

DURHAM COUNTY COUNCIL

At a Meeting of **Area Planning Committee (South and West)** held in Council Chamber, Council Offices, Spennymoor on **Thursday 20 October 2016 at 2.00 pm**

Present:

Councillor H Nicholson (Chairman)

Members of the Committee:

Councillors M Dixon (Vice-Chairman), B Armstrong, H Bennett, J Clare, K Davidson, C Kay, S Morrison, A Patterson, G Richardson, L Taylor, C Wilson and S Zair

1 Apologies

Apologies for absence were received from Councillor D Bell.

2 Substitute Members

Councillor H Bennett substituted for Councillor D Bell.

3 Declarations of Interest

Councillor Richardson noted that it had been suggested that he had an interest in the Windmill item. He informed the Committee that he was familiar with both parties but that he was not a Member of the Windmill Residents Group and would consider the application with an open mind after hearing all arguments.

4 Revocation, Modification and Discontinuance Orders, Mill House Farm, Windmill

The Committee had received a report of Legal and Democratic Services with regards to Revocation, Modification and Discontinuance Orders, Mill House Farm, Windmill. The report was exempt by virtue of paragraph(s) 3, 5 of Part 1 of Schedule 12A of the Local Government Act 1972.

The Chairman confirmed that the report was to be noted by Members and as they had received the report well in advance of the meeting, having considered it and its contents, he sought a motion to exclude the public in order to debate the exempt report if Members felt like this action was necessary. No members moved exclusion and therefore members of the public were not excluded from the meeting.

Members did not have any queries with regards to the content of the report and therefore Councillor Dixon moved that Members noted the contents of the report as per the recommendation, seconded by Councillor Davidson.

Resolved

That the content of the report be noted.

5 Revocation, Modification and Discontinuance Orders, Mill House Farm, Windmill

The Committee considered a report of the Planning Development Manager with regards to Revocation, Modification and Discontinuance Orders, Mill House Farm, Windmill (for copy see file of minutes).

The Planning Development Manager referred to an update which had been published in addition to the report following the receipt of late comments from two interested parties who had both requested that the report be withdrawn. Following a discussion with Legal Services, the Planning Development Manager had concluded that there were no grounds to withdraw the report and the content of the update report contained a description and response to the objections from both interested parties.

The Planning Development Manager gave a detailed presentation which included plans and photographs of the site. Members had also attended a site visit earlier in the day.

The Clerk of Evenwood and Barony Parish Council addressed the Committee in support of Mill House Farm and thanked the Planning Development Manager for the detail in the report which highlighted the constant allegations it had been subjected to and also the pressure of a police investigation, a court case and a decision of the Local Government Ombudsman (LGO), based on a flawed report. He advised that the decision of the LGO had been made following receipt and consideration of forged documents claiming to be from the Parish Council, but in fact written by a third party. Mrs Sewell had suffered years of uncertainty whilst being subjected to intolerable personal, financial and emotional strain. This was through no fault of her own, but due to the errors of the Council and the document forgery. The Parish Council confirmed they were in full support of Mill House Farm and would prefer the outcome to reflect Option 2. If there was to be any action at all taken, then a combination of Options 3 and 4 would be preferable as the Parish Council did not want the owner of Mill House Farm subjected to any additional financial burden.

Councillor Nicholson, Chair of Evenwood and Barony Parish Council referred to the update report and described it as ironic that one of the interested parties had sought an apology and withdrawal of the report and described it as an inaccurate written, false and damaging claim about her. The same person had been arrested and charged, then consequently found guilty of using a false instrument. Without the two forged documents, the LGO would never have reached the conclusion it had and Members would not be considering the matter. She urged Members to help Mill House Farm.

Mr Potts, Wind Mill resident and objector, gave a presentation which described the impact of the existing approved planning permissions of Mill House Farm. He confirmed that Wind Mill was a traditional farming village where animal activity, smells and noise were expected and residents had lived alongside these conditions for decades without problem. The barns at Mill House Farm would allow in excess

of 320 housed cattle in three barns 40-90m from residential properties. He suggested that had the applications been in front of the Committee for consideration and the impact on amenity assessed correctly, they would be refused.

Mr Potts stated that the Council had issued a written apology to the residents of Windmill for the suffering caused. The LGO had requested that the Council address the issue regarding the permanent housing of high numbers of livestock and remove the impact on residents. The LGO had also required the Council to identify measures which would remove the impact on residents and to also make a decision on whether to revoke or amend the existing permissions. Mr Potts suggested that the use of the barns that Members would have witnessed on the site visit was not relevant to the decision being made. The issue for the Committee to consider was the fact that existing permissions allowed the land and barns to be used to permanently house in excess of 320 livestock.

