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18th October 2023

Planning Department
Kirklees Council,
Civic Centre 3,
Market Street,
Huddersfield,
HD1 2EY

Dear Sirs,

RE: Planning application at Hunter's Lodge, Cemetery Road, Holmfirth, HD9 2RH

1. Introduction

- 1.1 I am instructed by Mr & Mrs Nutton who reside at Hunter's Lodge, Cemetery Road, Holmfirth, HD9 2RH ("the Property"). The Property is located within the Green Belt.
- 1.2 The Property is a detached barn conversion which was created pursuant to planning permission 90/62/04419/C3, prior to this the building was an agricultural barn. The planning permission was granted on 1 October 1990 and the description of development was "*conversion & extension of barn to form dwelling*". The Property created pursuant to the planning permission had a volume of 448 m3.
- 1.3 The Property has then been extended once, by the addition of a porch. The porch has a total volume of 28m3.
- 1.4 My clients now wish to extend the Property with a two storey extension to the side and a 'lean to' single storey extension to the front elevation. The proposed extensions would have a total volume of 176m3.
- 1.5 My clients therefore submitted an application for planning permission which was assigned planning reference 2022/93949.
- 1.6 This application was withdrawn on 26 February 2023 following confirmation from the planning officer that he was minded to refuse the planning application.

- 1.7 The planning officer confirmed in an email to my clients agent that the reasons for refusal would be on the grounds of:
- (1) *cumulative scale of this and previous extensions being excessive and not in line with national or local Green Belt policy; and*
 - (2) *Design, in that neither the side nor front extensions would comply with advice in the House Extensions and Alterations SPD and it would not respect the simple linear built form of the original barn.*
- 1.8 The architect responded to offer amendments to the design to address the second reason and made reference to case law which demonstrates why point one is not a sound reason for refusal.
- 1.9 This letter seeks to address the first point, that being that the scale of the proposed extensions and previous extensions are excessive and not in line with national and local Green Belt policy.
- 1.10 It is clear to us that the planning officer who considered the application made a fundamental flaw when assessing the application and therefore whether the proposed extension was appropriate in accordance with the Development Plan and the National Planning Policy Framework.
- 1.11 When seeking to apply planning policy the planning officer was considering “previous extensions”, being those extensions to the original barn, along with the proposed extensions to the current dwelling. However, this is incorrect. The planning officer refers to the definition of “original building” being, the “original” building means a building as it existed on 1st July 1948 (if built before that date), or as built, if it was built if built after that date. However, he then failed to take account of the well-established case law which confirms that the original building is the point at which the dwelling comes into existence i.e. as was approved in 1990. This is supported by the case law set out below.
- 1.12 The original dwelling, is therefore as approved under the 1990 planning permission. The original dwelling has a volume of 448m³. The existing porch extension increased the volume by 6% (28m³)
- 1.13 The proposed extensions are 176m³. Therefore, the proposed extensions represent a circa 39% increase in volume from the original dwelling. Cumulatively, with the existing porch extension, the extensions would represent a 45.5% increase in volume from the original dwelling. This would not amount to a disproportionate addition to the original dwelling and the application therefore fully accords with national and local planning policy.
- 1.14 We therefore consider that the proposed reasons for refusal were based on an incorrect assessment of the application. Our clients have therefore been advised to resubmit the application with this covering letter clearly setting out the correct position so that the Local Planning Authority can properly consider the application in light of the case law set out within this letter.

2. The Development Plan and the NPPF

- 2.1 The Kirklees Development Plan consists of the Kirklees Local Plan (adopted February 2019) and, the Holme Valley Neighbourhood Development Plan.
- 2.2 Local Plan Policy LP57 is concerned with extensions, alteration or replacement of existing buildings within the Green Belt. Policy LP57 provides:

“Proposals for the extension, alteration or replacement of buildings in the green belt will normally be acceptable provided that:

- a. in the case of extensions the host building remains the dominant element both in terms of size and overall appearance. The cumulative impact of previous extensions and of other associated buildings will be taken into account. Proposals to extend buildings which have already been extended should have regard to the scale and character of the original part of the building;*
- b. in the case of replacement buildings, the new building must be in the same use as and not be materially larger than the building it is replacing;*
- c. the proposal does not result in a greater impact on openness in terms of the treatment of outdoor areas, including hard standings, curtilages and enclosures and means of access; and*
- d. the design and materials used should be sensitive to the character of the green belt setting.”*

- 2.3 The Policy justification provides:

“19.24 If building extensions are to be accepted in the green belt it is essential that they should neither prejudice the open character of the green belt nor be disproportionate in relation to the host building. This will avoid detriment to the established character of the area. This consideration will be especially relevant when an extension is proposed to a building which has already been extended.

