



Amy Miller
By email

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Our Ref: CUS3880
Date: 02/02/2023

Dear Amy Miller,

RE: NE/22/00867/FUL – Erection of House at 31 Main Street Woodnewton PE8 5EB

Thank you for contacting Customer Services with your feedback. I was personally in attendance at the meeting in question and observed the presentation, comments, deliberation and events after the meeting closed.

I can confirm that during the course of the determination of this planning application the case officer visited the site three times. They assessed the site from surrounding land including the adjacent shared driveway which serves Stable Barn, Brookview Barn, Granary Barn, 31a, 31b and 33 Main Street. This shared driveway is open to the highway and they were able to view the site from various points along its length, it was not necessary to make contact with any residents due to the open nature of the shared drive.

The case officer has also attended the site while determining two previous applications for a new dwelling and for works to the existing dwelling at number 31.

The levels on this side of Main Street lower gradually from the street level (north east) to the river (south west) and it is noted that the neighbouring dwellings are on slightly lower land than the site subject to the application, however the assessment concluded that the proposal in terms of its height, bulk, scale, mass and design would not have a detrimental impact on these neighbouring dwellings amenity. Whilst the proposed dwelling in this location would be larger and therefore more noticeable than the existing structure it would not cause a detrimental level of overshadowing or appear overbearing and the windows would not cause a detrimental level of overlooking.

During the debate questions were asked of the officer with regard to the height of the dwelling in relation to the surrounding development. The height of the surrounding development is varied, which is acknowledged in the report and the proposed height at just over 9 metres would not have a detrimental impact on the character and appearance of the area, wider CA or surrounding Listed Buildings in the opinion of the officers involved in determining the case.

The majority of the building would be within the settlement boundary. The relationship with the settlement boundary is acceptable and as discussed in the



meeting the settlement boundary was drawn very tightly – the proposal would be located in line with an existing dwelling and the relationship between the open countryside and settlement would be maintained – the recommended conditions clarify the land use to ensure this remained the case. This decision does not set a precedent in relation to future applications. The objections and thoughts of the Parish were appropriately considered and given relevant weight in the determination.

In planning terms the use of the site is lawfully Class E commercial under the current regulations. Previously lawful use classes persist unless they are wilfully “abandoned”, which is a technical test with a high threshold. The duration of the cessation of commercial activity is a factor, but is not determinative.

English courts have established 4 factors for determining abandonment - the physical condition of the buildings; the period of non-use; whether there has been any other intervening use; and the owner's intentions – but below are some other things to consider when assessing whether a use has been abandoned:

1 Is the property capable of accommodating its former use?

A building that has laid vacant for some time may well have fallen into disrepair and will require (sometimes significant) refurbishment works. The key question is whether the use is still capable of being re-commenced at the property. Even if it may involve considerable financial or technical challenges, if it's possible, it should not necessarily be considered abandoned. There would have been no physical barrier to recommencement of the market garden use in this instance.

2. Was the former use a lawful use?

The lawful class E commercial use was established during consideration of application 16/01126/FUL and Highways have consistently regarded this as a the case. There is no evidence before the Planning department to regard the former use as unlawful.

3. Have alternative uses been investigated?

Although developers may have investigated alternative uses for a vacant property, this does not result in a use to be abandoned.

It would likely be the same even if planning permission is granted for a change of use, but that permission was never implemented. Technically the existing use has not changed until the permission is implemented, although the application for and grant of permission could demonstrate sufficient "intention" to abandon the use and/or evidence to suggest resumption is no longer possible.

4 Is the developer's "intention" an objective test?

The courts have confirmed that it is not the subjective intention of the developer that can prevent a use from being abandoned. Instead it is an objective test based on various factors. This links back to the use being "capable" of being accommodated. If a developer's intentions are unrealistic and stubborn to the facts, then on an objective basis the use will likely have been abandoned.

In this instance the requirements for Abandonment of the lawful use have not been met, therefore the class E commercial use persists until the residential use commences in accordance with the approval. I did discuss abandonment at the meeting and its relevance to this situation.

I can confirm that the committee members had received the papers in good time prior to the committee and am assured that they read all the relevant documentation before making a decision.

It was clear to me that the committee members did fully understand the objections raised in both written submissions and in person. The duty of the committee members is however to make a judgement based on the planning balance.

The committee took the opportunity to ask for clarification from each speaker and each and every member listened to responses given. The case officer, Mr Baish, then provided relevant clarifications and answered in detail.

Additional questions, interruptions or comments from the gallery are not permitted according to the committee procedure. The determination of applications does not consist of an open floor debate on the merits of the application. This does not constitute gagging or censorship of the opinion being expressed. The meeting procedure is explained at the start of committee for the benefit of the public attending.

The Parish Council was consulted, making representations both in writing and at the meeting. These comments appeared to be addressed to the satisfaction of the committee members. The committee is not obligated to repeat the objections during the course of the meeting, they form part of the case documents in the same way as the planning statement made by the developer.

The role of the case officer in relation to applications is to objectively assess the submission against existing policy and make a recommendation as to whether permission should be granted or refused. In the preparation of the reports for this committee I did not observe the bias in favour of the developer which you appear to be indicating. Case officers have no stake in whether permission is granted or not and they did not act to persuade the committee to grant approval. They provided information in relation to the submission to the best of their knowledge when questioned by the committee members. As you noted in your letter the committee members, who are quite experienced in handling planning matters, gave positive feedback to the officer during the meeting.

You will kindly note, at 7.4.6 of the officers report, that the Conservation Officer was consulted on the proposals and did not raise objections to the impact on listed buildings or the conservation area.



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Highways noted that the access was related to a historic commercial use which could lawfully create substantially more traffic movements than the proposed residential use. As noted by the Planning Solicitor who was in attendance at the committee a refusal based on purported Highways access issues would not have withstood an appeal to the Planning Inspector and would have been regarded as unreasonable.

We understand that this is not the result you hoped for, but the determination of this application was appropriate from a technical and procedural standpoint.

Yours sincerely

Troy Healy
Principal Planning Manager