Mr Potts confirmed that in 2010 planning permission had enabled 160 cattle to be housed in the two existing barns, however in 2015 there were 243 animals on the site. Mr Potts suggested that the LGO wanted the impact on residents to be removed permanently. He confirmed that there had been two LGO reports and three independent reports relating to the impact on amenity, which had all concluded that permission should be revoked or significantly modified in order to remove the impact on residents. The report by AECOM had only assessed 50 housed cattle and had concluded that the number of housed livestock should be reduced and restricted, and the impact on residents removed. The outcome of the Fairhurst report was unknown as residents had never been provided with copies, however it had also concluded that housed livestock numbers needed to be reduced and restricted. Robson & Liddle had concluded that such livestock numbers could not be sustained on the land unless they were permanently housed. When Mill House Farm had been monitored with regards to the noise, almost all housed cattle and heavy machinery was moved off site, with only 15 cattle left in the barn. The conclusion was that 15 housed cattle was borderline statutory nuisance yet the permission attached to the land allowed more than 320 animals and there had been at least 243 animals in July 2015.

The conditions the Council were proposing were unrealistic and impractical and Mr Potts suggested that the restricted times for site activity and waste management plans would not be adhered to. He considered that the existing conditions had not been monitored by the Council and there had never been any enforcement action taken despite repeated breaches. He suggested a number of planning conditions, which included only housing 15 animals in barn 1 in emergencies only and not housing livestock at all in barns 2 and 3. Mr Potts claimed that the business model for the Farm was to intensively house livestock. Residents believed that new conditions should not be forced on to the landowner, nor should they be forced to reduce the business from farming 320 animals to fewer than 15. Residents did not believe the landowner should be penalised for the Council's failures, however the impact had to be removed and the existing permissions allowed barns which were too close to residential properties to permanently house livestock. The only way to remove the impact was to revoke all three of the existing planning permissions. This would enable the business to be moved to an alternative and more suitable

site which was a suitable distance from existing homes. Mr Potts believed that Officers of the Council had repeatedly alleged that residents had not paid Council Tax since 2012 and had also claimed complaints about the site were unfounded or exaggerated. He confirmed that this was not the case, all residents had paid Council Tax and over 150 documents evidencing site impact were missing from Council files for the LGO investigation.

Mr Potts summarised that all three permissions should be revoked, the landowner fully compensated, and the land returned to a traditional farming field.

Mr Cuthbertson, NFU Mutual and Group Secretary of the Weardale branch, was speaking in support of Mill House Farm. He asserted that the situation of Mill House Farm, was a result of the Local Planning Authority and the Action Group and not of the actions of Mrs Sewell. He confirmed that all existing permissions had been granted by following the correct application process and investigations carried out by all statutory bodies involved had found no wrongdoing. The Council had been found guilty of maladministration by the LGO, which had nothing to do with Mill House Farm and despite what had been stated in the presentation by Mr Potts, there had been no breach of planning conditions or orders. Mill House Farm had been subjected to the full force of the Action Group, the conduct of which, he believed was in excess of normal acceptable behaviour. Mrs Sewell had suffered a devastating effect on her health and the lack of conditions with regards to the existing planning consent was the fault of the Council, not Mill House Farm, which was the victim of this ordeal. Mrs Sewell had been forced to install 24 hour CCTV surveillance for her own protection, due to the anti-social behaviour she had suffered.

Mr Cuthbertson confirmed that in 2013 Mrs Sewell had been made aware that the remainder of the LGO report would stand. The Council chose not to rectify the injustice and he reiterated the devastating effect this had on Mrs Sewell's health. He asserted that no financial reimbursements had ever been offered to Mrs Sewell.

Retrospective planning conditions were not the answer or the solution to neighbourhood disputes that were originally caused by the maladministration of the Council and Mr Cuthbertson claimed that none of the conditions listed in the report were workable. He suggested that the Council were recommending the least costly avenue and with regards to all of the people affected, there was no guarantee that the abuse would not continue.

Mr Cuthbertson referred to the conditions set out in the report and confirmed that Mill House Farm was already in breach of condition b) as the animals were housed for the winter already despite only being October. The Planning Authority were attempting to subject Mill House Farm to unreasonable and excessive conditions which he considered amounted to more injustice and bullying. He suggested that the Council were attempting to take the least timely and costly avenue rather than correcting the injustices caused by them. He stated that any conditions would be contested at every opportunity.

