers to change of use to residential dwelling and curtilage. 'Curtilage' is not a use of land and I have therefore

corrected the notice to refer to 'garden' instead. I am satisfied that this correction can be made without resulting in injustice to the parties.

### **The appeal on ground (f)**

2. The ground is that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control. I acknowledge that the appellant does not dispute the requirement for the residential use of the building and Land to cease, in the event of the appeal against the refusal of planning permission (Appeal B) being unsuccessful, but takes the view that the cessation of residential use alone would be sufficient to remedy the breach, insofar as it relates to the stable block building.
3. Accordingly the appellant argues that the requirement to remove residential paraphernalia, fixtures and fittings within the building is excessive and also that residential paraphernalia is insufficiently defined. It seems to me that the existence of various paraphernalia, fixtures and fittings are part and parcel of facilitating the residential use. The purpose of the notice is clearly to remedy the breach by restoring the land to its condition before the breach took place. Irrespective of the previous Inspector's findings regarding the physical appearance of the building itself, if these elements were allowed to remain in place this objective would not be achieved and it would also make it unreasonably difficult to prevent the resumption of the unauthorised residential use.
4. With specific regard to the term paraphernalia, this is defined in the Oxford dictionary as "miscellaneous articles, especially the equipment needed for a particular activity". In this context I am not persuaded that there should be any difficulty identifying miscellaneous articles or fixtures and fittings relating to the residential use of the building and land. I consider the term to be sufficiently precise and not readily open to misinterpretation.
5. The appellant further argues that the requirement to restore the stable block and land to their condition prior to the breach taking place is vague and imprecise. However such a requirement is in accordance with s173(4) of the Act and I am satisfied that the appellant is in the best position to know what the condition of the building and land was like at that time. For the above reasons the ground (f) appeal therefore fails.

### **The appeal on ground (g)**

6. The appeal on ground (g) is that the time given to comply with the requirements is too short and that a period of twelve months should be allowed. I have not been provided with any information to indicate that the appellant would face any unusual difficulty in finding alternative accommodation. I recognise that the loss of residential use of the site would interfere with rights under Article 8: The Right to Respect for Private and Family Life and for the Home of the Human Rights Act 1998. However these are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies.
7. I acknowledge that the appellant has referred to complications presented due to a family member being affected by severe disabilities. Whilst I am

sympathetic to the personal circumstances of the family, having considered the supporting information submitted in this regard, a compelling case has not been made as to how this should justify an extended compliance period. I consider the compliance period of eight months is a proportionate response. The ground (g) appeal fails.

8. Therefore for the reasons given above I consider that Appeal A should not succeed.

## **Appeal B**

### *Background*

9. This matter was the subject of a previous unsuccessful retrospective planning application and subsequent appeal. It is evident from the decision letter that the previous Inspector raised no issue with regard to the physical appearance of the dwelling in its own right, referring to it as retaining a degree of equestrian character. I concur with this stance and also consider that the building would, when taking into account its very limited scale and fenestration, not result in harm in terms of artificial light emissions at night.
10. The Inspector also concluded in that case that the residential change of use amounted to the re-use of a redundant or disused building which led to an enhancement to the immediate setting. He therefore found that the appeal development would accord with one of the special circumstances set out in the National Planning Policy Framework (the Framework), where isolated new homes in the countryside may be acceptable. Again there is no reason for me to take a contrary view in this respect.
11. The Inspector's concern was focussed on the prominent external area of the property resulting in the visibility of residential paraphernalia and the use of the land for day to day domestic activities, therefore appearing as a domestic incursion into the open countryside. He was not persuaded that this could be resolved through the imposition of a planning condition.
12. From the submissions, the main issue between the parties is whether the visual impact of the external parts of the residential development, with particular regard to views from the north-west can be satisfactorily addressed. I have no reason to take a contrary view.

### *Main Issue*

13. The main issue is the effect of the external part of the development on the character and appearance of the surrounding countryside.

### *Reasons*

14. As identified in the previous appeal decision, the appeal site is set amongst predominantly agricultural buildings of larger scale, discreetly sited in relation to Mill Lane, but far more obvious as being on the edge of the village in views from the north-west across equestrian related paddocks. From my visit it was evident that the appeal site and adjacent buildings are prominently sited on an embankment, interspersed with mature trees and with the land sloping down to the north-west. Because of this the appeal site, including substantial garden area, and the adjacent buildings can easily be seen from various viewpoints

situated to the north-west, as identified in the appellant's Landscape and Visual Impact Assessment (LVIA).