19.25 Disproportionate additions will be deemed to be those where the host building is no longer the dominant element and this will not be judged solely on whether the extension is visible from public vantage points, such as roads or footpaths. Just because an extension is not visible from a public vantage point does not make it acceptable as any built form impacts on openness. Assessment will also include consideration of the presence of outbuildings and other curtilage buildings where the cumulative effect of those buildings, the proposed extension and any previous extensions would render the host building subservient in appearance. In the case of buildings that have already been extended the host building should be taken to mean the original building.

19.26 *While the essential characteristic of the green belt is its openness it follows that no harm to openness should be caused if a building that is already there is altered or replaced, provided that the new or altered building does not have a greater impact on openness than the one it is replacing.”*

2.4 The National Planning Policy Framework (2023) (“NPPF”) also confirms that proportionate extensions to existing buildings are not to be considered to be inappropriate development within the Green Belt.

2.5 Paragraph 149 of the NPPF is concerned with exceptions to inappropriate development within the Green Belt and provides:

“A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

...

c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building

...”

2.6 It is therefore clear that in accordance with the Local Plan and the NPPF extensions to dwellings are not to be considered as being inappropriate development provided that they do not result in disproportionate additions over and above the size of the original building.

2.7 “Original building” is then defined within the glossary to the NPPF and provides:

“‘Original building’ a building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally”

2.8 Case law has been very clear that new dwellings replace the “original building” and start a new chapter in the planning history of a property.

3. Case Law

3.1 In Sevenoaks DC v Secretary of State for the Environment & Clarke & Dawe [1997] EWHC Admin 1012 it was found by the Court that an Inspector had rightly identified the new dwelling as being the “original building”. The judge found that *“reference to the original dwelling must on any common-sense reading...refer to the existing building before any extension...i.e. to the replacement dwelling and not to an earlier dwelling that no longer exists.”*

3.2 In Brentwood Borough Council v. Secretary of State for the Environment, Transport and the Regions and Mr I Churley (September 1999), the court, in considering the matter of the original building, considered that comparison with the original building did not take one back to the original building which no longer existed because it has been replaced by a dwelling.

- 3.3 Ascot Wood Limited v Secretary of State for the Environment, Transport and the Regions & Runnymede Borough Council [2000] PLCR 265 the Deputy Judge held that comparison with the original floorspace did not take the decision-maker back to the original floorspace of a building that no longer existed because it had been replaced.
- 3.3 These cases establish that “original building” means when a new planning unit is created i.e. the point that the building became a dwelling not that of the barn which the dwelling replaced.
- 3.4 In appeal decision Windmill Cottage, Finwood Road, Rowington, Warwick (2013) (APP/T3725/A/12/2185711) an Inspector was asked to determine the correct approach to defining the original building in respect of an appeal against refusal of permission for an extension to a converted barn in the green belt. The proposed development was two single storey extensions to the rear, first floor extension to the side and first floor extension over the existing garage. The site had been originally occupied by outbuildings serving Windmill House. Conversion and extension occurred to create accommodation ancillary to Windmill House following grant of planning permission in 1981. Importantly, the Inspector stated that at this point the property became a separate dwelling house and planning unit.
- 3.5 The Council argued that the original building was the outbuilding that was present on the site prior to its conversion to ancillary living accommodation after the grant of planning permission in 1981. The Inspector stated:
- “However, in my judgement the Council is interpreting the Framework too literally. The Framework refers to the extension of a “building” instead of a “dwelling” in guidance that it replaced. It strikes me that the purpose of this was to widen the exception to inappropriate development to the extension of all buildings rather than further restrict the extension of those dwelling houses that have been created by conversion. As a consequence, I consider that the original building in this case is the building that existed when Windmill Cottage became a separate planning unit. In this case that is the property as it existed on 27 September 1988.”*
- 3.6 The Inspector noted that his decision was consistent of the findings of the Inspector in West Wing, Durham Woods, Charcoal Road, Bowdon, Altrincham, (APP/Q4245/D/12/2171839).

4. Conclusion

- 4.1 It is therefore clear that when planning permission was granted for the conversion of the barn to a dwelling and that dwelling was created it became a new planning unit. At the point that the dwelling was created this became the “original building”. This is supported by the above case law.
- 4.2 Therefore, it is correct that the ‘original building’ for the purposes of the development plan and the NPPF is the dwelling which came into existence pursuant to the 1990 planning permission. It is therefore this dwelling which should be taken into consideration when considering whether an extension to the existing building is

appropriate in accordance with the Development Plan and the NPPF, not the original barn as was considered by the previous planning officer.

- 4.3 The proposed extensions, when taken with the existing porch extension, therefore represent a circa 45.5% increase in volume. This can in no way be classed as a disproportionate addition to the original building and planning permission should not be refused for such extensions.
- 4.4 Once you have had an opportunity to consider the above I welcome your confirmation that the resubmitted application will be correctly considered looking at the extensions as extensions to the dwelling as created under the 1990 planning permission not against the original agricultural barn.

I look forward to hearing from you.

Yours faithfully

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Charlotte McKay LLB(Hons) FCILEX

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