The Chairman invited the Planning and Development Solicitor to respond to any issues raised by the speakers. The Planning and Development Solicitor noted that the representative of the Parish Council had made references to forged letters and reminded Members that they were here to consider their preferred option with regards to the three existing permissions and not to be distracted by the background of the case.

The Solicitor confirmed that a number of points had been raised with regards to the instructions of the LGO to permanently remove the impact of the barns. She confirmed that the LGO prescribed a process but that there had been no instruction from the LGO which had prescribed an outcome – if the LGO had done this, the Committee would have no need to consider this report.

The Planning and Development Solicitor clarified that the LGO had requested the Council to commission a report with regards to the impact of the barns and for the Council to make a decision with regards to what action to take, if any. Regarding the reference to a Waste Management Plan, this had had been attached as a condition to barn number 3 which had not yet been constructed and therefore in the absence of a building, no plan applied and no breaches had occurred.

The Planning and Development Solicitor responded to Mr Cuthbertson's reference to the proposed conditions being unworkable and the fact that the animals were already housed. There was a general requirement to keep land in good agricultural and environmental condition and therefore the Officers believed the conditions were workable. A 'winter housing' condition had previously been imposed with no objection from the landowner. She confirmed that the Secretary of State would be required to confirm any orders and so there would be an opportunity for a Public Inquiry and finally in response to the claim that the Council was recommending the least costly avenue, reminded Members that the exempt report had given details of financial implications to ensure they had full knowledge of the potential costs involved.

The Planning Development Manager confirmed that he had been closely involved with Mill House Farm over the last three years and was unaware of any outstanding enforcement issues. All complaints had been fully investigated as evidenced in the report and enforcement action had twice been taken for the removal of a hedgerow and two caravans. He was confident in the way that the site had been policed to the appropriate standards and it was accepted that should the recommendation to impose additional conditions be approved, there would be additional enforcement monitoring. He confirmed that the conditions had been drafted with advice from a specialist agricultural surveyor and had been recommended with the agreement of Planning and Legal Officers, who were also satisfied that they could be enforced.

Councillor Davidson had considered the report on a number of occasions and described it as distressing to read. He was concerned about the potential number of cattle which would be housed should barn no. 3 be erected however he referred to the site visit and considered the site to be an adequate location for a farm, therefore to remove it, as per Option 1, would not be appropriate.

Councillor Dixon reiterated that this was not a normal planning application and advised the Committee to stay clear of the history of the case and consider a position which would assist both Mill House Farm and the residents to move forward and meet the needs of both. He considered Option 6 as the only option which met the needs of both parties and could assist them in moving forward.

Councillor Patterson referred to the site as open countryside and the number of animals grazing on the land was something for consideration under a different legislation and not within the remit of planning. She was concerned at the lack of evidence with regards to nuisance noise and odour and suggested that since the applicant had not breached any conditions and the Council had not upheld any of the complaints, the applicant should be monitored and evidence gathered, before conditions were implemented.

The Planning and Development Solicitor confirmed that officers found the current operation of the site did not have any unreasonable impact on the amenity of local residents. Members were being asked to consider the potential future impact should the third barn be erected and no further planning conditions be imposed.

The Planning Development Manager confirmed that the land was of agricultural use, there was an adjacent farm in close proximity and it was within the character of Windmill. Should Members conclude there was no potential for significant impact, they may prefer to consider and recommend Option 2. He confirmed that there were no concerns with regards to animal welfare –relevant organisations had been consulted and had confirmed that with regards to stocking in barns and on the land as a whole, the animals were able to be accommodated, in compliance with animal welfare standards.

The Environmental Health Officer was invited to speak and confirmed that no statutory nuisances had been observed on any investigation carried out at the site. However he reminded Members that the reports commissioned by the council demonstrated the potential impact of the site should it be used to its fullest extent allowed without further controls.

The Environmental Health Officer was invited to speak and confirmed that no statutory nuisances had been observed on any investigation carried out at the site. He reminded Members that consideration was for the potential impact of the site and therefore they should consider this as they would consider a new application.

Councillor Kay had not visited this site however he did often cycle through the area and was well aware of the vicinity. Planning permission had been granted in error and there was a ruling of maladministration against the Council, however there had been no wrongdoing by Mill House Farm in its current operation. There was the potential for an impact in the future which could not be guaranteed, however he agreed that a compromise was needed to enable both parties to move on, and that was Option 6.

