

## SCHEDULE A: Applications with Recommendation

21/1083

Item No: 10

Date of Committee: 25/02/2022

**Appn Ref No:**  
21/1083

**Applicant:**  
Mr Holmes

**Parish:**  
Hayton

**Agent:**

**Ward:**  
Brampton & Fellside

**Location:** Noble Garth, Hayton, Brampton, CA8 9HR

**Proposal:** Removal Of Condition 7 (Residential/ Non Commercial Restriction) Of Previously Approved Permission 90/0011 (Conversion Of Redundant Barns To 2no. Dwellings) To Allow Short Term Letting For Noble Garth

**Date of Receipt:**  
23/11/2021

**Statutory Expiry Date**  
24/01/2022

**26 Week Determination**  
28/02/2022

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### REPORT

**Case Officer:** Richard Maunsell

#### 1. Recommendation

- 1.1 It is recommended that this application is approved with conditions.

#### 2. Main Issues

- 2.1 Principle Of Development  
2.2 Impact Of The Proposal On The Living Conditions Of Neighbouring Properties  
2.3 Impact Of The Proposal On Highway Safety

#### 3. Application Details

##### The Site

- 3.1 Noble Garth, Hayton is a detached property located within Hayton around a courtyard of properties. The dwelling comprises of both two and single storey elements that is predominately constructed from stone with an element of render, under a slate roof. There is a small outdoor area adjacent to the southern gable of the property which is accessed from a pair of double doors.

- 3.2 The property is accessed from the main road through Hayton via a single width access which leads past the adjacent property to the north, Chestnut Cottage. Noble Gath is located on the east side of the access and to the south and the head of the access is Blacksmiths Cottage. A building converted to three garages occupies a position in the south-west corner of the access, adjacent to which and to the west of the access is Friars Garth.

## **Background**

- 3.3 Planning permission was approved in 1990 of the conversion of redundant barns to 2no. dwellings. The permission was subject to eight planning conditions, of which condition number 7 reads:

*“The proposed development shall be used solely for private, domestic purposes by the occupants and no trade or business shall be carried out therein or therefrom.”*

## **The Proposal**

- 3.4 The proposal seeks permission to remove the condition to allow the property to be used for short-term occupancy lets.

## **4. Summary of Representations**

- 4.1 This application has been advertised by means of a site notice and direct notification to the occupiers of four properties. In response, six representations have been received objecting to the application. The representations have been reproduced in full separately for Members, however, the main issues raised are summarised as follows:
1. originally the property was a barn serving a working farm. Planning permission was granted with a condition to preclude the building used inappropriately and residents have bought properties on this basis;
  2. the property is one of three which is served by the driveway which, together with the courtyard are in separate ownership and restricted by conditions which have already been breached;
  3. the garage is not big enough to meet current standards or park a vehicle in and doesn't comply with any parking guidelines;
  3. exit from the drive is over a busy footpath and double yellow lines have been installed on the road surfaces at specific points;
  4. the parking restrictions brought about by the double yellow lines are ignored and represent a continuous daily illegal safety hazard around the entrance to the driveway;
  5. the entrance to the driveway does not include visibility;
  6. in order to safely exit the driveway, vehicles must cross over the footpath and into the middle of the public road before any clear view of oncoming vehicles, cyclists or pedestrians can be seen;
  7. any commercial use would significantly increase traffic movement to and from the site;
  8. the entrance to the driveway is unlit and there is no street lighting in the

immediate vicinity which together with the height of the boundary walls poses a safety hazard;

9. a long-term tenant would be more appropriate and would have a better understanding of local highway issues;
  10. the applicant has stated that is the intention to install a “commercial sized” hot tub within the boundary of the very small yard. Any noise will be applied by the size of the yard and height of the boundary walls
  11. the yard is directly adjacent to neighbouring properties and associated window openings which would result in loss of amenity from unreasonable levels of noise and disturbance;
  12. the concerns about noise should be referred to the council's Environmental Health Officer for consideration of the proposal and an antisocial management plan;
  13. clarification should be provided as to how the proposed commercial sized hot tub will be screened;
  14. the original planning permission required that details of the height and materials of all screen walls and boundary fences to be submitted to and approved and therefore its assume that those currently in situ are conditionally approved. Screening in the area of the hot tub needs to be addressed;
  15. holiday properties need to be “site specific” and not at the expense of the local residents and their surrounding community who have chosen these areas to be their homes for the very reasons that this applicant seeks to erode;
  16. the Planning Officer/committee should visit the site in person prior to any planning decision being determined so that they too can see for themselves the unsuitability of a holiday let in this specific location based on the points raised in association with this objection;
  17. the proximity of the property to adjacent properties will result in a loss of privacy;
  18. there is the possibility of strangers knocking on the doors of neighbouring properties trying to find the holiday accommodation;
  19. there are concerns about unknown tenants occupying the property and safeguarding concerns for children in the village.
- 4.2 An additional representation has been received from a resident re-enforcing the originally submitted concerns and also highlight the fact that fence has been erected around the courtyard which will exacerbate and reverberate any noise emanating from the site.
- 4.3 In addition, one representation has been received raising comments in respect of the application and the main issues raised are summarised as follows:
1. although detached, the building is very close to neighbouring properties;
  2. the building has been empty for some time and its not whether it will be occupied but how;
  3. any noise levels from the property shouldn't exceed those which would be reasonable were the property in long-term occupation;
  4. any short-term letting should be well managed;
  5. occupation by single families would be acceptable but groups should be