15. Although at my visit, the external parts of the appeal site and adjacent land were relatively clear of domestic paraphernalia, I am in no doubt that the placement of typical garden items there, such as seating and recreational equipment, would have the potential to result in the sense of an untidy domestic incursion that would be at odds with the agricultural and equestrian character of the edge of the village.
16. With a view to mitigating this visual impact, the appellant has submitted for consideration a unilateral undertaking (UU), under the terms of section 106 of the Act. This UU would commit to removing all items of domestic paraphernalia, including washing lines, children's play equipment and garden structures and furniture, from specified parts of the site to the immediate north-west and north-east of the appeal building, and thereafter keeping these areas clear of such paraphernalia. It would also commit to implementing a scheme of landscaping, including native boundary hedge planting and some localised tree planting, in order to help soften the visual impact of the development, including by helping to screen the car parking area and use of the site for day to day domestic activity.
17. I have had regard to the appellant's LVIA, including photo montage representation of the landscaping proposals. I consider that this study serves to demonstrate that the landscaping scheme would assist in softening the development whilst, when taking into account a raised back drop of mature intermittent trees, not causing any material harm to the character of this part of the countryside. Although I am not persuaded that the proposed boundary planting would completely screen any garden structures that might potentially be placed within its confines, it is important to consider the significance of the appellant's commitment to precluding the placement of items of domestic paraphernalia within the garden and a so-called 'restricted area' in the vicinity of the building.
18. From my visit and the information before me, I am satisfied that adherence to the restrictions set out in the UU would safeguard the surroundings of the building from harmful domestic encroachment. It is also apparent that the restrictions would still allow for some limited and discreet domestic use of external parts of the property immediately to the side of the dwelling, for example for the drying of laundry during finer weather. Although constraining, it seems to me that the UU would not excessively restrict the recreational use of the property, whilst ensuring that any remaining visible parts of the site would not appear at odds with the character of its surroundings.
19. Despite the Council's representations, I cannot envisage a particular difficulty with being able to detect a breach of this obligation, were there to be one, given the visibility of the site from the north-west. I am not therefore persuaded that this would present a problem in principle, in terms of enforcing this element of the planning obligation. In arriving at this view I have also taken into consideration that the planning application site boundary is commensurate with the north-west extension of the 'restricted area' as set out in the UU. Therefore were there to be any domestic related encroachment beyond this line in the future, it would be for the Council to consider whether further enforcement action would be expedient.

20. Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 states that a planning obligation may only constitute a reason for granting planning permission for the development where it meets three tests. The tests, which are restated in paragraph 56 of the Framework are as follows:
- a) necessary to make the development acceptable in planning terms;
  - b) directly related to the development; and
  - c) fairly and reasonably related in scale and kind to the development.
21. I am satisfied that the provisions of the UU would be necessary to make the development acceptable in planning terms, would be directly related to the development and would be fairly and reasonably related in scale and kind to the development. The statutory tests in Regulation 122 of the CIL Regulations are, therefore, met and the planning obligation is a material consideration which carries weight in the appeal decision.
22. In this context I conclude that the development would not be in conflict with Policy CS3 (criterion 8) of the Stockton-on Tees Core Strategy 2010 and with the Framework insofar as they require development to respond positively to local character, whilst recognising the intrinsic character and beauty of the countryside. Whilst I recognise that this finding is at variance with that of the previous Inspector, in that case there was not a planning obligation before him for consideration, specifically identifying areas where domestic incursion would be restricted and additional landscaping measures proposed.
23. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission in this case.

#### *Other Matter*

24. There have been representations from a third party regarding rights of access over parts of the appeal site and in relation to neighbouring land. This however is a private matter and is not relevant to my deliberations in this case.

#### *Conclusion*

25. The previous Inspector made reference to the Council not being able to demonstrate a five year supply of deliverable housing sites. There is nothing before me to suggest that this position has changed. Paragraph 11 of the recently revised Framework indicates that in these circumstances, relevant development plan policies should be considered out of date and housing proposals need to be considered in the context of the presumption in favour of sustainable development.
26. I have taken into consideration the modest contribution of the development in this case to the supply of housing, together with the potentially beneficial re-use of the existing building. For the above reasons there is also a justification for restrictions over the placement of domestic paraphernalia on the site, and additional landscaping measures, in accordance with the terms of the UU. In this context I conclude that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed

against the policies of the Framework taken as a whole. There are no material considerations that would justify the refusal of planning permission.

27. For the reasons given above I therefore conclude that Appeal B should succeed and planning permission will be granted.

*Conditions*

28. I have given consideration to whether any conditions are required in order to make the development acceptable. A condition specifying the plans is necessary to provide certainty. Given the prominent position of the site and the importance of protecting the character and appearance of the landscape, I consider that there is clear justification to impose conditions removing normal permitted development rights for extensions to the dwelling together with curtilage buildings.

**Overall Conclusion**

**Appeal B**

29. For the reasons given above I conclude that the appeal should be allowed.

**Appeal A**

30. Section 180 of the Act states that where after the service of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. Consequently the notice ceases to have effect with regard to the conversion of a stable block into a single dwelling with associated car parking, because this benefits from planning permission and is therefore lawful for planning purposes. For the avoidance of doubt this means that the enforcement notice ceases to have effect so long as the planning permission is extant and is complied with.

**Formal Decisions**

*Appeal A*

31. It is directed that the enforcement notice be corrected by deleting the word "curtilage" in paragraph 3 and substituting the word "garden" instead. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

*Appeal B*

32. The appeal is allowed and planning permission is granted for Retrospective application (revised) for the conversion of a stable block into a single dwelling with associated car parking at Millstone Cottage, West End Farm, Mill Lane, Long Newton, Stockton-on-Tees TS21 1DQ in accordance with the terms of the application, Ref 18/0865/REV, dated 18 April 2018 and the plans submitted with it, subject to the conditions below.

*Roy Merrett*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be in accordance with the following approved plans: 1632-16-100 Revision C; 1632-16-101 Revision A; 1632-16-102 Revision A; 1632-16-103 Revision C; 1632-16-104 Revision B.
- 2) 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 dwelling shall be constructed.
- 3) 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 buildings shall be erected within the curtilage of the dwellinghouse.

## **END OF SCHEDULE OF CONDITIONS**