Councillor Clare referred to the tragedy of the situation which had destroyed a community and had been detrimental to the quality of life of all involved. Members had been asked to give advice to the Head of Planning and Assets in order for him

to come to a decision and Councillor Clare considered this community required a permanent solution for them to come to terms with and which would enable them to live the rest of their lives. He referred to the two completely different views expressed by the speakers – one was requesting demolition of the existing barns and to cease the operation altogether, or reduce it to 20 cows and another was requesting the Council to do nothing. Councillor Clare felt that neither of those conclusions were suitable or acceptable in this situation. Barclays Bank who held a secured charge over the relevant land, had also issued a plea for the Committee to consider the effect that this decision could have on the value of the land, which was essentially determined by its ability to function as a farm. Councillor Clare concluded that it was a functioning farm in a rural area and it should be allowed to remain in operation, however he considered Option 6 as the only way to ensure that a middle ground was reached for both parties.

In response to a query from Councillor Clare, the Planning and Development Solicitor confirmed that the report from Fairhurst recommended a cap on the number of animals for animal welfare reasons. The welfare of animals would be applicable under animal welfare regulations and supervision by DEFRA and therefore a condition attached to the planning consent would appear to duplicate other statutory controls and therefore would not be necessary.

Councillor Dixon confirmed that should the Committee be minded to recommend Option 6 as their preference, there were no restrictions preventing a further application from being submitted for a third barn.

Councillor Richardson confirmed that he had been involved in the planning process since it began in Teesdale District Council and regardless of the planning history, Members had to recommend a solution, which could only be supported by Option 6.

Councillor Patterson confirmed that the Committee were not responsible for finding a balance or to please one side or the other, or both, but were to look at the facts and recommend the option which was best. She was concerned that should the Committee recommend Option 6, they would be imposing unrealistic conditions. She referred to condition b) which restricted the months of which animals could be housed between November to April and confirmed that in Tow Law, animals were already housed due to adverse weather. She suggested that to impose conditions in the absence of sufficient evidence of unreasonable impacts was unfair. Councillor Dixon suggested that the Committee may recommend the addition of adverse weather to be included as an exception to the condition should it be accepted as a reason for emergency housing.

Councillor Armstrong agreed that the conditions may have needed tweaking to allow the business to operate, however she considered Option 6 to be the most desirable outcome.

Councillor Dixon confirmed that the Committee's concerns should be fed back to the Head of Planning and Assets in addition to their recommendation prior to any decision being made and he moved that the recommendation to impose Option 6 be approved.

Councillor Davidson queried the need for the Committee to vote for a resolution, however the Chairman considered it relevant to record the consensus in the circumstances.

Councillor Clare seconded the recommendation made by Councillor Dixon and confirmed that there was not an option which would please everybody, however Option 6 would be a compromise.

Councillor Patterson appreciated there had been two reports commissioned by the Council, however the nuisances and impact on amenities referred to were based on potential, rather than an actual. Councillor Patterson suggested a portfolio of evidence should be required before conditions were imposed and therefore her preference was Option 2.

Resolved

(Councillor Patterson dissenting)

That Option (6) Revocation and Conditions, as outlined in the report, be recommended to the Head of Planning and Assets on behalf of the Committee, as the preferred recommendation.

6 Minutes

The minutes of the meeting held on 22 September 2016 were agreed as a correct record and signed by the Chairman.

Councillor Patterson left the meeting.

7 Applications to be determined

a DM/16/01325/VOC - Site Of Former School, 28 Front Street, Staindrop, DL2 3NH

Consideration was given to the report of the Senior Planning Officer regarding an application on the variation of condition 2 of application DM/15/00292/FPA to amend the design of the scheme (retrospective) at site of former school, 28 Front Street, Staindrop.

The Senior Planning Officer gave a detailed presentation which included plans and photographs of the site. Members had also attended a site visit to the property.

Local resident, Mrs Grice confirmed that she and her husband had met with the architect and raised two concerns with regards to the development. The first was with regards to the height of the building and they were reassured that it would be no higher than the nearby telegraph pole. The second issue raised was with regards to parking in the lane – she added that there had been a recent near miss involving a child as reported by the Teesdale Mercury. However they had not objected to the proposal as they had been reassured following the meeting.

They had accepted that the windows in the roof would look back over their property, however on the original plans they were at head height and had been installed at waist level, which would reduce the amount of overlooking to their property. Had the roof been built to the prescribed height and pitch, the impact with regards to loss of privacy would have been minimised. This loss of privacy was confirmed by Mrs Grice who stated that workmen had waived to her from the roof windows as she washed dishes in her kitchen. She urged Members to refuse the application and required the roof be restored to its original height and the windows of the third unit be addressed in order to eliminate any overlooking. Mrs Grice referenced the delegated report which confirmed that permitted development rights should be removed with relation to roof extensions, to protect residential amenity and the conservation area setting.