- limited to three persons;
- 6. no more than two vehicles should be associated with the use;
- 7. house animals should be limited to one well-behaved dog;
- 8. nothing should be placed in the yard that would result in unacceptable levels of noise;
- 9. the condition should be varied to allow trade or business other than short-term letting.

## 5. Summary of Consultation Responses

**Hayton Parish Council:** - no response received;

**Local Environment - Environmental Protection:** - no response received.

## 6. Officer's Report

### Assessment

- 6.1 Section 70(2) of the Town and Country Planning Act 1990/Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires that an application for planning permission is determined in accordance with the provisions of the Development Plan unless material considerations indicate otherwise.
- 6.2 The relevant planning policies against which the application is required to be assessed is the National Planning Policy Framework (NPPF), the National Planning Practice Guidance (NPPG) and Policies SP2, SP6, EC9, IP3 and CM5 of the Carlisle District Local Plan 2015-2030. The proposal raises the following planning issues.

### 1. Principle Of Development

- 6.3 Paragraph 7 of the NPPF outlines that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraphs 8 and 9 explaining that achieving sustainable development means that the planning systems has three overarching objectives: economic, social and environmental. All of which are interdependent and need to be pursued in mutually supportive ways. Economic growth can secure higher social and environmental standards with planning decisions playing an active role in guiding development towards solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.
- 6.4 Paragraph 10 of the NPPF states:

*“So that sustainable development is pursued in a positive way, at the heart of the Framework is a **presumption in favour of sustainable development** (paragraph 11).”*
- 6.5 Paragraph 11 requires that for decision-taking this means:

*“c) approving development proposals that accord with an up-to-date*

*development plan without delay”*

- 6.6 To support a prosperous rural economy, paragraph 84 outlines that planning policies and decisions should enable: *"a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings; b) the development and diversification of agricultural and other land-based rural businesses; c) sustainable rural tourism and leisure developments which respect the character of the countryside; and d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship".*
- 6.7 Paragraph 85 recognises that: *"sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist".*
- 6.8 Policy EC9 of the local plan highlights that the tourism sector is vitality important to Carlisle as generators of economic prosperity. Outlining that proposals will be supported where they contribute towards the development and/or protection of the arts, cultural, tourism and leisure offer of the District and support the economy of the area subject to satisfying three criteria. The NPPF and the local plan recognising that tourism development is a main town centre use and, as such, the Council will encourage this type of development within a recognised centre (i.e. the City Centre, District Centres or Local Centres).
- 6.9 The proposal seeks planning permission for the removal of a condition which prohibits any commercial activity taking place from the property resulting in an unfettered dwellinghouse.
- 6.10 The Town and Country Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categories known as 'Use Classes' which are detailed below. 'Change of use' can occur within the same use class or from one use class to another. Depending on the specifics of any proposed change of use, including any building work associated with the proposal, it may require an application for planning permission or prior approval.
- 6.11 In this instance, a dwellinghouse would fall within an unrestricted use class C3 (dwellinghouse). Over recent years and following the increased use of buildings for holiday accommodation, there have been numerous planning appeal decisions involving the issue of change of use from a dwelling house to a C1 use (hotels) which also covers hotels, boarding and guest houses

where no significant element of care is provided (excludes hostels). It's a matter of fact and degree as to whether a change of use occurs but in a recent appeal decision in Oxford, the Planning Inspector found that:

*"I have found that the transient pattern and occupancy of the short term let accommodation and its associated service provision all combine to increase general comings and goings to the property beyond what would normally be expected with a dwellinghouse use. "*