Mr McGill spoke on behalf of the Applicant as his Agent and confirmed that before the development commenced, the site was derelict and an eyesore in the area. Following the approval of the application in 2013, there had been no interest in the site and therefore it was considered to be unviable. In 2015 the applicant had been careful to ensure that objections by local residents were dealt with face to face, rather than via Planning Officers and the fact that they had raised objections had confirmed that this was not the correct route to go down. The applicant had also made other changes which he regretted. With regards to the design of the windows, he had accepted that this needed to be rectified, however the issue of overlooking was minimal – the distances between the properties was well in excess of normal limits. There was no impact to neighbours, particularly those in adjoining properties and he confirmed that there had been an improvement to amenity due to the demolition of part of the old buildings. The applicant had suffered a huge amount of difficulty – some of which had been brought on by his own actions, but some were to please neighbours, however on the whole this was a positive scheme which would improve the character of the conservation area.

The Senior Planning Officer confirmed that the objection raised was with regards to overlooking since the changes in height to the roof and the position of the windows, however the distances were well in excess of 21m – it was measured at approximately 30m and no negative impact to amenity had been identified.

With regards to the traffic management, the road was used as a cut through to the school, however there were parking spaces included within the courtyard which would limit the impact of on street parking.

Councillor Richardson was the local Member and referred to the concerns regarding the height which had been reported to the Enforcement Officer. They had told the builders to stop, however they had continued working on the roof until a stop notice was served by the Enforcement Officer. With reference to the Agent's statement which described the changes as minor and also criticised the objectors, he confirmed that these were not minor changes, they were affecting the privacy of the residents who were being watched in their own back yard. He was appalled that the plans were up for approval as the applicant had been working to a different plan than what was originally approved by the Council. He referred to the objection from Staindrop Parish Council, of which he shared the same views. He queried how an originally approved development could proceed with so many arbitrary

changes, which had resulted in the issue of a temporary stop notice. Referring to the current system as deficient for allowing developers to ignore planning constraints and submit a retrospective application. He suggested that this sent out the wrong signal to the majority of people who abided by the rules. Current planning policy and law was in favour of applicants against the interests of communities, usually in favour of development. Until stronger action was taken against breaches of the planning system and developers were made aware of the consequences of not adhering to the rules, these issues would continue. Councillor Richardson urged the Committee to consider the message that approval of the amended development would send out to other applicants.

The Planning and Development Solicitor confirmed that carrying out work without planning permission was not a criminal offence and recent Government Policy allowed Planning Committees to consider the retrospective nature of a development as a material planning consideration.

Councillor Dixon confirmed that the applicant had agreed to change the windows and had accepted that he had made mistakes with regards to the roof. The scheme overall was good for the area and should Members refuse the application and the viability of the scheme with regards to the costs involved in restoring the roof to its original height could jeopardise the development.

In response to a query from Councillor Davidson, the Senior Planning Officer confirmed that the increase in height was above eaves level, however he was unaware of the reasons for the increase. Councillor Davidson referred to the argument regarding loss of privacy and considered 30m as an acceptable distance. In addition the rooms in question were not habitable rooms, of which 21m would be the required distance. Although the Applicant may not have been scrupulous, the Committee had no grounds to refuse the application.

Councillor Armstrong agreed that the changes to the windows needed rectifying, however she had observed the height of the building on the site visit and it was no higher than the building opposite. She did not consider it a significant enough reason to refuse and therefore supported the Officers recommendation.

In response to Councillor Zair the Applicant explained that the foundations had been lowered further into the ground than on the original plans and therefore had made the peak of the roof no higher than originally planned.

Councillor Clare referred to the statement from the Applicants agent and felt the language used by him with reference to the objections, was inappropriate. Notwithstanding, had this been a new application in front of the Committee, the resolution would be to approve. In response to a query from Councillor Clare the Principal Planning Officer confirmed that although a copy of the original delegated report was not available, the issue regarding the removal of some permitted development rights as identified by Mrs Grice was with regards to dormer windows. Councillors Clare and Kay supported the recommendation to approve.

Councillor Richardson confirmed that the question for Members was not whether they would approve this application had it not been retrospective and suggested

that Members would be setting a dangerous precedent should they recommend approval.

Councillor Davidson moved the recommendation, seconded by Councillor Clare.

Resolved:

That the application be approved as outlined in the report.