- 6.12 Properties in Greater London are subject to the Deregulation Act 2015 which allows you to use residential premises for temporary sleeping accommodation without being considered a "change of use" if you use the property as a short-term rental for 90 or fewer nights in a calendar year, which is known as the "90 night rule". Many authorities have adopted the approach to their planning advice.
- 6.13 In the absence of any restrictive condition, planning permission is not required to let a property used as a dwelling house as a short-term holiday let, subject to the issues outlined in the aforementioned paragraph. The applicant has confirmed in correspondence that the property would be used for holiday let and on the basis of the aforementioned considerations, it is Officers opinion that if the property is used in excess of 90 nights per calendar year, an application for a change of use would be required.
- 6.14 Hayton is close to Brampton and accessible by a range of transportation modes including National Cycle Network Route 72 'Hadrian's Cycleway' which passes through the village and in principle, holiday accommodation accords with the objectives of the NPPF and local plan.
- 6.15 It isn't considered necessary to impose further restrictions in respect of other commercial uses or trade which may take place from the property. An occupant of the property could legitimately use a room as an office for themselves as this would be considered ancillary to the primary use as a dwellinghouse. The only permitted change of use without the need for planning permission would be to a House of Multiple Occupation (HMO) which is a small house shared by six unrelated individuals. Given that this property only comprises two bedrooms, such a use is considered unlikely and therefore any further restrictive conditions are deemed unnecessary.

## **2. Impact Of The Proposal On The Living Conditions Of Neighbouring Properties**

- 6.16 Policies within the local plan seek to ensure that development proposals should be appropriate in terms of quality to that of the surrounding area. Policies SP6 and CM5 seeking to ensure that the development proposals do not have an adverse impact on the living conditions of the occupiers of adjacent residential properties which cannot be satisfactorily mitigated within the development proposal or by means of compliance with planning conditions.
- 6.17 As outlined earlier in the report, the proposal seeks planning permission for

the removal of a condition with the ultimate use being as a short-term holiday let for part of the year. Members will note that for similar proposals, applications are often supported by a Management Plan which details measures to be undertaken to mitigate for any potential noise nuisance to neighbouring properties arising from the use of the property as a holiday let. In this instance, as planning permission isn't required for the short-term let, it isn't necessary to submit such a plan; however, in the event that the property is used more intensively and a change of use is required, then it would be appropriate to consider the submission of a plan.

- 6.18 The transient nature of people coming together for a short period of time are unlikely to live in the same way that a single household would with a normal daily or weekly routine. Groups staying at the property may lead to an increase in noise and disturbance during arrival and departure times and through the use of the external areas of the property including the use of the hot tub and external seating areas. The increase in noise and disturbance especially late at night or in the early hours of the morning are issues cited by third parties in their representations of objection. Again, planning permission isn't required for the use as a short-term holiday let but notwithstanding this, the views of the Environmental Health Section has been sought on this matter and has confirmed no objection is raised against the application.
- 6.19 The representations received make repeated reference to the siting of a hot tub within the yard and concerns about the resulting noise and disturbance. Whilst this may have originally been an intention, the applicant has subsequently confirmed that it is now not their intention to install a hot tub. In any event, the siting of a hot tub isn't considered to constitute development and therefore doesn't require planning permission
- 6.20 Accordingly, in line with objectives of Policies SP6 and CM5 Members have to make a judgement as to whether the unrestricted use of the dwelling results in a significant adverse impact on the living conditions of the occupiers of adjacent residential properties. Having outlined the operations and use which can take place without the need to obtain planning permission and these which require consent, it is considered that the unfettered use as a dwelling wouldn't adversely impact on the living conditions of neighbouring residents from unacceptable noise and disturbance. Should such a nuisance occur through the use as a short-term holiday let, which doesn't require planning permission, it is considered that this should be investigated and enforced through separate legislation.

### **3. Impact Of The Proposal On Highway Safety**

- 6.21 Access to the property is via a single width narrow drive that is shared with the neighbouring property. The parking arrangements were agreed under the previous permission and remain unaltered. In the representations, there is significant concern expressed in relation to highway, parking and traffic safety issues.
- 6.22 At present, the property can legitimately be used as a dwelling with the associated vehicle movements which that may entail. Concern is expressed

that non-local residents wouldn't appreciate or take account of local circumstances such as children playing or the traffic and parking issues in the village, particularly in and around drop-off/ collection times for the school. The narrow width of the access and the stone walls either side when exiting the drive, naturally cause any driver to approach with caution at a slow speed.

- 6.23 Although Cumbria County Council, as Local Highways Authority, hasn't been formally consulted, Officers have discussed the proposal with them. In response, they advise that the use of a property as a holiday let generates half the number of vehicle movements as a dwellinghouse and that in this instance, they do not wish to be consulted or raise any concerns. The views of the objectors are respected, however; in light of the foregoing together with the views of the Highway Authority it would be difficult to substantiate a refusal on highway safety grounds.

#### **4. Other Matters**

- 6.24 This application has been submitted under section 73 of the Town and Country Planning Act 1990 to vary a condition associated with a planning permission. Paragraph: 015 Reference ID: 17a-015-20140306 Revision date: 06 03 2014 of the Planning Policy Guidance states:

*"Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended.*

*A decision notice describing the new permission should be issued, setting out all of the conditions related to it. To assist with clarity decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. Further information about conditions can be found in the guidance for use of planning conditions.*

*As a section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission. If the original permission was subject to a planning obligation then this may need to be the subject of a deed of variation."*

- 6.25 Conditions 1, 2, 3, 4, 5, 6, 7 and 8 attached to planning permission granted consent in 1990 required the permission to be begun within 5 years; be in accordance with the approved details; the submission of material details; garaging and parking to be provided and retained; details of all screen walls; drainage connection to a mains sewer; no trade or business to be carried out; and removal of permitted development rights for alterations and extensions respectively. A note on the file from the Planning Enforcement Officer at that time confirms that the scheme complied with the approved plans. Some of the conditions have now fallen away due to the fact that permission was implemented, however, it is appropriate to impose conditions to deal with the timescale for implementation; approved documents; retention of parking in accordance with the approved scheme; and removal of permitted development rights as these conditions remain appropriate and are therefore



imposed as part of this approval.

- 6.26 In the representations, the question was asked whether the boundary structures are consent by the council as part of the planning permission for the conversion of the buildings. Given the passage of time, reliance has to be made on the File Note from the Planning Enforcement Officer who confirmed that the development had been undertaken in accordance with the approved details.
- 6.27 Since the submission of that objection, the applicant has clad the rendered wall to the rear of the yard in timber and erected a low timber fence above the stone wall on the boundary adjacent to the access. The condition removing permitted development rights only applies to alterations and extensions and didn't include the class which relates to fences and boundary structures. The structures that have been erected comply with the relevant permitted development criteria and therefore don't require planning permission.

## **Conclusion**

- 6.28 The proposal seeks permission for the removal of a planning condition attached to the property which prohibits the property being used for commercial purposes. It's the applicant's intention to use the property on a short-term basis for holiday let which in itself, doesn't require planning permission; however, were this to form part of the application, the property is located within Hayton and adjacent to the National Cycle Network Route 72 'Hadrian's Cycleway' and would therefore be acceptable.
- 6.29 Policies SP6 and CM5 seeks to ensure that development proposals do not have a significant adverse impact on the living conditions of the occupiers of adjacent residential properties which cannot be satisfactorily mitigated within the development proposal or by means of compliance with planning condition. The principle of an unfettered dwelling wouldn't adversely affect the living conditions of neighbouring residents from unacceptable levels of noise and disturbance. Such any such issues occur, this would be subject to investigation and possible enforcement action through separate legislation
- 6.30 In overall terms, the principle of development accords with the objectives of the NPPF and local plan policies. The proposal would not have a detrimental impact on highway safety and as such, the proposal is recommended for approval.

## **7. Planning History**

- 7.1 Planning permission was granted in 1989 for the conversion of redundant farm buildings to two dwellings.
- 7.2 In 1990, planning permission was granted for the conversion of redundant farm buildings to two dwellings.

## **8. Recommendation: Grant Permission**

1. The development shall be begun not later than the expiration of 3 years beginning with the date of the grant of this permission.

**Reason:** In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The development shall be undertaken in strict accordance with the approved documents for this Planning Permission which comprise:
  1. the Planning Application Form received 22nd November 2021;
  2. the Site Location Plan received 23rd November 2021;
  3. the Notice of Decision;
  4. any such variation as may subsequently be approved in writing by the local planning authority.

**Reason:** To define the permission.

3. Garaging and car parking shall be provided and retained in accordance with the details approved as part of application 90/0011.

**Reason:** To ensure that adequate parking is retained for the property in accordance with Policy IP3 of the Carlisle District Local Plan 2015-2030.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and/or re-enacting that Order) the following forms of development within the provisions of Schedule 2 Part 1 Classes A, B, C, D, E and G of the Order shall not be undertaken without the express permission in writing of the council:
  1. extension or enlargement; and
  2. additions to roofs; and
  3. alterations to roofs; and
  4. porches; and
  5. detached outbuildings; and
  6. chimneys and flues.

**Reason:** The further extension or alteration of this dwelling or erection of detached buildings requires detailed consideration to safeguard the amenities of the surrounding area, to accord with Policies SP6 and HO8 of the Carlisle District Local Plan 2015-2030.

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# Noble Garth 2021

